

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/W/56/Rev.3

27 March 1985

Special Distribution

Committee on Government Procurement

ARTICLE IX:6(b) NEGOTIATIONS

CONSOLIDATED LIST OF SUGGESTIONS MADE FOR IMPROVEMENTS OF THE AGREEMENT

Note by the Secretariat

Third Revision

1. The present third revision of document GPR/W/56 includes a summary of the main points made with respect to each proposal, as requested by the Committee at its meeting on 13 February 1985 (GPR/M/15,¹ paragraph 59). The proposals have been grouped in the categories suggested by the Chairman at that meeting, i.e. (a) non-controversial proposals; (b) proposals that were generally acceptable except for one Party; (c) controversial proposals; and (d) questions to be left aside until concrete texts have been presented (idem, paragraphs 55-58).

2. For the convenience of delegations, the proposals made are listed in the left column, the relevant provisions of the Agreement in the right column, and the summary of main points underneath these. The secretariat would like to stress that this summary is based on its own understanding of the positions of delegations as they have been made known in the recent past. For an account of previous statements in the Committee, reference is made to the minutes, in particular GPR/M/10-12 (February, April and June 1984 meetings).

3. The contents and lay-out of this note, including the suggested categories of proposals, are without prejudice to the position of any delegation in the overall Article IX:6(b) negotiations.

4. It is recalled that delegations have been invited to present further texts by 10 April 1985 (GPR/M/15, paragraph 59). Any such texts will be issued as addenda to this document.

¹To be issued.

CATEGORY A NON-CONTROVERSIAL PROPOSALS

PROPOSED NEW TEXT

PRESENT TEXT

1. Leasing

- Article I:1(a): Redraft first sentence:

(This Agreement applies to:)

"any law, regulation, procedure and practice regarding any procurement contract for any type of acquisition, including acquisition through purchase or lease, by the entities subject to the Agreement.";

"any law, regulation, procedure and practice regarding the procurement of products by the entities subject to this Agreement."

- Article I:1(b): Add new sentence after first sentence:

(This Agreement applies to ... (b) any procurement contract of a value of SDR150,000 or more.)

"For leasing contracts, the value of the contract for purposes of determining whether or not it exceeds SDR150,000 (or some new value of) SDR's, shall be the sum of the total payments plus the estimated residual value.";

- Article V:4: Add new sub-section (h)²:

(Each notice of proposed purchase shall contain the following information:)

"whether the entity is inviting offers for purchase, for lease, or both."

¹Footnote 1 is not reproduced here, as no proposals have dealt with it.

²Other proposals to add a new provision (h) to Article V:4 are made under items 3 and 14.

Main points made

The proposals are not controversial as such, but three Parties have indicated that leasing should more appropriately be considered in the context of the broadening of the Agreement; one Party has suggested that leasing should be taken up in the context of service contracts. The points have also been made by one Party that the definition of leasing would have to be discussed as well as the threshold value; two other Parties have indicated that in their view no additional obligations, e.g. in respect of tender notices, should be imposed on entities which do not use leasing. Two Parties have noted that their entities do not practise leasing.

2. Estimated Value/Actual Value

- Article I:1(b): Redraft footnote 2 to first sentence:

"²The Agreement shall also apply to any procurement contract for which a notice of proposed purchase has been made in accordance with Article V:3, whether or not the value of the contract as awarded exceeds SDR150,000."

Former footnote 2 to be deleted.

"²For contracts below the threshold, the Parties shall consider, in accordance with paragraph 6 of Article IX, the application in whole or in part of this Agreement. In particular, they shall review the procurement practices and procedures utilized and the application of non-discrimination and transparency for such contracts in connection with the possible inclusion of contracts below the threshold in this Agreement."

Main points made

While the proposed new text is considered non-controversial, the point has been made that if a contract's value is, in good-faith, underestimated, it should be treated as non-Code covered. Some Parties consider that the present footnote should be maintained.

3. Information on the use of single tendering¹

- Article V:3: Redraft first sentence:

¹ Single tendering has also been dealt with under items 4 and 20 below.

"Entities shall publish a notice of each proposed purchase, including purchases to be procured through single tendering, in the appropriate publication listed in Annex II.";

"Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex II. Such notice shall constitute an invitation to participate in either open or selective tendering procedures."

-- Article V:4: Add new subparagraph (h):

(Each notice of proposed purchase shall contain the following information:)

"In the case of single tendering, notice that the procurement is being made under single tendering procedures and identification of the reason under Article V:15 for doing so."; and

-- Article V:15: Modify first line to conform to these other changes by changing the reference "paragraphs 1-14" to "paragraphs 3, 5-14."

First line of Article V:15: "The provisions of paragraphs 1-14 above, etc."

Main points made

These suggestions are non-controversial but one delegation has noted that some drafting refinements might be needed in respect of the second proposal. Three Parties pointed out that single tendering might be made more transparent with less administrative burden through more detailed statistical reports. Two other Parties have also stated that they saw no particular need to impose publication requirements for single tendering. One Party has stated that this matter was related to the "General observations" on Article V, quoted under item 20 below.

4. Statistics on the use of single tendering

Article VI:9(c):

-- Redraft as follows:

"(c) statistics broken down by entities, on the number and total value of contracts awarded under

"statistics on the total number and value of contracts awarded under each of the cases of

each of the cases of Article V, paragraph 15 showing country of origin of the product."; and

- Redraft as follows:

"(c) statistics on the total number and value of contracts awarded above the threshold value under each of the cases of Article V, paragraph 15, broken down by entities, categories of products and country of origin of the products, according to the classification system listed in Annex V."

Main points made

The Party tabling the first proposal could agree to the second proposal.

CATEGORY B PROPOSALS THAT WERE GENERALLY ACCEPTABLE EXCEPT FOR ONE PARTY

5. Qualification procedures¹

Article V:2(b):

- Add new clause at the beginning of the existing provision:

"Conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfill the contract in question."; and

- Add new clause to the end of the existing provision:

"2. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between domestic and foreign suppliers. Qualification procedures shall be consistent with the following:"

"(b) any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the

¹ Qualification procedures are also dealt with under item 11 below.

"The financial, commercial and technical capacity of a supplier shall be judged on the basis of that supplier's total business activity rather than its activity in the territory of the purchasing entity;"

verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers;"

Main points made

These two proposals have been tabled by two different Parties who have mutually supported one another's text. Two of the Parties that have supported the proposals have noted that the precise language might need to be looked into; the point has been made in this regard that formulations should be found which do not foreclose the right to ban firms for reasons such as fraud and non-compliance with previous contracts. One Party has stated that there is no need to change present rules on qualification procedures because they are sufficient to ensure the need for transparency and non-discrimination.

Article V:2(d):

- Redraft the existing provision:

(... Qualification procedures shall be consistent with the following:)

"entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time."; and

"entities maintaining permanent lists of qualified suppliers shall ensure that all qualified suppliers so requesting are included in the lists within a reasonably short time;"

- Add new clause at the end of the existing provision:

(... reasonably short time;)
"and on their permanent supplier list, entities shall not maintain subgroups of qualified suppliers within a product category on such grounds as volume of business, nor shall they use

such distinctions as a basis of restricting invitations to tender."

Main points made

With respect to the first proposal, one Party considers it unnecessary to stipulate explicitly that application for qualifications be received at any time. The same Party explained that the second proposal would imply a fundamental change of its system under which qualifications might depend on the scale of a purchase.

6. Delivery times

- Article V:9 (b): Redraft as follows:

"Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the proposed purchase, the extent of sub-contracting anticipated, and the normal time required for production, de-stocking and transport of goods from the points of supply."

"9(b) Consistent with the entity's own reasonable needs, any delivery date shall take into account the normal time required for the transport of goods from the different points of supply."

Main points made

One Party has argued that delivery times are different according to the nature of the goods procured and also that the present wording is sufficiently clear. The Party suggesting the text has explained that many invitations to tender have delivery times which make it impossible for foreign suppliers to compete and that this should be made clear to the entities. Another Party has pointed out that, when entities consider what their own reasonable needs are, they should bear in mind that competition among suppliers was in their own interest.

7. Time limits in recurring purchases¹

- Article V:10(d): Redraft as follows:

"The periods referred to in (a), (b) and (c) above may be reduced where a state of urgency duly substantiated by the entity renders

"The periods referred to in (a), (b) and (c) above may be reduced either where a state of urgency duly substantiated by the entity renders impracticable

¹Recurring contracts are also dealt with under item 10 below.

impracticable the periods in question."

the periods in question or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4 of this Article."

Main points made

One Party has reserved its position, arguing that the initial notice makes suppliers aware of recurrent purchases. The Party proposing the new text has argued that suppliers that might have missed the initial notice and subsequently - even repeatedly - might have found themselves facing a very short bid time would tend to give up competing in the market and that this was against the purpose of the Agreement.

8. Statistics on the use of derogations

- Article VI:9

Add new subsection (d):¹

"(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement listed in Annex I."

Main points made

Seven Parties have indicated support for this proposal. One Party has stated that the proposal is difficult to accept because of the workload involved.

CATEGORY C. CONTROVERSIAL PROPOSALS

9. The Threshold Value

- Article I:1(b): Redraft first sentence:

(This Agreement applies to:)

"any procurement contract of a value of SDR75,000 or more."²

"any procurement contract of a value of SDR150,000 or more."²

¹A further proposal concerning addition to Article VI:9 is dealt with under item 24 below.

²For footnote 2 see item 2 above.

Main points made

Seven Parties have indicated that a lowering of the threshold is inappropriate at this stage, some of these adding that the matter might be discussed in the context of the entity negotiations, another pointing out that inflation has effectively reduced the threshold already, and one considering that, if anything, the value should be raised. Three delegations have reserved their positions or indicated that further reflection is needed. Of these, one delegation has stated that, whilst a lower threshold might encourage smaller countries to adhere to the Agreement, the extra administrative burden involved might have the opposite effect. Another Party has stated that it is relatively open-minded to the proposal.

10. Recurring Contracts¹

- Article I:1(b): Redraft third sentence:

"If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the basis for application of this Agreement shall be either the value of similar recurring contracts concluded over the previous twelve months or the value of recurring contracts in the twelve months subsequent to the initial contract."

"If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the value of these recurring contracts in the twelve months subsequent to the initial contract shall be the basis for the application of this Agreement."

Main points made

Six delegations have supported the proposal. However, one of these delegations has added that the Parties or the entities concerned should declare periodically which procedure was going to be used, in order to avoid frequent changes. Another of these delegations has stated that, in the interest of uniformity, the retrospective period should be the norm, on the understanding that reasonable adjustments might be made for known/anticipated changes in quantity or price but that the prospective period should be used for new purchases where no historical record exists. One Party has stated that the present rule should continue to apply; because its entities were subject to a "single fiscal year"

¹The Party which has made the textual proposal has also commented that "A problem with respect to the calculation of the threshold is that the disposition concerning recurring contracts has not or has only partially been transposed into their national legislation by some signatories. The Committee should cover this point in its review of implementation legislation." A change of the text of the Agreement has not been proposed.

system they could not base themselves on past values. The delegation which proposed the amendment explained that the intention was to give entities which did not operate under such a system an alternative way to proceed.

11. Variety of qualification procedures

- Article V:

Add new paragraph 3:

"Parties shall ensure that

- (a) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures;
- (b) differences between the qualification procedures of separate entities are minimized."

Main points made

Seven Parties have expressed support for this proposal. One Party has indicated that the matter is still being examined.

12. Separate publication

- Article V:3: Redraft second sentence:

(Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex II.)

"Such notice, constituting an invitation to participate in either open or selective tendering procedures, shall be published under a separate heading referring explicitly to this Agreement."

"Such notice shall constitute an invitation to participate in either open or selective tendering procedures."

Main points made

Seven Parties have expressed support for such an amendment. One Party, pointing out that in its case it would be burdensome and costly to introduce, has stated its willingness to consider the matter in conjunction with the overall results of the negotiations.

13. Bid times

- Article V:10(a), (b) and (c)

In order to allow exporters sufficient time to prepare and transmit tenders, the period for the receipt of tenders in Article V:10 should be extended from thirty to [forty] [forty-five] days from the date of publication of notice of proposed purchase.

10(a) "In open procedures, the period for the receipt of tenders shall in no case be less than thirty days from the date of publication referred to in paragraph 3 of this Article.

(b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than thirty days from the date of publication referred to in paragraph 3; the period for receipt of tenders shall in no case be less than thirty days from the date of issuance of the invitation to tender.

(c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than thirty days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 3, there shall in no case be less than thirty days between those two dates."

Main points made

Four Parties have suggested forty days. Two Parties have suggested forty-five days. Two other Parties, as well as three proposing forty days, indicated that either solution could be acceptable. Four Parties have expressed reservations; one considering it unnecessary to formalize a uniform extension since in practice this might be possible to achieve, anyway; another arguing that the question is one of conforming to these present requirements in

Article V:10(a); a third explaining that under its present practice of weekly publications an extended period might cause practical difficulties.

- Article V:10: Add new sub-paragraph (d):

"Entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender."

Former sub-paragraph (d) to become sub-paragraph (e).

Main points made

This proposal has been supported by six Parties, some of which have noted that the time-lag problem is a matter of implementation as the Agreement is clear on this point. One Party has reserved its position.

14. Languages

- Article V:4: Add new subsection (h):

"Each notice of proposed purchase shall contain the following information:"

"(h) the GATT language or languages in which tenders can be submitted."

Main points made

Six Parties can agree to the text. Two Parties have reserved their position, in line with the view they have taken on the proposal concerning languages below.

- Article V:11: Redraft as follows:

"Entities shall, except in exceptional circumstances, allow tenders to be submitted in an official GATT language designated by the entity."

"If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT."

Main points made

This proposal has been supported by eight Parties. One Party, while appreciating the objective of the proposal, has stated that it could not accept the proposal because it would create serious implementation problems at entity level. Another Party has found the proposal inequitable as amongst entities and countries depending on whether or not the official language was a GATT language. Two Parties have expressed concern about the "exceptional circumstances" provision and have sought a clarification on this point.

15. Publishing information on winning bids

- Article VI: Add new subsection 1, and renumber all existing subsections accordingly:

(1). "Within 45 days of a contract awarded under Article V:14 and 15, entities shall publish a notice in the publication listed in Annex II. Such notice shall include:

- (a) the nature and quantity of the goods in the contract award(s);
- (b) the name of the awarding entity;
- (c) the name and address of the winning supplier(s);
- (d) the value of the winning bid; and
- (e) a means of identifying the proposed purchase notice issued for the contract under Article V:3."

Main points made

This proposal has been supported by two Parties. One Party has indicated that it has difficulties in particular with respect to sub-paragraphs (c) and (d) as proposed. Five other Parties have also expressed strong reservations on giving price information. Some delegations have expressed a doubt as to whether any benefits would match the additional administrative work involved. Some delegations have also found new obligations on publishing unnecessary, as in their view sufficient information can be obtained under the present Agreement.

16. Information to unsuccessful tenderers

- Article VI:3: Redraft as follows:

"Entities shall promptly and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded, the value of the winning bid and the name and address of the winning bidder."

"Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded."

Main points made

The positions are similar to those mentioned under the previous item.

17. Statistics¹

- Article VI:9(a):

- Redraft as follows:

"(a) statistics on estimated value of contracts awarded, both above and below the threshold value on a global basis and broken down by entities;"
and

"(a) global statistics on estimated value of contracts awarded, both above and below the threshold value;"

- Redraft as follows:

"(a) statistics on number and value of contracts awarded by each entity above and below the threshold value;"

Main points made

The first proposal has been supported by five Parties and the second by six Parties. Some other delegations proposed that the two texts be combined. One Party which could accept the ideas concerning above-threshold data,

¹ Other proposals concerning statistics are dealt with under items 4, 8 and 23 in this document.

considered that further information on below-threshold procurement was not relevant in terms of the Agreement. Two other Parties have also stated that figures on below-threshold purchases would be very difficult to accept, one of these noting that in many countries legislation did not exist for such purchases. One Party has indicated that the present wording was sufficient and that further administrative work should be avoided. One delegation has reserved its position. Another has indicated that it could join any consensus.

Article VI:9(b):

- Redraft as follows:

"(b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products according to a classification system using 100 product categories, and country of origin of the product, according to a recognized trade or other appropriate classification system."; and

- Redraft as follows:

"(b) statistics on number and total value of contracts awarded above the threshold under open and selective procedures, broken down by entities, categories of products and country of origin of the product, according to the classification system listed in Annex V;"

Main points made

Seven Parties have stated their support for using "Country of origin of the product". Another Party has stated that this method is no more arbitrary than a system based on the nationality of winning tenderers. The Party tabling the second text above has explained that it is seeking uniformity on the basis of more detailed information and that an appropriate product breakdown should appear in a new Annex V to the Agreement. Five Parties have expressed doubts as to a more detailed breakdown, pointing to the administrative burden involved. One Party has stated that while it was reluctant to support the proposals it would nevertheless examine them further.

CATEGORY D. QUESTIONS LEFT ASIDE UNTIL CONCRETE TEXTS HAVE BEEN PRESENTED

18. Rules of Origin

- Article II:3

The Agreement currently stipulates that rules of origin for the purpose of the Agreement must be the same as used in the normal course of trade. In practice this is problematic because it requires procurement officers to make judgements requiring customs expertise or to rely on input from customs officials who are often occupied with matters of more immediate concern to them. It is also confusing to firms because determinations are complex and the rules vary from country to country. Using different definitions may lead to confusion and/or errors in determining origin. The question of origin would be greatly simplified if a simple 50 per cent rule were adopted by all Parties to the Agreement.

"The Parties shall not apply rules of origin to products imported for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same Parties."

Main points made

Nine delegations have indicated that they prefer the existing language of the Agreement. Two delegations have reserved their position. The existence of a number of origin rules and the difficulty of envisaging special rules for this Agreement have been referred to by a number of these delegations. Two delegations have noted that, in principle, a 50 per cent rule might be useful for administrations. The question has been raised as to whether the profit element is to be included in the suggested calculation.

19. Special and differential treatment for developing countries

Negotiations on entity offers presented by developing countries

- Article III:3

In particular, it has been suggested that Parties should show the necessary flexibility in accepting the entity offers of developing countries and that the quantitative and qualitative criteria used by Parties might be clarified.

Transparency

- Article VI:9

The views have been expressed, inter alia, that the activities of the Committee ought to be more transparent and that information concerning purchases by Code-covered entities would, in particular, be extremely useful in evaluating the benefits accruing from membership.

At the Committee's meeting on 20 June 1984 the Chairman announced that, in the future, statistics will be circulated as ordinary GPR documents (and thus be available to observers), that statistical reviews would be conducted in regular Committee meetings, and that the statistics will be derestricted one year after the conclusion of the annual review. (GPR/M/12, paragraph 9)

Main points made

One observer has made a general statement with respect to this item in the List (GPR/M/14, paragraph 4). The matters are expected to be reverted to at the Committee's special session in April 1985.

Article III:3 (first sentence)

"With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 above shall be duly taken into account in the course of the negotiations with respect to the lists of entities of developing countries to be covered by the provisions of this Agreement."

20. Single tendering

Article V: General observations

- Observation of the practices employed in the various signatory countries over the last year indicates that there is a need to eliminate potential "grey" areas between the selective and single-tendering procedures. Some signatories appear to regard as selective procedures those tenders where the entity selects a limited number of suppliers and then denies for one reason or another - usually shortage of time - the possibility of participating in the tender to additional suppliers. This procedure usually discriminates against foreign suppliers since the selected candidates for participation in the tender are usually domestic suppliers. Other signatories, however, tend to regard such procedures as a form of single tendering even though a number of suppliers may be involved in the negotiation of the contract since the procedure lacks the essential transparency and openness characteristics of a truly selective procedure. Unless the possibility of participation in a market is genuinely open to all potential suppliers it should in future not be classified under the open or selective tender heading.

Main points made

Some delegations have sought clarification. Some have reserved their positions.

Article V:1

"The Parties shall ensure that the tendering procedures of their entities are consistent with the provisions below. Open tendering procedures, for the purposes of this Agreement, are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement, are those procedures under which, consistent with paragraph 7 and other relevant provisions of this Article, those suppliers invited to do so by the entity may submit a tender. Single tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers individually, only under the conditions specified in paragraph 15 below."

Article V:15

"The provisions of paragraphs 1-14 above governing open and selective tendering procedures need not apply in the following conditions, provided that single tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or protection to domestic producers:" (Sub-paragraphs (a)-(e) then follow)

21. Contents of synopsis and quality of information

Article V:4:

- The Agreement specifies in its Article V:4 the minimum contents of the synopsis of the invitation to tender. There is widespread disrespect of this particular disposition among purchasing entities to the point where it is sometimes scarcely possible to identify the basic parameters of the invitation to tender. Thus it becomes impossible for a potential supplier to identify whether the invitation to tender interests him or not. Indeed it is becoming evident that some signatories may not have adequately transposed the contents of Article V:4 into their national legislation. It is incumbent on those signatories who are in default in this respect to remedy it now before other signatories are obliged to seek redress under the terms of the Agreement. The Committee may wish to review national legislation on this and indeed other matters during the negotiations.

A change of the text of the Agreement has not been proposed.

- In respect of those signatories whose entities observe in form at least the terms of Article V:4, the Committee should verify that the contents of the publication are in conformity with the terms of the Agreement. (The Party making this proposal) is already carrying out such an investigation into the contents of the synopsis of invitations to tender published in (its) Official Journal. Other signatories should carry out similar studies in order that appropriate proposals may be made at a later date

"Each notice of proposed purchase shall contain the following information:

- (a) the nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature;
- (b) whether the procedure is open or selective;
- (c) any delivery date;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation.

The entity shall publish in one of the official languages of the GATT a summary of the notice of proposed purchase containing at least the following:

during the negotiations for the modification of Article V:4, if it should prove to be necessary.

A change of the text of the Agreement has not been proposed.

- (i) subject matter of the contract;
- (ii) time-limits set for the submission of tenders or an application to be invited to tender; and
- (iii) addresses from which documents relating to the contracts may be requested."

Main points made

One Party has stated that it would be interested to consider any concrete texts as it supported improved tender notices and quality of information. Four other Parties have noted that the observations seemed to be related to implementation/administration in general.

22. Offset procurement and technology licensing

- Article V:14(h)

The Committee should consider the possibility of modifying this provision to make the present restraints on the use of offset procurement and technology licensing requirements stricter and perhaps forbidden in Code-covered purchases.

"entities should normally refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, Parties concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one Party over suppliers from any other Party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one Party shall not be favoured over suppliers from any other Party."

(The note to this provision is not reproduced in this document.)

Main points made

Two Parties have indicated that an outright prohibition could not be accepted. One Party has asked what would happen to the Note to Article V:14(h).

23. Statistics¹

- Article VI:9: General comments

It is clear after the experience of the last two years that the statistical requirements of the Agreement have presented problems for most signatories. A wide diversity of methods has been developed to face up to these problems. However, much of this ingenuity may have led to a situation where the statistical returns submitted for the information and examination of the Committee are scarcely comparable. It is thus necessary to discuss within the framework of the renegotiations the experience amassed by the signatories over the last three years in order to distill from it a series of more detailed guidelines than those presently foreseen in the Agreement for the preparation of the annual statistical returns.

Article VI:9, GPR/M/1, Annex III and subsequent decisions concerning a common format are not reproduced in this document.

24. Preferences and exceptions/specific derogations (Annex I):

In addition to the proposal concerning statistics on the use of derogations (item 8 above), the following suggestions have been made:

- Although the Agreement recognizes the existence of a number of preferences and exceptions, it would appear that some of these preferences have

The notes contained in the Entity lists in Annex I are not reproduced in this document.

¹ Concrete texts concerning statistics proposed by other delegations are contained under items 4, 8 and 17 above.

been more extensively used than was expected at the time of the negotiation of the Agreement. In the meantime other instruments and exceptions, which appear to discriminate against foreign suppliers, have surfaced. It would seem appropriate that signatories should further examine the validity and importance of such preferences and exceptions during the renegotiations with a view to defining more restrictive conditions for their use.

Main points made

One Party has stated that clarification is needed.

- Despite the fact that most Parties have not provided the agreed information which makes it possible to quantify the impact of specific derogations, such limitations on coverage could be used to circumvent the Agreement. Serious consideration should be given to the elimination of all derogations under the Agreement.

Main points made

Five Parties have expressed reservations, some considering it necessary to have a political assurance that a safety net exists, one noting that the proposal would meet with great domestic difficulties. One delegation, which had difficulties with the proposal, considered, nevertheless, that some derogations have been used more frequently than anticipated and that it would be useful to have data, e.g. on the use of small-business set-asides.

- A requirement should be added to Article VI:9 that each case in which derogations are made use of shall be reported to the Committee through the GATT secretariat within thirty days of the award of the contract.

Main points made

The proposal has been supported by four delegations. Two Parties have expressed considerable doubt.