GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

GPR/M/34

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Committee on Government Procurement

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MINUTES OF THE MEETING HELD ON 6 OCTOBER 1989

Chairman: Mr. John Donaghy (Canada)

1. The following agenda was adopted:

A. Article IX:6(b) negotiations

2. The Chairman gave the following report, on his own responsibility, concerning the two meetings of the Informal Working Group on Negotiations held since the Committee last met:

"Since the last meeting, the Informal Committee has met twice, on 13-15 June and 4-5 October. The following is a summary of the work that has been undertaken at those meetings, which I present on my own responsibility in my capacity as Chairman.

As mentioned in the report of the last meeting, a text entitled "Techniques and Modalities of Negotiations on Broadening" has been elaborated by the Group, and I am in a position to state that this text is now available. It will take too much time to read it all and I therefore suggest that it be annexed to the minutes of the meeting as being part of my report.[1] Work undertaken at the June and October meetings has been based on these techniques and modalities which cover the main issues involved in the work on broadening.

In the area of broadening, the Group met in June to discuss further work on the basis of proposals made by the European Communities and by Japan. Further suggestions were made at that meeting by Japan and the United States and, both in June and in October the Group focused on substance rather on the further drafting of texts concerning future work. In the area of regional and local government entities, participants recognized the magnitude and importance of the procurement involved and the potential for increased mutual benefits within the limits of an agreed perception of balance. In at least some parties, such procurement represents more than 50 per cent of total public procurement.

The Group has elaborated further on questions related to issues such as administrative burden, the thresholds, jurisdiction, and the question of insurance of compliance. It is progressively getting a better understanding of the types of procurement and overall values, the legislative and regulating bases for sub-governmental, sub-central procurement, conditions attached to central government funding, and the kinds of rules or solutions that might be envisaged. The Group has also noted a need for additional data with respect to Group A entities presently not Code-covered. With respect to other entities whose procurement policies are substantially controlled by, dependant on, or influenced by central, regional, or local governments, work continues towards elaborating an operational concept.

At the October meeting, the Nordic countries and the United States presented further ideas concerning this Group. The discussion at both the last two meetings has reiterated a number of different considerations which individual delegations wish to see stressed. There is no agreed approach to further work in this area; in the informal Working Group, however, delegations have been encouraged to come prepared to give relevant information based on their own experience. Issues relating to privatization and nationalization have also been discussed in relation to this Group, in the light of the need for a mutually agreed rights and obligations, currently dealt with in Article IX:5(b) of the Code.

Three delegations have submitted information and suggestions about surveillance, monitoring, and control, including what has been referred to as a bid-protest mechanism. This has to be discussed further since some delegations have questioned the usefulness and cost of new requirements in this regard, others have sought further clarifications from participants.

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[1]See Annex I.

A number of delegations see rules in this area as an important element of confidence building for the business world. The Group has also heard statements and questions about the possible improvement of the Agreement, notably in respect of origin rules and in respect of possible transitional membership of the Agreement. These matters are expected to be re-visited.

In the area of service contracts, some delegations have explained rules, practices, and activities of their respective countries. The United States has proposed a work programme since the last meeting of this Committee. The exchange of views, comments, questions and replies has been inclusive, but some delegations have indicated general support stating that they favor progress in this area within the Group. The view has also been expressed that priority should be given to broadening over service contracts at this time; the Group recognizes that the work of the Group of Negotiations on Services is of direct relevance to its own activities."

3. The representative of Singapore voiced her Government's support for the objective to seek greater opening of markets in government procurement. She stated that although Singapore already had a very open and competitive public tendering system, as a Party to the Agreement its procurement entities had had to take on additional administrative burdens and each faced procedural constraints in their procurement activities. It was only reasonable to expect commensurable benefits from participation and unless the Agreement attracted a wider membership, Singapore saw little prospect thereof. With the broadening exercise aimed at a wider coverage of entities, and the inclusion of services procurements, other contracting parties, particularly the developing countries, would be even less inclined to join the Agreement. Moreover, although her delegation did not wish to obstruct the exercise, it believed that it would be of little benefit to Singapore, especially when an inordinate amount of manpower and resources had to be expended in the process. Her delegation would not associate itself with the text on "Techniques and Modalities of Negotiations on Broadening"; however, it would not prevent others from using it as a guideline to facilitate discussions. As a Party to the Agreement, her Government would, as appropriate, offer its views on proposals that were or would be tabled in the Committee, but it would reserve its position on the final package of results that would emerge at the end.

4. The Committee took note of the statements made.

B. 1987 Statistical review

5. The Committee received written questions from the delegation of the United States to the delegations of Finland, Japan, Norway and Switzerland, and written questions from the delegations of Canada and Japan, to the United States' delegation. Supplementary questions from the United States concerning the 1986 Reports of Japan and Sweden were also circulated in writing, together with a written Swedish reply.

(i) Hong Kong, Singapore, Austria, Sweden, and Israel (GPR/45, and Adds.1, 2, 5, and 9, respectively)

6. No statements were made.

(ii) Norway (GPR/45/Add.3)

7. The representative of Norway stated that written answers would be submitted soon to the questions by the United States.

(iii) United States (GPR/45/Add.4, and Corr.1)

8. The representative from the United States deferred a response to the questions from Canada and Japan until it had been prepared in writing. She noted an error in the statistics on the value of single tendering and stated that corrections would be submitted.

(iv) Japan (GPR/45/Add.6)

9. Answers had been circulated in July 1989 to questions by the United States but it was decided to postpone the review of Japan's 1987 statistics to the next meeting.

(v) Switzerland (GPR/45/Add.7)

10. The representative of Switzerland stated that answers to the questions by the United States would be given before the next Committee meeting.

(vi) Finland (GPR/45/Add.8)

11. The representative of Finland stated that answers to the questions by the United States would be forthcoming as soon as possible. He asked for clarification of a question concerning the National Board of Navigation, whose procurement of icebreakers and whose transferral from the Ministry of Trade and Industry to the Ministry of Transportation had been addressed at the March meeting.

12. The representative of the United States noted that a question in this regard had been posed earlier in the context of implementation. Since this was the first official examination of 1987 statistics, her delegation wished to retain this question under this agenda item.

(vii) European Economic Community (GPR/45/Add.10/Rev.1)

13. The representative of the United States noted that her delegation would be submitting questions to the EEC at a later date.

(viii) Canada (GPR/45/Add.10)

14. The representative of the United States noted that her delegation would have questions for Canada at a later date.

(ix) Conclusion

15. The Chairman concluded that the Committee's 1987 statistical review had been completed for Hong Kong, Singapore, Austria, Sweden, and Israel. He reminded delegates that 30 September 1989 was the deadline for

submission of 1988 statistics. He noted that the 1988 Reports of Hong Kong, Singapore, and Austria had been circulated in the GPR/53/- series, and that the reports of Canada, Finland, and Sweden would be circulated in the near future.

C. Uniform classification system for statistical purposes

16. The Chairman made reference to the Nordic proposal contained in document GPR/W/83 of October 1987. In document GPR/W/94, Austria had supported the Nordic proposal of a common system based on the Harmonized System and had circulated its 1988 statistical report on this basis. In document GPR/W/95, Canada had stated that the existing 26 groups were manageable and that Parties using the NIPRO and the FSC systems could easily re-group commodities into those 26 groups. In a new proposal[1], the United States suggested that it might be more useful to either develop the existing system or choose a system for procurement purposes which was currently in use and adapt it to the needs of the Committee. The Chairman noted that the main point of discussion had been whether all Parties could begin using the same 26 groups and whether those who currently used them could transpose the corresponding CCCN and SITC language into that of the new Harmonized System. He also recalled that at the March meeting, the EEC had stated that its solution would be an internal Community system to be translated into the HS by way of a concordance (GPR/M/32, paragraph 16). The Chairman noted that statistical reporting, not implementation of the Agreement, was being discussed.

17. The representative of Austria noted that the question of uniform classification did not represent a priority area for his delegation and that it could be discussed at a later stage. Efforts should focus on the areas of broadening and the other issues which needed more immediate consideration. Furthermore, he noted that he could associate himself with the considerations regarding the dfferent requirements of product classification systems for customs and procurement purposes, as presented in the US paper.

18. The representative of the United States stated that while her delegation believed it important to have a uniform and detailed classification system, it had not yet found a system of preference. The system chosen by the Committee should be the easiest to adapt to the purposes of the Committee, represent the least amount of work, and be the most efficient. Her delegation did not believe that the Harmonized System satisfied these criteria.

19. The representative of Sweden, speaking on behalf of the Nordic countries, stated that these delegations had found that the CCCN-based system served the purposes of the Committee well and that the number of categories (26) was sufficient for the work of the Committee. They suggested that this system be converted to the HS nomenclature; in this regard they welcomed the Austrian proposal and would be prepared to adopt it as a basis for a uniform classification system. They reserved their position on the United States' proposal pending further study.

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[1]Subsequently issued as GPR/W/100.

20. The representative of the European Economic Community noted that, in preliminary examination, difficulties had been encountered with the Harmonized System because it did not appear to be well adapted to the purposes of the Committee. On the other hand, the United Nations Central Products Classification appeared to be promising as it was a product based system, which included service classifications as well, and was based on a United Nations re-classification of the Harmonized System. Most importantly the 26 headings of the CCCN and the NIPRO categories in use could be easily transposed to the 39 categories which the UNCPC consisted of. His delegation had prepared a draft concordance for this purpose.

21. The representative of Switzerland noted that one of the main purposes of the Harmonized System was uniformity and greater comparability of statistics in all fields of international trade. For this reason, his delegation supported the statement by the Nordic delegations. In reference to point (iii) of the Canadian proposal, his delegation did not believe that a product imported by a government agency should have a classification different from that of the same product when imported by a private company. He added that military equipment was to a large extent excluded from the Agreement.

22. The Chairman concluded that the Committee should revert to this agenda item at the next meeting, taking into account the various proposals presented. He added in this connection that delegations might wish to revert to the question of extending the current number of categories. Although it had not been specifically discussed at the present meeting, some delegations had suggested discussing the possibility of expanding the current list to include certain sub-categories for main product groups purchased by governments, e.g. category 14 (office machines and automatic processing equipment).

D. Questions concerning definition of origin

23. The Chairman noted that the Group had two questions to deal with under this agenda item one in relation to rules of origin for statistics, another in relation to rules of origin used to define products which were entitled to Code treatment. In regard to the latter aspect, he noted that Canada and the United States had given replies in documents GPR/W/96 and GPR/W/97 on their rules of origin for implementing obligations. The most recent information from Finland, Japan, Norway, Singapore, and Switzerland was contained in documents GPR/W/59 and GPR/W/59/Adds.1-3 which had been circulated in 1984. The delegations of Austria, Hong Kong and Sweden had provided oral information at the meeting in March 1989 which was recorded in document GPR/M/32, paragraphs 21-27. The basic question originating from the previous inconclusive discussion was whether there should be a standard rule of origin. The Chairman recalled Japan's reference to the requirements of Article II:4 and also to the work on this subject in the Negotiating Group on Non-Tariff Measures.

24. The representative of the United States noted that if statistics were to be used for the purpose of monitoring the implementation of the Agreement, then the definition of origin for implementation ought to be consistent with the definition used for reporting. Rules of origin should

be uniform and consistent among Parties in their implementation of the Agreement, hence her delegation suggested that the Group try to determine which rule of origin could be used for all purposes. Such a determination might involve a provision to improve the Agreement which could be taken up during the renegotiations.

25. The representative of Canada asked when the EEC would provide information on rules of origin regarding the application of the Agreement.

26. The representative from the European Economic Community stated that it was his delegation's understanding that the EEC had been applying the rules of origin used in normal trade but he reserved his right to give a more detailed response at later time.

27. The Chairman took note of the comments and suggested the Group revert to this topic at the next or a later meeting.

E. Other questions concerning implementation and administration of the Agreement

(i) Implementation in the United States

28. The representative of the United States informed the Committee of a re-organization in the General Services Administration which had resulted in a transfer of most of the procurement in Region 9 to other regions in the GSA. Region 9 was listed in Annex I to the Agreement as an entity excluded from its coverage. Her delegation had calculated that the transfer would eliminate the Buy America preferences for procurement worth $258.4 million, thereby increasing the US coverage by this amount. Some of these procurements had been transferred to the Tools Commodity Center which would remain excluded from Code-coverage, as would the category FSC 7340, i.e. purchases of stainless steel flatware in the amount of $2.6 million in 1986. The net benefit to other Parties in the amount of $258.4 million would more than compensate for the reduction in Code-coverage resulting from the dissolution of the Civil Aeronautics Board, which had made purchases under the Agreement in 1981 only, and in the amount of $834,000. Her delegation would submit a new text for entry in Annex I to reflect the above-mentioned changes.

29. The representative from the European Communities reserved his delegation's rights pending examination of the US text.

30. The representative of Japan expressed concern about Title VII of the US Trade and Competitiveness Act of 1988, in particular its unilateral aspect and the incompatibility of the "Good Standing" provision, with the provisions of Article VII:14 of the Agreement.

31. The representatives of the European Economic Community and the Nordic members associated themselves with the concerns expressed.

32. The representative of the United States responded with assurances that she had noted the concerns and would report them to her authorities. The provisions of Title VII were completely consistent with the US obligations under the Agreement, and the Act, which had been passed by the Congress, recognized the current status of the renegotiations underway. Her delegation expected that a successful result of those renegotiations would considerably lessen the problems that had given rise to the establishment of Title VII.

33. The representative of the European Economic Community replied that, although he was unclear as to the exact message that the representative from the United States wished to convey, he believed that the pressure inherent in such negotiations was not an appropriate context in which to deal with any problems regarding Title VII as it related to the Agreement as it stood.

34. The representative of the United States replied that she had intended to convey that the pressures that had given rise to Title VII should be alleviated by renegotiations. Such pressures existed in every country but in the United States, they would usually be reflected in law form because the basic legal requirement in the US market was that complete equality in competitive conditions be extended to all.

(ii) Implementation in Finland

35. The representative of Finland informed the Committee that the Finnish General Procurement Guidelines and the Act governing its application had been amended according to the Nordic trade law of 1987. These amendments would be duly circulated (ref: GPR/14/Add.18).

(iii) Implementation in Norway

36. The representative of the United States expressed serious concerns regarding the way a particular government procurement had been handled by Norway. Her delegation had carefully investigated the matter and had had several bilateral exchanges with the government of Norway. In September 1989, Article VII:3 consultations had been held on the issue; nevertheless, the contract in question had been awarded in mid-September. The manner in which the procurement had been handled appeared to be inconsistent with both the letter and the spirit of the Agreement. Her delegation had requested Article VII:4 consultations and was planning to hold those in the near future. She wished to advise the Committee, for transparency reasons, of the consultations that would be taking place and to alert the Committee that her delegation might need to revert to this issue at a future time.

37. The representative of Norway stated that he had not expected this matter to be raised at this meeting; the request to enter into consultations under Article VII:4 had been received the week before and since then his delegation had been actively engaged in finding a date mutually suitable for the experts of both sides. Concerning the substance

of the matter, his delegation hoped that the ensuing consultations involving technical expertise would eliminate any further need to pursue this matter in the Committee.

F. Questions concerning Article I:1(c)

38. The Chairman noted that previous discussion of this agenda item was recorded in document GPR/M/31, paragraphs 55-63. He recalled that there were no comments at the last meeting but that it had been agreed to keep the item on the agenda.

39. The representative of the European Economic Community stated that his delegation continued to reserve its position.

40. It was agreed to retain the item on the agenda.

G. Ninth annual review of the implementation and operation of the Agreement; Third major review of Article III; Adoption of 1989 Report to the CONTRACTING PARTIES

(i) Ninth annual review and 1989 Report to the CONTRACTING PARTIES

41. The Chairman suggested that the secretariat update the draft report and circulate it to Parties with time for comments before the final version would be considered to be adopted. It was so agreed.

(ii) Third major review of Article III

42. The representative of Singapore expressed her delegation's view (contained in document GPR/W/98) that the review of Article III should address the problem of why more developing countries had not been attracted to accede to the Agreement. In her delegation's view, a major objective of the ongoing Article IX:6(b) negotiations and of the Uruguay Round negotiations was to achieve a broader participation of contracting parties, especially developing countries. The Committee should identify the obstacles and suggest possible solutions regarding the question of why, in spite of Article III, more developing countries had not joined this Agreement. Article III recognized that developing countries might not be able to accept the full Code obligations on accession, or to immediately do away with giving price and other preferences to their domestic producers. Article III:1 and III:3 stipulated that certain factors as well as the development, trade, and financial needs of developing countries should be taken into account in the negotiations for accession and in determining the list of entities that should be covered; negotiations for accession of developing countries should be conducted on the basis of the principle of "relative reciprocity." Her delegation believed that this principle had not been respected by some developed countries in the bilateral negotiations required to determine the list of purchasing entities. Furthermore, Article III:5 provided that a developing country that had acceded to the Agreement could, at a later stage, request that certain entities or products that had been included in its list of entities be excluded from the rules of national treatment. In addition, Articles III:2

and III:3 called upon the developed countries to facilitate increased imports from developing countries by including in their lists, entities that purchase products of export interest to developing countries. It was her delegation's view, therefore, that the reluctance of developed countries to abide by the letter and intent of the Article III provisions had led to the problems of developing country accession. Certain proposals by India and Korea, tabled in the Uruguay Round negotiations, highlighted the problems of accession for developing countries and contained suggestions for examining the adequacy of the provision relating to special and differential treatment in this Agreement. Her delegation believed that in order to facilitate accession by developing countries, it would be important that Parties, in responding to entity offers of developing countries wishing to accede, pay greater attention to the developmental, financial, and trade needs of these countries in accordance with the principles set out in Article III. The question that the Committee would need to address was how it could operationalize this in concrete terms in order to overcome the obstacles to developing country accession. The EC paper on transitional membership, which had been tabled in the Uruguay Round negotiations and which provided some preliminary thoughts on how enlarged membership could be encouraged, merited further consideration and required further elaboration. She suggested that an examination of possible approaches to developing country accession include: (i) a lower entrance fee in the form of some minimum initial commitments such as full transparency or minimum entity offers; and (ii) progressive liberalization through further offers of entities over an extended time-frame. A detailed examination by the Committee of the issues relating to greater participation of developing countries should continue at the next meeting.

43. The representative of the European Economic Community drew attention to document MTN.GNG/NG8/W/47, distributed to the Uruguay Round Negotiating Group on MTN Agreements and Arrangements, and which had been discussed in the Informal Working Group on Negotiations. The paper presented preliminary suggestions with a view towards establishing guidelines for a transitional mechanism which might, in conjunction with the existing provisions of Article III, help developing countries with the problems of adhering to the Agreement. The aim of the EC suggestion was to address a particular set of difficulties that had not been addressed elsewhere. These were the difficulties associated with establishing internal co-ordination for meeting the requirements of the Agreement and for establishing the appropriate bases of information. His delegation envisaged that it should be possible, in a transitory stage, to begin publishing tender notices and fulfilling information and specification requirements without creating obligations in the area of access and transparency of procedures, although it would be necessary to be ready to explain legislative obstacles to purchasing in particular areas. His delegation believed that this would be helpful because it would give to the country in transition a period of time in which to fully evaluate the problems that arose from their particular procurement needs and to identify the extent of their own capacity to meet Code requirements and to identify potential problems in competition. It would not prejudice the special and differential treatment to which they had access under Article III, but it would give them time in which to take the appropriate organizational steps

before moving on to full membership. His delegation envisaged this mechanism as one that would lead to membership, but for the least developed countries, the Committee could envisage some form of staged acceptance of the full obligations of the Agreement. This proposal had been tabled to encourage constructive discussion and his delegation remained open to suggestions on how to further develop or improve it.

44. The representative of Israel supported the statement by Singapore: the question of why so few developing countries were Parties to the Agreement was a very important issue and the operation of Article III should be examined in this light. Welcoming proposals from delegations on this issue, he noted, in particular, that the proposal by the EC on transitional membership merited serious examination. His delegation wished to stress that the objectives and provisions of Article III must be taken into account in all negotiations dealing with the question of broadening and the inclusion of service contracts in the Agreement. In its view, the objectives of Article III, particularly that of assisting developing country Parties to benefit from membership, were not being filled. The Agreement had done very little to help Israeli suppliers increase their sales to Code-covered entities. He cited several reasons for this complexity of procedures, language problems, difficulties with information flows, behaviour of procuring officers, etc. These problems might also be felt by developed countries, but it was more difficult for developing countries to overcome them due to their limited resources and the position of their suppliers in the markets. The Agreement recognized, in Articles III:1 and III:2, the needs of developing countries in the implementation and administration of the Agreement; moreover, in order to meet these objectives, Articles III:9 and III:10 provided for technical assistance and Article III:11 for information centres. His delegation believed that these provisions should be utilized. In this regard, he again thanked the delegation of Japan for having held a seminar in Israel on government procurement in Japan, as mentioned at the last regular meeting (GPR/M/32, paragraph 62). He invited other developed country Parties to take similar positive initiatives and to ascertain what they could do to help suppliers from developing countries.

45. The representative of Hong Kong associated himself with the statement by Singapore. He added that his delegation welcomed the statement by the EC as an initial step to explore the question of developing country accession. It would reflect on the issue and comment at the next meeting.

46. The observer from India supported, in full, the statement by Singapore.

47. The observer from Korea also expressed his delegation's support for the statement by Singapore, noting that its own proposal in the NG8 in October 1988 followed along the same lines. His delegation believed that it was very important to incorporate the spirit of special and differential treatment into Article IX. In this context, he re-iterated the main point of his delegation's proposal regarding negotiations for accession by developing countries: (i) consideration of the differences in procurement

systems, i.e. degree of centralization; (ii) a commitment to gradual extension of entity lists; and (iii) the lack of flexibility in the implementation of Article III during negotiations for developing country accession. He hoped that these points would be considered by the Committee. He thanked the EC for the effort in the proposal on transitional membership which his delegation believed was a positive contribution, even though it might need further elaboration.

48. The representative of Sweden, speaking on behalf of the Nordic countries, stressed the importance of broadening the Agreement, both in regard to new entities and to new members. He looked forward to further discussions concerning the EC proposal because they believed that rules along the lines proposed, in conjunction with the existing Article III provisions, would make it easier for developing countries to sign the Agreement.

49. The observer from Argentina stated that his delegation believed the EC paper to be a very important document and had referred it to its authorities for examination.

50. The Committee took note of all comments and agreed to revert to this item at the next meeting.

H. Other business

(i) Negotiating Group on MTN Agreements and Arrangements

51. The Chairman noted that the main development under this item was the tabling of the EC paper on transitional membership that had been discussed under the previous agenda item. The discussion in the NG8 was summarized in document MTN.GNG/NG8/11, paragraphs 26-28.

(ii) Threshold levels for 1990-1991

52. The Chairman recalled the new procedures agreed upon in November 1986, as set out in GPR/M/24, Annex V, and invited the Parties to notify their thresholds in national currencies for 1990-1991.

(iii) Panel candidates for 1990

53. The Chairman invited delegations to nominate panel candidates for 1990.

(iv) Further meetings

54. The Committee noted that the Informal Working Group would hold its next meeting on 17-19 January 1990. It was agreed that the next Committee meeting would be held on 9 March 1990, following a further meeting of the Informal Working Group on 7-8 March 1990. It was also decided to set a further Committee meeting on 29 June 1990, again preceded by the Informal Working Group which would meet on 27-28 June 1990.

Annex I
TECHNIQUES AND MODALITIES OF NEGOTIATIONS ON BROADENING

(Text referred to in paragraph 2)

1. The purpose of the present text is to provide guidance for the third stage of the work programme, i.e. review of the situation and negotiations on the basis of agreed techniques and modalities. The text does not in any way prejudice the positions of any delegation on any aspects of the future work.

Introduction

2. The aim is to bring as many entities as possible in Groups A, B and C under an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement. For this purpose further criteria should be established for the appropriate classification of entities into either Group A, B or C, and more information, including names of entities and data on their procurements, would be useful.

3. A number of considerations would need to be taken into account in order to achieve the highest possible balance of rights and obligations. Efforts necessary to assure domestic support for changes in laws and practices would depend on expectations in terms of real new economic opportunities, but also on what could be conceived as a broad equivalence of concessions between the Parties, including the concept of sectoral balance, having regard to the provisions of Article III relating to developing countries. Additional procurement opportunities must justify additional costs of implementation. Further elements in the assessment of balance are for discussion.

4. Different rules could be considered for different types of entities or situations. This might also imply flexibility in rule implementation by way of transitional periods, or particular actions in pursuance of Article III. As a means of ensuring even-handed treatment, appropriate provisions might be agreed to permit entities or sectors engaged in similar activities to be made subject to similar obligations. Nonetheless, over-complicated sets of rules should be avoided. These matters need further discussion.

5. The principles of transparency and predictability are important and should make it easier for suppliers to become aware of procurement conditions and possible sales opportunities. They might be appropriate as minimum requirements for certain procurements as might an undertaking by Parties to require that their entities concerned follow the principles of national treatment and non-discrimination.

6. A request/offer procedure could be an appropriate mechanism depending on more information on entities (including classification criteria and procurement data), and fuller clarification on the ways of assessing balance of concessions (including exclusions or special treatment of certain types of entities or Parties). Such a procedure might begin with offers/requests from individual Parties based on their own considerations. It is considered most relevant for Group C and would be more relevant for Group B than for Group A.

7. The objective of increasing coverage could also be enhanced by adopting flexible and reasonable accession terms. Transitional arrangement could exist for new Parties which cannot immediately assume the full obligations under the Agreement. It is for consideration what arrangements would be appropriate to ensure a balance of rights and obligations for Parties under transitional arrangement and whether such arrangements should be time-bound but as an example such a Party may be required to: (a) state clearly which contracts awarded by entities under its Group A and B were open to outside bids and on what terms; (b) fulfil transparency requirements for Groups A, B and C; and (c) the use of non-discriminatory technical specifications. Governments in a transitional situation are expected, in due course, to assume the other obligations of the Agreement, the basis being lists of entities in each of the agreed Groups to be examined by the Committee, where appropriate, in the light of the relevant provisions of Article III.

A. Central government entities, including those operating at regional and local levels

8. In principle, entities in this category would be the subject of negotiations on broadening on the assumption that they be made subject to the Code obligations. There could be situations which justify flexibility in this regard, ref. paragraph 4 above.

B. Regional and local government entities

9. Entities in this Group belong to the public sector and are subject to the same mechanisms and disciplines (e.g. budgetary) as entities in Group A. They are also important in the attainment of overall and sectoral balances. Their procurements might reflect their own political considerations as well as influence or control exercised by the central government. It is desirable to make such entities subject to the Agreement or at least its basic principles. Difficulties relate to jurisdiction, i.e. the capacity of central governments to undertake commitments in this area and to enforce such commitments once taken. Failure to provide general coverage of these entities would pose the question of how to find an acceptable definition of which entities were to be covered.

10. Bearing in mind that trading partners are mainly interested in regional or local governments, which have relatively large amounts of procurement, one starting point could be to focus on (i) the first level of

government below the central government; recognizing the effects which differences in governmental/administrative structures would have on balance; (ii) other regional or local government entities which are funded from the central or regional government. Concerning flexibility or minimum obligations, see paragraphs 4 and 5 above. Parties which see difficulties with the approach outlined under this Group are invited to suggest solutions as to how subsequent distortions of the Agreement could be prevented. The actual negotiations could, in such circumstances, be based on a request/offer procedure.

C. Other entities whose procurement policies are substantially controlled by, dependent on, or influenced by, central, regional or local government

11. To the extent that the GATT itself does not already require governments to abide by the principles of national treatment and non-discrimination, these principles could be spelled out in the Agreement for entities in this Group. A satisfactory solution to the scope and coverage of Group B entities would have a bearing on the approach to Group C entities, and vice versa.

12. It is assumed that entities in this Group could be covered, subject to negotiations, if the expansion of procurement opportunities to be generated by broadening, justifies the increase of costs. A distinction should also be made between entities which are engaged in competitive/non-competitive activities, while performing governmental or quasi-governmental functions. These concepts need further clarification. A case-by-case examination may be necessary to determine appropriate disciplines.

13. With respect to the concept of "substantial" control, dependence or influence the following factors are relevant and might be taken as a starting point for further discussion of characteristics:

(i) the special situation of developing countries.

(ii) the degree to which strong competitive pressures could be held to prevent the exercise of direct or indirect government pressures on an entity's procurement policy and decisions; and

(iii) the various means governments have to control or influence an entity's procurement policy and decisions;

14. The "means" referred to in (iii) above could include, inter alia, governmental ownership (including mixed ownership), financial assistance from the government (subsidies, capital investment, etc.), statutory relationship between entity and government, special status and privileges (monopolies, rate regulations, etc.), government budget review, appointment of management personnel by the government, other political pressures which even entities in the commercial environment might have to accommodate, etc. These points would be discussed further in the process with, where appropriate, particular emphasis on the particular situation of developing countries.

15. Minimum obligations on the Parties would have to be further developed, not least for entities in this Group, bearing in mind, inter alia, the point made in paragraph 11 above. These could cover, inter alia, matters such as the application of the principles of non-discrimination and national treatment; and transparency and predictability.

D. Other entities whose procurement are not substantially controlled by, dependent on, or influenced by, central, regional or local government, including cases where they are engaged in commercial activities

16. When properly defined, these entities shall not be the subject of negotiations on broadening. Governments should, however, refrain from interference in their procurement activities.

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Mechanism to evaluate and, if necessary, adapt the coverage to a new situation such as privatization or nationalization of entities

17. Since with respect to each Group the obligations incumbent upon the Parties are to be clearly defined, changes of obligation would seem to be required if an entity moves from Group A, B or C to D, or vice versa. The possibility of a compensatory mechanism should be further discussed, as well as a possible provision for subsequent review of the effective situation of a privatized or nationalized entity. This should enable verification as to whether the entity does de facto cease or begin to act as an agent of a public authority in terms of government procurement covered by the Agreement.