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RESTRICTED

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

GOVERNMENT PROCUREMENT

Note by the Secretariat

Background

1. Working Group I, established by the Committee on Trade in Industrial Products in December 1969, was charged with the task of examining, on the basis of information in the GATT Inventory of Non-Tariff Measures, possibilities for concrete action in the area of government procurement and certain other notified non-tariff barriers to trade as found in the illustrative list (COM.IND/W/40).

2. At its meetings during 1970, this Group concluded that government procurement was a problem of a general nature and both the legal and practical aspects would have to be considered together. It was felt that the solution lay in the formulation of a code or set of guidelines that would apply to government procurement operations. The Group agreed that in determining guidelines, the following elements should, inter alia, be considered (L/3496, page 26):

- (i) Objectives and principles
- (ii) Definitions
- (iii) Procurement entities
- (iv) Elimination of existing discrimination
- (v) Exceptions
- (vi) Purchasing procedures
- (vii) Publication of government procurement regulations
- (viii) Reporting, review, complaint and confrontation procedures.

3. Note was taken of the fact that the OECD was addressing itself to this matter and that all the suggested elements referred to above were covered by the guidelines under preparation in OECD. The Group was informed of the state of work in the OECD and of the main contents of the envisaged guidelines. In the circumstances, it was not considered useful to elaborate further at that stage on the main headings in the Group; it was agreed that for the time being the best way to proceed would be for the Group to follow developments in OECD.

4. In the context of the Multilateral Trade Negotiations, the Group "Non-Tariff Measures", at its meeting in March 1975, agreed that the secretariat should prepare a background note which would gather together the available and relevant information on government procurement (MTN/NTM/1, paragraph 7).

5. In this respect, it may be noted that the OECD is drafting a comprehensive instrument concerning government purchases, contracts and certain services incidental to them, aimed at making these operations more open to international competition. In addition, the information obtained by the OECD from the original survey of procedures and practices in member countries in the field of government procurement and published in a booklet¹ is now being revised and updated with a view to publication by the end of this year. For details of the OECD work, see Annex A.

6. The following paragraphs contain a summary of the information available concerning government procurement in the GATT Inventory of Non-Tariff Measures and, on the basis of the notifications, an indication of some of the problem areas which have been identified in this field.

Introduction

7. Governments are major purchasers of both goods and services. Government procurement in its broadest sense covers both the action and the process by which governments and their agencies acquire the commodities and services they require for their own consumption and needs. The scope of procedures involved in government procurement operations basically cover, inter alia:

- (a) the specification of the kind and quantity of goods or services to be acquired;
- (b) investigation of the market with respect to suppliers and contacts with potential suppliers;

¹Government Purchasing in Europe, North America and Japan. OECD Secretariat. Paris 1966.

- (c) placing orders or contracts through the calling of tenders or otherwise, including negotiation of terms relating to the transaction;
- (d) supervising delivery and performance; and
- (e) the taking of necessary action in the event of inadequate performance.

8. A distinction should be made at the outset between State-trading and government procurement. In the context of the former, the government or its agent is involved in buying, selling and sometimes manufacturing operations. The latter mainly relates to the government or its agent acting as a consumer procuring for its own consumption and not for commercial re-sale.

The GATT Inventory of Non-Tariff Measures

9. Part I of the Inventory of Non-Tariff Measures contains twenty-five notifications relating to government procurement. These have been summarized in Annex B. The Committee on Trade in Industrial Products in the course of its work selected eleven of these notifications as being representative of the problems that arise in this area.¹

10. Some of the factors which affect foreign participation in procurement activities have been mentioned in certain of the notifications contained in the inventory. Basically, the inhibiting factors are seen from the inventory to arise in three areas, viz:

- (a) Legislation²

¹The identification numbers of the illustrative notifications contained in document MTN/3B/1 are: Nos. 56, 57, 58, 64, 65, 68, 69, 74, 76, 79 and 80.

²See Notification No. 80.

(b) Ministerial and Cabinet Decrees¹, and

(c) Administrative practices and directives.²

11. These inhibiting factors which may be of general or of somewhat more special application are listed as follows:

(a) Preferential price treatment generally for products of indigenous origin³

(b) Preferential price treatment for the products of certain domestic socio-economic groupings and product groups⁴

(c) Inadequate notice to foreign bidders⁵ and advance notice of prospective contracts being given only local publicity⁶

(d) Short-time periods for bidding⁷

(e) Requirement that foreign firms operate through local counterparts⁸

(f) Predominant use of the technique of selective tendering⁹

(g) A specified percentage of government purchases to consist of products from a particular geographical area¹⁰

(h) Specified products are closed to foreign competition by the use of the technique of selective bidding¹¹

¹See Notification No. 78

²See Notification No. 79

³See Notification Nos. 66, 73, 80

⁴See Notification Nos. 65, 79

⁵Of general pertinence in the field of government procurement

⁶See Notification No. 69

⁷See Notification Nos. 56, 60, 71

⁸See Notification No. 65

⁹See Notification No. 69

¹⁰See Notification No. 68

¹¹See Notification No. 69

- (i) Bidding restricted to domestic suppliers and suppliers from a particular regional grouping (free-trade group) to which the importing country belongs¹
- (j) Equality of treatment restricted to domestic products and products of a preferred grouping of countries as against third country producers²
- (k) Preferences accorded in the purchase of goods and awarding of contracts to countries with which bilateral clearing accounts³ and reciprocal arrangements⁴ are maintained; or who purchase indigenous goods in compensation⁵
- (l) Use of government funds restricted to the purchase of goods of local origin if similar to the foreign products⁶
- (m) Some measure of preference accorded to products of domestic firms located in areas designated "development districts"⁷, and areas of substantial unemployment.
- (n) Agency located in another country, but when acting as Chief Procuring Agents for importing country it places the country of its location and/or nationality at a distinct advantage over third countries in the disbursement of purchase contracts.⁸

12. A number of the notifications, together with comments and observations made by the notifying countries, relate to difficulties caused by administrative discretion prevalent in many countries in relation to government procurement. It has been stated by the notifying countries in this connexion that it often appeared that when there existed a domestic industry capable of supplying a product, relationships had been built up which came close

¹See Notification No. 74

²See Notification Nos. 57, 58, 59

³See Notification No. 66

⁴See Notification No. 75

⁵See Notification No. 76

⁶See Notification No. 75

⁷See Notification No. 79

⁸See Notification Nos. 70, 72

to excluding foreign suppliers even before bids were called, simply because designs and specifications of materials required by the government had been evolved in collaboration with particular domestic suppliers. This, in the opinion of the notifying governments, makes it difficult for foreign suppliers to get their bids accepted.

13. The comments by some countries, recorded in the GATT inventory of non-tariff measures, highlight the following policy considerations as influencing certain governments in purchasing locally produced goods:

- (a) to save foreign exchange and generally safeguard their balance-of-payments situations;
- (b) to promote the economic development of certain areas;
- (c) to ease a situation of high and persistent unemployment, or as a measure to counter potential unemployment;
- (d) to promote the economic development of certain social groups and socially depressed or victimized groups of persons;
- (e) to attain certain strategic objectives such as independence from foreign sources of supply for certain essential goods of military importance, or for reasons of national security.

Main points emerging from notifications

14. Outside the catalogue of factors which are claimed to inhibit foreign participation, the main points which tend to emerge from the notifications are that:

- (a) the giving of preferences for products of local origin is widespread;
- (b) these preferences basically divide into two types - price preferences and non-price preferences, with most countries using a combination of both;
- (c) the system of preferences for domestic products has sometimes been placed on a statutory basis of a generally mandatory character;
- (d) the preferential treatment applied in the field of government procurement to domestic products appears in many cases to be based on administrative discretion, practice and habit; and

- (e) the use of government procurement as an instrument of government policy is common to both the developed and the developing countries.

Some questions have also been raised regarding the implications of Article 14 of the Stockholm Convention for government procurement¹ from third countries.

15. The OECD has, in its publication, distinguished three main categories of procurement systems, - public tender, selective tender and single tender. It has also distinguished three main tendering procedures - automatic tender, discretionary tender, and negotiated tender. More detailed information on the operation of these procurement and tendering procedures may be obtained from the OECD document "Government Purchasing in Europe, North America and Japan - regulations and procedures (1966)".

GATT provisions in relation to government procurement

16. Article III of the General Agreement concerning national treatment on internal taxation and regulation is relevant to the question of government procurement. In this connexion, Article III:4 states "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product."

17. However, Article III:8(a) states: "The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial re-sale or with a view to use in the production of goods for commercial sale."²

18. Article III:8(b) states further: "The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or

¹Information on the Lisbon Ministerial Agreement of October 1966 on public undertakings in the context of EFTA may be found in EFTA Bulletin, Volume VIII, No. 2, March-April 1967.

²It has been suggested in the inventory that price preferences for domestic suppliers in respect of government purchasing operations may also result in indirect export subsidies for similar goods.

charges applied consistently with the provisions of the Article, and subsidies effected through governmental purchases of domestic products."

19. It may be noted that Article XVI:1 states, inter alia, that if subsidies operate "directly or indirectly to increase exports of any products from or to reduce imports of any product into its territory" certain procedures are provided with a view to considering the possibility of limiting the subsidization.¹

¹Article 16(4) states that "as from 1 January 1958, or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product, which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market". The declaration dated 19 November 1960 giving effect to the provisions of Article XVI:4 has been accepted by sixteen developed countries.

ANNEX A

Work on Government Purchasing by the OECD

1. The Trade Committee of OECD has been concerned for some years with the question of government purchasing. Originally, its work consisted of a far-reaching survey of the regulations, procedures and practices in Member countries. Because of the interest attached to this information as concerns both governments and trade circles, it was published in 1966 (see the booklet entitled: "Government Purchasing, Regulations and Procedures in Europe, North America and Japan"). The information exercise has continued since then, and a revised and fuller edition of the above booklet, covering all present OECD Member countries, is now being prepared and should come out at the end of this year.
2. The review of government purchasing policies, procedures and practices was soon followed by further work, with the aim of making State contracts more open to international competition and of ensuring maximum fairness in this respect. To this end, the work was aimed at elaborating a solution on the basis of which the principle of non-discrimination could be established on a multilateral basis, by making provision for both the policies and the practices to be employed in order to ensure respect for this principle. The Trade Committee instructed its Working Party to endeavour, on an exploratory basis, to prepare the bases for such a solution. At earlier meetings of the GATT, information was supplied concerning current work, the problems raised and directions in which possible solutions were being looked for.
3. More recently, it became possible to begin drawing up a comprehensive draft instrument. Such an exercise involves the knowledge of policies, procedures and practices in force in interested countries and of other necessary data. The information systems from which the appropriate factual basis is to be made available for the countries concerned is one of the important elements being considered in this respect. Although the draft was prepared in the form of obligations which signatories would agree to implement, no government has committed itself, at this stage, neither on its form, nor on any of its provisions. A number of important provisions would still have to be drafted or completed.
4. This instrument concerns government purchases of supplies (though some services incidental to the supplies can be included). The "provisions of substance" in the draft are collectively aimed at eliminating discrimination in purchasing policies, procedures and practices. Because discrimination can take two forms (i.e. discrimination included in legislative, regulatory or administrative provisions or discriminatory practices implemented, in the absence of published rules, in the various stages of purchasing) it was necessary, besides provisions designed to abolish formal discrimination, to develop provisions on procedures designed to

foreclose use of discriminatory practices. Countries which would adhere to the Instrument would be expected to align their policies, procedures and practices to conform with its provisions. In this connexion, the fact that the instrument is expected to be made binding (as an alternative to a hortatory set of rules) is partly due to the need for effective guarantees concerning reciprocity.

5. Besides the principle of non-discrimination in government purchasing regulations, procedures and practices, the following provisions would aim, in connexion with national purchasing procedures, to guarantee that foreign suppliers and products have fair access to contracts interesting international competition. (It is intended that the system described would apply only to a value of contracts which would be meaningful in that respect. The level has not yet been fixed precisely.)

6. Interested suppliers would be informed of purchasing intentions by advance publicity, and this would apply both to procedures allowing all suppliers to participate ("open" procedures), and to those permitting some selection among competitors effectively allowed to participate ("selective" procedures). Suppliers would receive all relevant information necessary to evaluate the requirements in the invitation and prepare a bid. The time-limits allowed for at the various procedural stages would be of equitable and adequate duration. The criteria used in evaluating bids would be objective and specified in advance. Given the procedural constraints that these different guarantees would involve, an exhaustive list, some aspects of which are still being discussed, would specify those cases or circumstances in which purchasing entities could use other procedures (including direct negotiation with only one supplier), though they would continue to be bound by certain measures of control.

7. Other essential provisions would relate to the prohibition of discrimination in the form either of product specifications, or of qualifying conditions for suppliers and the guarantees demanded of them. Lastly, within the context of the purchasing process, suppliers would be given certain means of information. Suppliers could have contacts with the purchasing entity, and could have access to national procedures for hearing and considering complaints in respect of government purchasing. One question in respect of compliance with the obligations of the Instrument is the amount of information to be provided on award contracts and whether, in particular, publication of awards with a view to ensuring maximum transparency is necessary.

8. The above provisions would apply, via governments, to certain public sector purchasing entities. It should be noted that one question may arise in this connexion owing to the constitutional differences between countries (centralized or federal States) and different administrative and economic structures (in particular the varying share of the economy under State control). For reasons of reciprocity, the direct obligations underwritten by governments in respect of purchasing entities over which they have authority, could be supplemented by an

undertaking to use all reasonable means within their power to encourage other public sector entities to apply the Instrument.

9. It is intended that certain exceptions would be provided for in the Instrument. These concern problems which are known about in connexion with international commitments, but which can have a special impact on government purchasing (for example, purchasing of arms, ammunition and war material for national defence purposes). The question of whether, for certain other reasons, countries might deviate from the obligations of the Instrument has not yet been finally resolved.

10. The provisions designed to ensure the surveillance of the Instrument at government level constitute another essential aspect of the draft. It is understood that a committee composed of the signatory countries would have a major rôle in this respect. Two types of function can be distinguished under this heading.

11. These include, in the first place, the permanent surveillance and periodic reviews which the committee would undertake in the context of the implementation of the Instrument. They also include the procedure for settling differences which will in fact have to guarantee that commitments are effectively respected. The intention is, however, to ensure, by a system of successive screens, (the first of which consists of the contacts established between the suppliers and the purchasing entities themselves) that differences can be solved at the lowest level and do not normally lead to an international dispute. If bilateral consultations between governments, which are given an important rôle in this context, should fail and the difficulties are of a serious nature, the parties concerned could launch an appeal at multilateral level. Still to be resolved are the questions of the detailed appeal procedure, and in particular of whether ultimately differences would be settled by the Committee of signatory countries or by reference to an impartial sub-committee or panel, and of the range of the possible consequences of appeals, whether in particular compensatory action could be authorized.

ANNEX B

Notifications in the Field of Government Procurement

This summary is based on the information contained in the inventory of Non-Tariff Measures and may not fully reflect the nuances contained in the notifications and explanations given, as well as any subsequent modifications in the measures that might have been made by countries against whom notifications were made. For further details, delegations are invited to refer to the relevant inventory sheets.

Reference and Identification No. of the Notification	Notifying Countries	Country against whom Notifications were made	Description and Effects of Measures	Type of Measure	Remarks contained in inventory
(1)	(2)	(3)	(4)	(5)	(6)
MTN/29/1 50 ¹	U.S. Yugoslavia	Austria	Bidding time often too short for foreign publication. No uniform rules for procedures and no central purchasing agency.	Rules relating to Public tendering are based on ONORM A 2050 Article 1/24 which provides "If circumstances permit only Austrian products shall be used and Austrian firms will be engaged," so long as the application of these provisions does not contradict any international obligations entered into by Austria. Paragraph 2/A of ONORM A 2050 provides that the time between the date of issue of the public tender and its closing date must be sufficiently long. In fixing dates consideration must be given to any technical difficulties involved in the preparation of bids etc.	
57 ¹	U.S. Yugoslavia	Benelux (Belgium)	Government procurement based on the principle of non-discrimination between domestic and foreign products and suppliers. Any departure from this principle only in exceptional circumstances and where the price differential does not exceed 10 per cent. Benelux Customs Union Agreement provides for no discrimination between the three member countries.	Law of 4 March 1963 and Royal Decree.	U.S. considered that non-discrimination clause of Benelux Agreement implies discrimination against third countries. Belgium rejects this view and insists that foreign tenders are judged on their intrinsic value only. U.S. noted that system of procurement did not appear compatible with m.f.n. clause or Article XXIV of General Agreement. Belgium rejects this view.
58 ¹	U.S.	Benelux (Luxembourg)	Products of local origin are believed to be given a 10 per cent preference. This view was contested. The trade licence requirement precluded non-Benelux based foreign suppliers from bidding. Preference given for products from Benelux Customs Union.	Decree of December 1956 - Paragraph 2 states "In principle products of foreign origin shall not be used if producers in the Benelux Customs Union are able to supply similar quality at prices which are substantially the same." Licences to trade which bidders must have are only issued to nationals of countries having reciprocal arrangements.	It was pointed out that nearly all foreign firms bidding for a government tender had subsidiaries in the Grand Duchy or Belgium through which they submitted offers thus competing on an equal footing with Benelux firms. This measure, it was stated, had no impact on international trade. U.S. noted that procurement clause in Benelux Agreement was not compatible with the spirit of m.f.n. clause in the General Agreement.
59	EEC	Brazil	Imports not allowed on credit terms if they could be obtained, within certain price, quality and delivery date limits. Locally. Long delay in the granting of import certificates and a 15 per cent price preference allowed for iron and steel products of local origin were also mentioned.		It was pointed out that the delays incurred in the operation of the system could be long and amounted to a barrier to trade. Moreover, there was no central procurement organ and the various boards of procurement sometimes took long periods to examine technical problems.

RTN/29/A 60	(1)	(2)	(3)	(4)	(5)	(6)
	Australia U.S.	Burma	The time factor made it difficult to transmit specifications to foreign firms in time to submit bids ahead of the deadline.	Tender notice usually issued with advance bid deadline of 30 days.		
61	U.S.	Cameroon	Products purchased for public account.			
62	E.E.C. Japan U.S.	Canada	All federal government contracts included a clause stating that to the extent possible, consistent with proper economy and expeditious action, Canadian labour, parts and material, should be used. Provincial governments customarily granted preferences to locally manufactured goods. A 10 per cent preference on domestic products was the normal maximum granted by the Federal Government.	Administrative measures and practices.		These measures and practices posed a significant barrier to trade particularly through the operation of the price preference mechanism.
63	U.S.	Chile	Special ad hoc quotas established from time to time for official government purchases, import monopolies or government favoured activities.	Administrative action.		Chile commented that quotas for government procurement were fixed on the basis of consumption requirements. Imports took place through public tenders which were open to all interested bidders.
64	U.S. Yugoslavia	Denmark	Discrimination favouring domestic procurement. EFTA members had equal opportunity with domestic firms under Article 14 of EFTA Convention.			Denmark maintained that it had no law or regulation which provided for discrimination in government procurement.
65	U.S. Nordic countries Canada	France	Limited preferences granted to Workers' Production Cooperatives, Craftsmen, Artists and Artisans. Requirement that foreign firms operate through French counterparts and the difficulty in obtaining technical visas inhibited foreign participation.	Articles 62, 63, 70 and 71 of the Code of Procurement. Administrative discretion.		Notifying countries felt that the different rules operated as a "Buy French" policy which made it difficult for foreigners to gain access to the French market. Technical visas, while not keeping foreign goods out, created barriers. The French representative stated that a deliberate "Buy French" policy was not being pursued. In his view, when cases of preference occurred in practice, this was generally due to technical necessities (e.g.: using homogeneous material, ensuring after-sales service; need for spare-parts; public security, etc.)
66	Canada Japan, Nordics U.S.	Greece	Protection of domestic industry; preference given to goods from countries with which Greece has bilateral clearing accounts; 8 per cent price preference for domestic products.	Article 2 of Law 4494 of July 1965 states that "In purchases by Government Agencies, domestic industrial products shall be given preference over foreign industries' products even when the price of the domestic product is higher than that of its foreign counterparts."		The Nordic countries expressed concern that preferences for goods of Greek origin appeared to be placed on a legislative basis. The Greek Government stated that the provisions were not mandatory, their purpose being to promote development of domestic firms and conserve foreign exchange in view of balance of payments difficulties.

	U.S.	India	Trade reduced through the use of import restrictions in connection with government procurement. Foreign participation is inhibited by the restriction of specifications to British or local standards; renegotiation of bids; issuing invitations to bid on short deadlines; and failure to identify sources of financing.	Administrative Practices	<p>It was stated by the Indian delegate that import restrictions were imposed both on public and private accounts in order to ease the BOP situation and only when indigenous products of comparable quality were available. The sources of financing, often foreign aid, were not always known in advance. The adoption of British or Indian specifications could not be regarded as a barrier. Efforts were being made to evolve Indian standards on the basis of internationally adopted standards.</p> <p>Italian view that any discrimination which flowed from Law of 6th October, was only at expense of Italian suppliers outside the Southern and Island areas. The military purchases were covered by Article XII of GATT, and provisions regulating government procurement were fully compatible with Article III and particularly paragraph 3(c) of the General Agreement.</p>
66 ^a	U.S. Canada U.S. Yugoslavia	India	70 per cent of Government procurement reserved for purchases of goods from South Italy and the Islands. Ministry of Defense made purchases from foreign sources only exceptionally.	Law of 6th October 1950, modified in 1964.	
69 ^a	Canada U.S. ESP	Japan	In respect of 14 specified articles, the procedure of selective tendering as opposed to open tendering may be applied and when there are two or more identical lowest bids the domestic bid should prevail without resort to the rule of drawing lots. Advance notice of prospective purchases given only limited publicity, and foreign suppliers obliged to enter into licensing arrangements with Japanese firms in order to participate.	Cabinet Order 336 of September 1963 provides for the two exceptions in respect of the 14 specified articles, while the other practices flowed from administrative discretion.	<p>The notifying countries felt that, while not maintaining specific preferences for domestic suppliers, Japan practised a <i>de facto</i> preference through the registration requirements, shortening of bidding times and other administrative practices, which, in combination made it difficult for foreign suppliers to compete effectively.</p>
70	U.S.	Kenya	British suppliers given advantage over other foreign suppliers.	Crown Agents in London act as Chief Procuring Agents for the Government of Kenya.	
71	U.S.	Madagascar	Short time for submission of bids and administrative discrimination.	All transactions subject to Decree No. 61-065 of February 1961 as amended by Decree No. 65-006 of January 1965.	
72	U.S.	Malawi	British suppliers given advantage over other foreign suppliers.	Crown Agents in London act as Chief Procuring Agents for the Government of Malawi.	
73	U.S.	Malaysia	Locally produced goods enjoy a price preference of up to 5 per cent.	A directive to all Government departments.	
74 ^a	U.S. Canada	Norway	Competition which is otherwise open may at the government's discretion be limited to domestic suppliers and suppliers of countries subject to the reciprocal obligations of Article 14 of the EFTA Convention in cases where a specific order would be conducive to securing a stable employment situation in developing a competitive domestic industry.	Royal Decree of April 1967	

(1)	(2)	(3)	(4)	(5)	(6)
MGW/28/1 75					
	U.S.	Peru	Government agencies and institutions in receipt of government funds may not acquire foreign goods similar to those manufactured locally. Preference given to countries who acquire Peruvian coffee for use in new markets (as defined in Annex B of the International Coffee Agreement)	Government Procurement regulated by Article 55 of Law 13270 of 1939 for the Promotion of Industry. Supreme Decree 139A on International Tenders.	
76 ^a	U.S. Canada	Portugal	Preference to be given to Portuguese products when other things are equal; and for the products of foreign countries who purchase local products in compensation.	Decree 22077 of December 1932 and Decree 39501 of 1951.	It was notified that individual cases indicated that preferences extended to foreign suppliers who buy Portuguese goods in compensation.
77	EEC Kurdias Japan Canada U.S.	South Africa	When considering the award of contracts, the State Tender Board may, <u>inter alia</u> , accord a preference to goods produced, manufactured or assembled in the Republic, or to goods falling into any other category on a basis determined by the Minister from time to time. Provision also made for the allowance of an additional discretionary preference of up to 15 per cent and of a further additional preference after consultation with and recommendation of the Board of Trade and Industries. State Tender Board not required to accept the lowest tender and low foreign tenders may be disregarded particularly for engineering products - if local industry was thought to be in difficulties. Tenders generally published only locally except in the case of tenders for major items.	State Tender Board Regulation 1733 of 1 October 1968.	Preferences generally not mandatory. These measures stemmed from economic recession of 1959, when the government felt it had a responsibility for the creation of larger market opportunities for local industries. This was regarded as a continuing responsibility since the country was still in the process of industrial development.
78	Kurdias U.S.	Spain	Establishes a general preference for domestic over foreign firms and predominantly for engineering firms	Decrease 3740 of December 1965, 3265 of December 1968, and 617 of April 1968.	
79 ^a	Canada Japan U.S.	United Kingdom	First preference given to Commonwealth products by purchasing departments. Some administrative measure of preference given to firms in "development areas"; preference given to computers of UK manufacture; and EFTA members have equality of opportunity with domestic suppliers under Article 14 of Stockholm Convention. In addition, discrimination appeared to be involved in the requirement that contracts over £250,000 had to obtain Treasury sanction if contracted overseas and Treasury review is based on balance-of-payment grounds.	Administrative practices and discretion.	Generally, despite absence of formal discriminatory requirements there seemed to be de facto discrimination sometimes operating through standards and specifications involved (frequently based on UK product). The UK representative stated that practices relating to Treasury approval, Commonwealth suppliers and UK computers did exist but only exceptionally. The Stockholm Convention could not give rise to preferences for EFTA members; as a principle there was no preference for domestic suppliers.

(1)	(2)	(3)	(4)	(5)	(6)
MTN/25/2 80A	Australia Canada, EEC Nordic Countries Japan Switzerland Yugoslavia	U.S.	Significant preferences granted to domestic products and producers by Federal, State, Municipal and County authorities. Preference for domestic products placed on a statutory basis.	The Bay American Act of 1933 (41 U.S.C.10a to 10d) confers preferences of a wide ranging character on domestic products. Executive Order 10582, prescribes uniform standards and procedures for making determinations under the Bay American Act. Berry's Amendment of 1934 forbids procurement of any food, clothing, and certain other textiles of foreign growth or manufacture for use in military establishments outside U.S.	A long-term trend in U.S. procurement policy towards increasing discrimination against foreign supplies was noticed and the fear that these regulations could become permanent was expressed.

^a Identified by the Committee on Trade in Industrial Products as being representatives of the problems that arise in this area (see paragraph 9 above).