

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Government Procurement"

DRAFT INTEGRATED TEXT FOR NEGOTIATION ON GOVERNMENT PROCUREMENT

Note by the Secretariat

1. Having regard to paragraphs 5 and 6 of the Chairman's summing-up of the last meeting of the Sub-Group "Government Procurement" (MTN/NTM/37), a number of draft provisions presently available on government procurement have been put together in an integrated text for the use of delegations participating in this area of the negotiations. The Sub-Group noted that the availability of such draft provisions would not prejudice the negotiating position of any delegation in any area of the negotiations on government procurement nor would it prejudice the possibility of submitting additional proposals as the negotiations proceed.
2. Where alternative texts or proposals have been made available, square brackets have been used simply to designate the existence of such alternatives. Square brackets have also been used to indicate the provisional character of certain texts or to show a reservation on a particular point by one or more delegations in areas where composite texts may have been submitted by a number of participating countries. However, the use of this device does not necessarily imply any attachment on the part of such delegations to other areas of the integrated text which should be considered as a working document to facilitate the negotiation of an agreement on government procurement.
3. As reflected in paragraph 7 of the Chairman's summing-up, the Sub-Group agreed that at its next meeting, it would focus its attention on the draft elements contained in the document put together by the secretariat and any additional points delegations may wish to take up at that meeting. It is to be expected that any further proposals or suggestions not received in time for inclusion in the integrated text, but circulated before the next meeting, would form part of the documentation for that meeting of the Sub-Group.

DRAFT INTEGRATED TEXT FOR NEGOTIATION ON GOVERNMENT PROCUREMENT

PREAMBLE<sup>1</sup>

Signatories to this Agreement,

Considering that Ministers agreed in the Tokyo Declaration of 14 September 1973 that comprehensive Multilateral Trade Negotiations in the framework of GATT should aim, inter alia, to reduce or eliminate non-tariff measures or, where this is not appropriate, their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

Considering that Ministers also agreed that negotiations should aim to secure additional benefits for the international trade of developing countries, and recognized the importance of the application of differential measures in ways which will provide special and more favourable treatment for them where this is feasible and appropriate;

Considering that Ministers in the Tokyo Declaration recognized that the particular situation and problems of the least developed among the developing countries shall be given special attention and stressed the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations;

Recognizing the need to establish rights and obligations with respect to laws, regulations, procedures and practices affecting government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

Recognizing that laws, regulations, procedures and practices affecting government procurement should not be prepared, adopted or applied to foreign or domestic products and to foreign or domestic suppliers so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers;

Recognizing that it is desirable to provide transparency of laws, regulations, procedures and practices affecting government procurement;

Recognizing the need to establish international notification, consultation, surveillance and dispute settlement procedures with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

Hereby agree as follows:<sup>7</sup>

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<sup>1</sup>The Preamble will need to be examined in the light of the provisions of this Agreement as may be agreed upon.

PART I  
SCOPE AND COVERAGE

1. This Agreement applies to:
- (a) any law, regulation, procedure and practice  affecting   regarding  the procurement of products by the entities<sup>1</sup> subject to this Agreement  for  immediate or ultimate consumption in governmental use.  This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se;
  - (b)  any  procurement contract of a value of ... or more.<sup>2</sup> No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below ... If an individual requirement for the procurement of a product 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 ;
  - (c)  procurement by   all  entities under  direct   or substantial  control of signatories with respect to their procurement procedures and practices (Annex ...). With respect to procurement entities of regional and local governments and authorities within their territories  other than those listed in Annex ...  signatories shall  take such reasonable measures as may be available to them to  ensure that the laws, regulations, procedures and practices of these entities comply with the provisions of this Agreement ;
  - (c)  procurement by  entities under direct or indirect control of signatories with respect to their procurement procedures and practices. The Agreement does not apply to entities listed in Annex ... .
2. This Agreement does not apply:
- (a)  to  procurement by entities otherwise falling under this Agreement made on behalf of and under the specific procedure of an international organization ;

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<sup>1</sup>Throughout this Agreement, the word entities is understood to include agencies.

<sup>2</sup>Besides the level of the threshold, the question is that of the extent to which it will affect obligations (would it determine the application of the whole instrument or only of certain provisions of it - for that reason the threshold provision will also be found in paragraph 1 of Part IV dealing with tendering procedures).

- (a) to procurement by entities falling under this Agreement where this procurement is made in the context of an intergovernmental industrial co-operation agreement or in carrying out a contract for supplies or services awarded by one government to another, unless otherwise stipulated in such agreements or contracts;
- (b) as long as tied aid is practised by signatories, to procurement made in furtherance of aid to developing countries.

PART II

NATIONAL TREATMENT AND NON-DISCRIMINATION

1. With respect to all laws, regulations, procedures and practices affecting government procurement covered by this Agreement, signatories shall provide immediately and unconditionally to the products and suppliers of all signatories offering products originating within the signatory countries, treatment no less favourable than:

(a) that accorded to domestic products and suppliers;

and

(b) that accorded to products and suppliers of any other signatory.

2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connexion with importation, the method of levying such duties and charges, and other import regulations and formalities.

PART III

TECHNICAL SPECIFICATIONS<sup>1</sup>

(a) Technical specifications laying down the characteristics of the products to be purchased such as quality, performance, safety and dimensions, testing and test methods, symbols, terminology, packaging, marking and labelling, and conformity certification requirements prescribed by procurement agencies or entities, shall not be prepared, adopted or applied with a view to creating obstacles to international trade nor have the effect of /affording protection to domestic production of any signatory or discriminating among signatories/ /creating unnecessary obstacles to international trade/.

(b) Any technical specification prescribed by procurement agencies or entities shall, where appropriate:

(i) be in terms of performance rather than design; and

(ii) be based on international standards, national technical regulations, or recognized national standards.

(c) There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tenders.

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<sup>1</sup>Provisions with respect to technical specifications might need to be examined in the light of the draft Code on Technical Barriers to Trade.

PART IV

TENDERING PROCEDURES

1. The provisions on tendering procedures shall be applied by the entities to any contract of a value of ... or more. No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below ... If an individual requirement for the procurement of a product 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.

2. Signatories shall ensure that the tendering procedures of their entities are consistent with the provisions below. They shall use either open or selective tendering procedures, unless the conditions specified in paragraph 14 below apply.

Qualification of suppliers

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

- (a) any conditions for participation in tendering procedures shall be made known to interested suppliers published in adequate time to enable them to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation required from suppliers, including financial guarantees, technical qualifications, information necessary for establishing the financial, commercial and technical capacity of suppliers as well as the verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers;
- (c) the process of, and the time required for, qualifying suppliers the qualification procedures shall not be used to keep a foreign supplier off a suppliers' list or from being considered for a particular proposed purchase. Entities shall recognize as qualified suppliers such domestic or foreign suppliers which meet the conditions for participation in a particular proposed purchase. Suppliers requesting to participate in a particular proposed purchase who may not yet be qualified may also be considered, pending completion of the qualification procedure;

- (d) 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;
- (e) any supplier having requested to become a qualified supplier shall be advised /upon request/ of the decision of the entities concerned as to whether or not he has been recognized as a qualified supplier. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them /as well as the establishment of related new lists for which they might wish to be included./
- (f) nothing in sub-paragraphs (a) to (e) above shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

Notice of proposed purchase and tender documents

4. /Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex ... Such notice shall constitute an invitation to tender in the case of open tendering procedures and an invitation to submit a request to become a /qualified supplier/ /candidate/ in the case of selective tendering procedures./

5. Each notice of proposed purchase shall contain the following information: (a) the nature and quantity of the products to be supplied; (b) whether the procedure is open or selective; (c) any delivery date; (d) the address and final date for receiving tenders /, candidatures./ or applications to qualify for the suppliers' list, /whether permanent or not./ 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 requirement, financial guarantees and information required from suppliers; (g) the amount and terms of payment of any sum payable for the tender documentation.

The content of the notice shall be published in the language chosen by the entity. /At the same time and in the same publication, 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:

- (i) Subject matter of the contract;
- (ii) time-limits set for the submission of tenders; and
- (iii) addresses from which documents relating to the contracts may be requested./

In the case of contracts of a recurring nature, /or intended to be renewed/, where the total value of purchases to be made under these contracts is likely to exceed the threshold, the first notice of the proposed purchase shall contain an estimate of the volume of purchases envisaged in the first year.

/6. Entities maintaining permanent lists of qualified suppliers for specific products or groups of products, shall be deemed to have met the provisions of paragraphs 4 and 5 above providing they publish the existence of their specific or grouped product lists in the relevant publications in Annex ..., including additions to and deletions from such lists, together with sufficient information to enable potential suppliers to initiate the qualification process./

7. To ensure maximum effective international competition under selective tendering procedures, entities shall send invitations to tender to the maximum /possible/ /practicable/ number of qualified domestic and foreign suppliers, consistent with the economic and practical considerations related to the proposed purchase. They shall select the suppliers to be invited to tender from among those who meet the conditions for participation as stated in the notices. /Suppliers requesting to participate in a particular proposed purchase who may not yet be qualified may also be considered, pending completion of the qualification procedure./

8. If after publication of a notice to purchase but before the time set for opening or receipt of tenders as specified in the tender documents, it becomes necessary to amend or reissue the notice, the amendment, or the reissued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to a supplier in respect of a particular proposed purchase shall be /sent/ /made known/ simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

9. Any time-limit prescribed in the notice of proposed purchase or the tender documents shall be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of sub-contracting anticipated, and the normal time for transmitting tenders by mail from foreign as well as domestic points.<sup>1</sup>

10. /If, in open 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; in selective procedures, /candidatures/ /requests to become qualified suppliers/ may be sent to an entity in either the language used by that entity or one of the official languages of the GATT./

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<sup>1</sup>This article should be read in relation to paragraphs 5, 12 and 13 of Part IV.

11. Tender documents provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including the following:

- (a) the address of the procurement agency or entity to which tenders should be sent;
- (b) the address where, and time-limit within which, requests for supplementary information should be sent. In no case shall this time-limit be less than fifteen days;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender would be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening insofar as provided for by national legislation;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the products required or of any requirements including technical specifications, conformity certification to be fulfilled by the products, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment;
- (j) any other terms or conditions.

12. (a) In open procedures, entities shall forward the tender documents at the request of any supplier participating in the procedure, and shall reply to any reasonable request for explanations relating thereto within six days promptly following receipt of the request for the tender documents, or for explanations.

(b) In selective procedures, entities shall forward the tender documents at the request of any interested supplier to any supplier invited to submit a tender, and shall reply to any request for explanations relating thereto within six days promptly following receipt of the request for the tender documents, or for explanations.

(c) Entities shall reply to any reasonable request for relevant information submitted by a supplier participating in the procedure within six days promptly following receipt thereof, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract, and to the extent that entities consider that such notification is not detrimental to the proper functioning of the procedure.

13. (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 4.

(b) In selective procedures the period for the receipt of candidatures shall in no case be less than twenty days from the date of publication referred to in paragraph 4.

(c) The periods referred to in (a) and (b) above may be reduced to twenty and twelve days respectively from the date of the publication referred to in paragraph 4, either where a state of urgency duly substantiated by the entity renders impracticable the final dates referred to in (a) and (b) above or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 5.

#### Submission, receipt and opening of tenders and awarding of contracts

14. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

(a) Tenders shall normally be submitted by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. Any tender that does not include such a statement may, nonetheless, shall not, be taken into consideration. The tender must be confirmed by letter posted on the day on which the telex, telegram or telecopy is sent promptly or by the despatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference

or conflict between that content and any documentation received after the time-limit. Requests to participate in a selective procedure may be submitted by telex, telegram or telecopy;

- (b) The opportunities that may be given to tenderers to correct unintentional errors between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice;
- (c) A supplier shall not be penalized if a tender is received in the office designated in the tender documents after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide;
- (d) All tenders solicited under open and selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings as well as the availability of information from the openings;

To this effect, and in connection with open procedures, entities shall establish provisions for the public openings of tenders and for the disclosure of the names of the tenderers and prices of tenders.;

A report on the opening of the tenders shall be drawn up in writing. This document shall not be published. It shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required at the bilateral phase of the settlement of disputes.;

The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement;

- (e) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the tender documents and be from suppliers which comply with the conditions for participation;
- (f) Unless in the public interest all tenders are rejected, entities shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the tender documentation is determined to be the most advantageous for the contract in question;

- (g) If it appears from evaluation in selective tendering that no single tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range;
- (h) Commercially confidential information provided by a supplier at any stage of the procurement process shall not be revealed to any other supplier;
- (i) In no case shall the award of a contract be made on the condition that the supplier licence the technology involved, provide offset procurement opportunities, or on any other condition inconsistent with the provisions of national treatment and non-discrimination.

Except in the case of international collaborative projects, the award of contracts shall not be made on the condition that the supplier licence the technology involved to another firm or provide offset procurement opportunities, or on any similar conditions, if these conditions are inconsistent with the principle of non-discrimination.

#### Use of single tendering

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:

- (a) Where a specified proprietary product or a product with highly specialized technical characteristics is required for which no reasonable alternative or substitute exists;
- (b) Where, due to highly specialized technical requirements, the proposed purchase is for products or replacement parts having to meet requirements of interchangeability with already existing equipment and a change of supplier would result in the purchase of equipment having different technical characteristics causing incompatibility or disproportionate technical difficulties of operation or maintenance;
- (c) When after the fulfilment of the requirements concerning the notice of proposed purchase only one qualified source is known to the entity or when no responsive tenders are received from a qualified supplier; and
- (c) When, in reply to an open or selective tender, no tenders have been submitted or tenders submitted have been either collusive or irregular or not conforming to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;



- (d) Where owing to circumstances that could not have been reasonably foreseen by the entity, there is serious urgency for the purchase in question, and the products could not be obtained in time by means of open or selective tendering procedures/;
- (e) When the products concerned are manufactured only for and in the course of research, experiments, study, or development/;
- (e) Where production and purchase are undertaken following design, development or research work, and it is impracticable to seek competition for production:
  - (i) because production contracts must be entered before development has been completed, or
  - (ii) because, although development has been completed, the requirement is of such a nature that the delay consequent on placing it with a new contractor would be unacceptable, or
  - (iii) because the entity has a contractual commitment arising out of the research and development contracts, to consider the reasonable need of the design contractor for production orders to enable him to maintain his manufacturing and design capacity.]

PART V  
INFORMATION

1. Any law, regulation /judicial decision, administrative ruling/ of general application, and any procedure (including standard contract clauses), affecting government procurement covered by this Agreement, shall be published promptly by the signatories in the appropriate publications listed in Annex ... and in such a manner as to enable other signatories and suppliers to become acquainted with them. Signatories shall be prepared, upon request, to explain to any signatory their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from other signatories their procurement practices and procedures.

2. /The entities shall, upon request by any supplier, promptly provide him with such pertinent information /as they deem possible to disclose/ concerning the reasons why his application to qualify for the suppliers' list was rejected or why he was not invited or admitted to tender. Information on the award of a contract shall be made known promptly to the unsuccessful tenderers by the entity concerned. /Upon request by an unsuccessful tenderer the entity concerned shall promptly provide him with such pertinent information /as they deem possible to disclose/ concerning the reasons why his tender was not selected, including information on the characteristics and the relative advantages of the tender selected./

3. /Entities shall publish in the appropriate publications listed in Annex .... a report on all contracts covered by the provisions of this Agreement, /when such contracts are awarded/at regular intervals of no less than .../. Such a report shall be made available to any interested person and shall contain the following information:

- (a) for each contract awarded under open or selective tendering procedures: the description of the products purchased identified according to a recognized trade or other appropriate classification; file reference number; the procurement procedure employed; date of notice in the relevant publications in Annex ...; date of contract awarded; name and address of company to whom contract awarded; and the value of contract;
- (b) for each contract awarded other than under open or selective tendering procedures, the information as required in sub-paragraph (a) above, together with an indication of the conditions in paragraph 15 of Part IV which prevailed./

4. Signatories which do not regularly publicize details of contracts awarded under single tendering procedures shall provide the other signatories at least annually with information on the use made of the provisions of paragraph 15 of Part IV specifying for each of the contracts so awarded (a) value and kind of goods purchased and (b) citation of sub-paragraph of paragraph 15 referred to above under which action was taken/ the number and value of contracts awarded under each of the conditions specified therein./

5. Signatories shall collect, and provide on an annual basis following the layout in Annex ... statistics on their procurement.<sup>1</sup>

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<sup>1</sup>This article should be read in relation to some of the alternative texts on dispute settlement.

PART VI

SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

1. Signatories shall give particular attention to the provisions of this Agreement affecting developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the administration of the Agreement as a whole.
  2. Signatories shall, in the preparation and application of laws, regulations and procedures affecting government procurement, avoid the creation of unnecessary obstacles to exports from developing countries.
  3. With a view to ensuring that developing countries are able to adhere to the Agreement as well as to creating the possibility of using government procurement for the promotion of development goals of developing countries [the committee] is, upon request, enabled to grant to signatory developing countries specific and time-limited exceptions from the rules on national treatment for (certain or all procurement). Each request to [the committee] shall be accompanied by the relevant national laws, regulations and procedures. When considering such requests [the committee] shall take into account the special development and trade needs of developing countries, the development of the competitiveness of specific branches of the economy and the necessity of support to parts or the whole industrial sector in its early development stages.]
1. Signatories to this Code recognize that in order to achieve their socio-economic objectives, to implement programmes and policies of economic development designed to raise the standard of living of their people and to rectify structural imbalances in their balance of payments, it is necessary for developing countries to adopt, in the field of government procurement, differential measures with regard to the provisions of this Code.
  2. Signatories to this Code further recognize that in the field of government procurement it is both feasible and appropriate to adopt differential measures to provide special and more favourable treatment to developing countries with a view to enabling them to derive fuller benefits from the rights under the Code and for providing flexibility in the acceptance by them of the obligations under the Code.
  3. Accordingly, the signatories to this Code agree that developing signatory countries may, notwithstanding the provisions of paragraphs 1 and 2 of the Chapter concerning national treatment and non-discrimination, take special and differential measures providing for more favourable treatment to their domestic products and suppliers and to the products and suppliers in other developing countries without having to extend such treatment to products and suppliers in developed signatory countries with a view to:

- (a) safeguarding their external financial position, threat to their balance-of-payments position, and to ensure a level of reserves adequate for the implementation of programmes of economic development;
- (b) promoting the establishment or development of domestic industries, including the development of small scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
- (c) protecting industrial units and ancillary industries wholly or substantially dependent on government procurement; and
- (d) promoting development of industries, trade and economic co-operation among developing countries participating in preferential arrangements for economic co-operation at the inter-regional, regional or sub-regional levels.

4. For achieving the objectives mentioned in the foregoing paragraph, the developing signatory countries may, inter alia, make appropriate adjustments in the threshold value, give price preference to domestic suppliers, limit the number of procurement entities coming under the purview of the Code and grant exemption to specific categories of products required by procurement entities.

5. The signatory countries to the Code agree that the developed countries shall accord to the developing country suppliers a treatment, no less favourable than to the domestic suppliers.

6. Notwithstanding the provision regarding the general application of the principle of non-discrimination, the developed countries may, with a view to providing special and more favourable treatment to developing countries, accord preferential treatment to the products and suppliers in developing countries.

7. The signatory countries to this Code further agree that developed countries shall, with a view to providing special and more favourable treatment to the products and suppliers in developing countries, in evaluating bids received from developing countries' suppliers, exclude customs duties and any other charges imposed or leviable in connexion with importation.

8. Developing countries applying any measures listed in paragraphs 3 and 4 above shall afford adequate opportunity for consultations at the request of any signatory country which considers that the benefits accruing to it under this Code are being unduly impaired as a result of such measures.

9. Where problems arise in the application of this Article, they may be referred to the Committee on Government Procurement for consideration in accordance with the procedures for surveillance and dispute settlement with a view to finding mutually satisfactory solutions.

10. The signatories to this Code shall review every year, on the basis of a report to be furnished to the Committee on Government Procurement, the operation and effectiveness of this Chapter in the light of the objective of economic development for developing countries and of their external financial needs, having regard to the other provisions of this Code.]

11. Recognizing that government procurement is an area in the Multilateral Trade Negotiations where special provisions could be made by developed countries in favour of developing countries, since the whole operation involves government purchases for non-commercial purposes, signatories to this Code, in pursuit of the above objective, hereby agree that:

- (a) The award of not less than 25 per cent by value of government procurement in developed countries shall be reserved exclusively for developing countries signatories on a competitive basis or in accordance with the discretion of the purchasing entities.
- (b) Where a purchasing entity grants awards on a discretionary basis, it shall accord greater favour to applicants from the least developed countries as a whole.
- (c) Purchasing entities in developing countries shall be permitted to discriminate in favour of their domestic producers only where operational experiences are less than fifteen years.
- (d) Elements of thresholds in favour of domestic producers shall be retained at all times.]

#### Special treatment for least developed countries

1. Signatories may grant, in an autonomous manner, the same treatment as that guaranteed under the relevant provisions of the Agreement, to products originating from least developed non-signatory countries, and to suppliers in those countries.

2. Developed signatories undertake to grant assistance to potential tenderers in the least developed countries referred to in the previous paragraph, in submitting their tenders, selecting the products which are likely to be of interest to entities in the developing countries and assisting them to comply with technical regulations and standards relating to products which are the subject of notice of proposed purchase.]

Information Centre

1. Each signatory shall see to it that there is in its territory an "information centre" capable of meeting, itself or by indicating the name and address of the authority in a position to do so, all reasonable requests from the other signatories or from interested parties who are nationals of the other signatories for information relating to the matters listed in the sub-paragraphs below. A group of signatories may set up a joint information centre.

2. The information centre shall have at its disposal the following information concerning the signatory or signatories which it covers:

- the rules, procedures and practices relating to government procurement;
- insofar as is possible, the nature and volume of supplies and products purchased or to be purchased by the entities.

3. The information centre shall keep up to date the addresses and other information relating to the entities subject to the provisions of this Agreement in the signatory or signatories which it covers.

4. Insofar as is possible, the information centre shall have at its disposal, addresses and other information relating to the bodies responsible for international trade in the signatory or signatories which it covers./

Assistance for developing signatory countries

1. Signatories shall endeavour, upon request, to provide to developing signatories all possible assistance in resolving their problems in the field of government procurement.

2. This assistance shall relate, inter alia, to:

- the solution of particular problems relating to the award of a specific contract;
- any other problem which the signatory making the request and another signatory agree to deal with in the context of this assistance./

PART VII

SURVEILLANCE, CONSULTATION AND DISPUTE SETTLEMENT PROCEDURES

1st approach

A. Domestic and bilateral procedures

1. After the award of each contract, the entities shall, upon request by any unsuccessful candidate or tenderer, inform him of the reasons why his candidature was rejected or his tender not selected, with, if relevant, such general information on the characteristics or relative advantages of the tenders selected as they deem possible to disclose.

2. Signatories shall have procedures for the hearing and reviewing of protests arising in connexion with any phase of the procurement process.

3. It is the firm intention of signatories that all disputes under this Agreement shall be expeditiously resolved between the candidate/supplier and the procuring officer or with the procurement entity under the terms of paragraphs 1 and 2 above.

4. (a) Signatories shall comply with the request of another signatory for consultation on the problems of a bilateral character relating to government procurement arising from the application of this Agreement generally or to any particular dispute not expeditiously resolved under the terms of paragraphs 1 and 2 above.

(b) In the event of repeated disputes or allegations of discrimination in a specific product area, the consulting signatories shall, upon request, promptly supply the information necessary for examination of the controversy, including available statistical information on the purchases in question.

(c) Confidential information provided to a consulting signatory shall not be revealed without formal authorization from the government providing the information.

B. Surveillance

5. A Committee on government procurement comprising all signatories to this Agreement shall be established.

6. Signatories shall notify the Committee within sixty days of any change in their laws, regulations, and procedures, and in the application of the same, which affect the implementation of this Agreement. Signatories shall particularly notify

the Committee of any changes that may concern either the lists of procurement entities in Annex ..., or the publications in which notices of tenders are to be found, listed in Annex ..., or any other relevant information for the implementation of the present Agreement.

7. Signatories shall collect and provide on an annual basis following the layout of Annex ..., statistics on government procurement.

8. The Committee on government procurement shall normally meet once a year to review developments with respect to government procurement, changes in the policies, procedures and practices and the functioning of this Agreement. The Committee shall also meet at the request of any signatory to consider any matter that such a signatory may wish to submit to it.

#### C. Arbitration

9. (a) In the case of disputes between signatories which cannot be satisfactorily resolved in bilateral consultations, the parties by common agreement may have the possibility of recourse to arbitration.

(b) For the purpose of arbitration, the Committee shall agree upon a list of arbitrators, composed of highly-qualified persons of signatory country nationality having wide experience in government procurement - the list shall be valid for a period of three five years.

(c) The parties in dispute shall each designate two arbitrators chosen from the list of arbitrators. The four arbitrators thus designated shall designate a fifth arbitrator. The arbitrators thus designated shall have no connexion with the matter in dispute.

(d) The arbitrators shall issue their decision in the matter within a maximum of one year. The decision of the arbitrators shall not constitute a precedent either for other arbitration or for the Committee, unless the latter shall decide otherwise. The costs of arbitration shall be borne by the parties to the dispute.]

#### D. Dispute settlement

10. Where the parties are unable to agree to put the matter to arbitration or upon the designation of arbitrators within a maximum of six months or where the matter in dispute is of general scope, the parties shall put the matter before the Committee on government procurement.

11. The Committee shall appoint from amongst its members each (two years) a permanent Sub-Committee of (five) members. The Sub-Committee shall investigate all disputes referred to it by the Committee and shall submit to the Committee within a period of six months a draft recommendation addressed to the parties in dispute. The Committee on government procurement shall reach its decision in those cases submitted to it within a period of (six) months.

12. Signatories shall use all means in their power to ensure that recommendations made in accordance with the procedure set out in paragraph 11 above are complied with.

#### 2nd approach

##### A. Domestic and bilateral procedures

1. Signatories shall have procedures for the hearing and reviewing of protests arising in connexion with any phase of the procurement process.

2. It is the firm intention of signatories that all disputes under this Agreement shall be expeditiously resolved between the supplier and the procurement entity under the procedures of paragraph 1 of this Article.

3. If an unsuccessful tenderer believes the explanation for rejection of his tender is unsatisfactory or if he has further questions about the award of the contract, he shall be afforded an opportunity to question a designated contact point in the entity and shall receive such additional information or explanation as the entity deems feasible to disclose.

4. If an entity is unable to provide to an unsuccessful tenderer the requested explanation for rejection of a tender it shall so advise the tenderer concerned. The signatory of the unsuccessful tenderer may then intervene with the signatory of the procurement entity to seek such additional information on the contract award as to ensure the purchase was made fairly and impartially.

5. Signatories shall comply with the request of another signatory for consultation on problems of a bilateral character relating to government procurement arising from the application of this Agreement generally or to any particular dispute not expeditiously resolved under the terms of paragraph 1 of this Article.

6. In consultations arranged under paragraph 3, signatories shall supply promptly all information relevant to the examination of the controversy. In the event of a dispute alleging discrimination in a specific contract or product area, signatories shall provide appropriate statistics as a basis for determining the merits of the dispute.

7. Confidential information provided to a consulting government shall not be revealed without formal authorization from the government providing the information.

B. International surveillance

8. A Committee on Government Procurement comprising all signatories to this Agreement shall be established.

9. Signatories shall notify the Committee within sixty days of any change in their laws, regulations, and procedures, and in the application of the same, which affect the implementation of this Agreement. Signatories shall notify the Committee of any changes regarding either the list of entities in Annex ..., or the publications in which procurement information is found in Annex ..., or any other relevant information regarding implementation of this Agreement.

10. The Committee on Government Procurement shall meet at least once a year to review developments with respect to government procurement; changes in policies, procedures and practices; and functioning of the Agreement. The Committee shall also consider any matter any signatory may wish to submit.

C. International dispute settlement procedures

11. In the event of serious difficulties between signatories which cannot be settled satisfactorily by bilateral consultations, either party may refer the matter to the Committee on Government Procurement.

(a) In such cases the Committee shall use its good offices for the purposes of resolving the controversy.

(b) In the event that any dispute is not resolved as a result of referral to the Committee, any party to the dispute has the right to refer the matter to an ad hoc panel/sub-committee of the Committee on Government Procurement.

(c) The ad hoc panel/sub-committee shall be composed of persons who are knowledgeable about procurement and about this Agreement, and who are citizens of signatories not immediately involved in the controversy. The party or parties to each side of the dispute shall nominate two persons to the ad hoc panel/sub-committee, and the fifth member shall be jointly appointed by the other four members.

(d) The ad hoc panel/sub-committee shall arrive at a decision within one year. It shall keep a record of its effort to resolve the controversy; provide an opportunity for the full presentation of evidence with regard to any particular dispute and with regard to the action, if any, taken under the terms of paragraphs 1-4 of this Article; be guided by earlier interpretations of the Agreement and prior precedents in dispute settlement cases; provide a ruling on the matter and formulate recommendations to the party or parties concerned; and, if the panel/sub-committee determines that the original complaint is justified, and the offending signatory does not agree to remedy the situation within sixty days of the ruling, it shall recommend which compensating action the complainant signatory may take with respect to its commitment under the Agreement. Such recommendations shall bear a direct relationship to the degree of reduction or impairment of benefits caused by the action complained of.

(e) Barring earlier settlement of the controversy, the ruling and recommendations of the ad hoc panel/sub-committee shall be implemented unless, within sixty days of the recommendation for compensatory action, the Committee on Government Procurement determines that such ruling is inconsistent with earlier precedents and interpretations in such cases.

### 3rd approach

#### A. Committee on Government Procurement

1. There shall be established a Committee on Government Procurement composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. In the discharge of its duties the Committee may consult with any signatory, contracting party to the General Agreement or competent body and may request from any signatory such information as it considers necessary and appropriate.

#### B. Notification

2. Each signatory to this Agreement shall, within [sixty] days following the date after the Agreement enters into force for it, notify the Committee of all existing laws, regulations and procedures, including standard contract clauses relating to its procurement practices. From thereon, each signatory shall notify the Committee of any change in such laws, regulations and procedures or in the application of the same at least [ ] days [after] before the change is effected. Signatories shall also notify the Committee of any changes that may concern either the lists of entities in Annex ..., or the publications in which notices of tenders are to be found, listed in Annex ..., or any other relevant information for the implementation of this Agreement.

3. Signatories shall provide on an annual basis following the layout of Annex ... statistics on government procurement.

4. Any signatory which considers that any matter affecting the operation of the Agreement has not been notified in accordance with the provisions of paragraph 1. above, may make a request in writing to the Committee that such matter be notified by the signatory or signatories concerned and may itself notify the matter.

C. Domestic procedures

5. The entities shall, upon request by any supplier, promptly provide him with such pertinent information as they deem possible to disclose concerning the reasons why his application to qualify for the suppliers' list was rejected or why he was not invited or admitted to tender. Information on the award of a contract shall be made known promptly to the unsuccessful tenderers by the entity concerned. Upon request by an unsuccessful tenderer the entity concerned shall promptly provide him with pertinent information as it deems possible to disclose concerning the reasons why his tender was not selected, including information on the characteristics and the relative advantages of the tender selected.

6. Signatories shall have procedures for the hearing and reviewing of complaints arising in connexion with any phase of the procurement process.

7. It is the firm intention of signatories that all disputes under this Agreement shall be expeditiously resolved between the supplier and the entity under the terms of paragraphs 5 and 6 above.

8. If an entity is unable to provide to an unsuccessful tenderer the requested explanation for rejection of a tender it shall so advise the tenderer concerned. The Government of the unsuccessful tenderer may then intervene with the signatory of the entity to seek such additional information on the contract award as to ensure the purchase was made fairly and impartially.

D. Consultation

9. Signatories shall comply with the request of another signatory for consultation on the problems of a bilateral character relating to government procurement arising from the application of this Agreement generally or to any particular dispute not expeditiously resolved under the terms of paragraph 7 above.

10. In the event of repeated disputes or allegations of discrimination in a specific product area, the consulting signatories shall, upon request, promptly supply the information necessary for examination of the controversy, including available statistical information on the purchases in question.

11. Confidential information provided to a consulting government shall not be revealed without formal authorization from the signatory providing the information.

E. Arbitration

12. Where consultations under paragraphs 9 to 11 above have not given rise to a resolution of the dispute between the parties concerned, they may resort to arbitration according to the following procedures:

- (a) In the case of disputes between signatories which cannot be satisfactorily resolved in bilateral consultations, the parties by common agreement may have the possibility of recourse to arbitration.
- (b) For the purpose of arbitration, the Committee shall agree upon a list of arbitrators, composed of highly qualified persons of signatory country nationality having wide experience in government procurement - the list shall be valid for a period of three five years.
- (c) The parties in dispute shall each designate two arbitrators chosen from the list of arbitrators. The four arbitrators thus designated shall designate a fifth arbitrator. The arbitrators thus designated shall have no connexion with the matter in dispute.
- (d) The arbitrators shall issue their decision in the matter within a maximum of one year. The decision of the arbitrators shall not constitute a precedent either for other arbitration or for the Committee, unless the latter shall decide otherwise. The costs of arbitration shall be borne by the parties to the dispute.

F. Dispute settlement

13. If no mutually satisfactory solution has been reached between the signatories concerned within thirty days six months from the time the request for consultations under paragraph 9 was made or where the parties are unable to agree to put the matter to arbitration or to agree upon the designation of arbitrators the Committee shall, at the request of any of the signatories concerned, consider the matter with a view to facilitating a mutually satisfactory solution.

14. When considering a matter under the procedure set out in paragraph 13 above, the Committee shall, at the request of any of the signatories concerned, establish amongst its members a panel and direct it to: (i) promptly investigate the matter; (ii) make a statement concerning the facts of the matter; and (iii) submit to the Committee a draft recommendation addressed to the parties in dispute. Any signatory shall give prompt and full consideration to any request by the Panel for such information as the Panel considers necessary and appropriate.

15. Signatories shall use all means in their power to ensure that recommendations made in accordance with the procedure set out in paragraphs 13 and 14 above are complied with.

4th approach

1. Signatories shall have procedures for the hearing and reviewing of protests arising in connexion with any phase of the procurement process.

A. Institutions

2. The signatories to this Agreement shall establish:

(a) A Committee on Government Procurement composed of representatives from each of the signatories to this Agreement. This Committee shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. In the discharge of its duties the Committee may consult with any signatory, contracting party to the General Agreement or competent body and may request from any signatory such information as it considers necessary and appropriate.

(b) A Panel composed of three (or five) non-governmental persons qualified in the fields of trade relations and other matters covered by this Agreement, and acting in their own individual capacities. The Panel members shall be appointed, from time to time, by the Director-General of the General Agreement in consultation with the Chairman of the Committee. The Panel shall carry out the responsibilities assigned to it under this Agreement and such other functions as may be given to it by the Committee. In the discharge of its responsibilities the Panel may consult with any signatory, contracting party of the General Agreement or any other competent body or person(s) and may request from any signatory such information as it considers necessary and appropriate.

B. Notification

3. Each signatory to this Agreement shall, within /x/ days following the date after the Agreement enters into force for it, notify the Committee of all existing laws, regulations and procedures, including standard contract clauses, relating to its procurement practices. From hereon, each signatory shall also notify the Committee of any change in such laws, regulations and procedures or in the application of the same at least /y/ days before the change is effected.

4. Any signatory which considers that any matter affecting the operation of the Agreement has not been notified in accordance with the provisions of paragraph 3 above, may make a request in writing to the Committee that such matter be notified by the signatory or signatories concerned and may itself notify the matter.

C. Enforcement

5. If any signatory considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired or that the achievement of any objective of the Agreement is being impeded by another signatory or signatories, it may, with a view to reaching a satisfactory resolution of the matter, make written representations to the other signatory or signatories which it considers to be concerned. Each signatory shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding such representations as may be made by another signatory.

6. If no mutually satisfactory solution has been reached between the signatories concerned within [thirty] days from the time that the representations referred to in paragraph 3 were made, the Committee shall, at the request of any of the signatories concerned, consider the matter with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached by the Committee within [forty-five] days from the time the matter was referred to it, the Chairman shall, at the request of any of the signatories concerned direct the Panel to: (i) promptly investigate the matter; (ii) make a statement concerning the facts of the matter; and (iii) make such appropriate recommendations as the facts warrant, based on the provisions and objectives of the Agreement. Any signatory shall give prompt and full consideration to any request by the Panel for such information as the Panel considers necessary and appropriate.

8. If the Panel finds that the matter referred to it results in the impairment or nullification of any direct or indirect benefit which accrues or could be reasonably anticipated to accrue to the notifying signatory under the Agreement, it shall recommend to the signatory or signatories concerned that: (i) the measure or practice giving rise to such impairment or nullification be eliminated or modified to the extent necessary, and (ii) what action should be taken to compensate for the loss of benefit occasioned by the measure or practice at issue.

9. If these recommendations are not implemented within [sixty] days, the Panel shall, as soon as possible, recommend to the Committee that a signatory or signatories be authorized to suspend the application, to any other signatory or signatories, of such obligations as may be appropriate in the circumstances.

10. Any recommendation under 9 above shall aim at maintaining the balance of rights and obligations at the highest possible level.

PART VIII

/PRO MEM/ EXCEPTIONS TO THE AGREEMENT

/Pro mem/ National Security

/Pro mem/

/Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any signatory to impose or enforce measures necessary to protect public morals, order or safety, human and animal health and life and plant life, industrial and commercial property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labour./

PART IX

/PRO MEM/ DEROGATIONS/SAFEGUARD CLAUSE

PART X

/PRO MEM/ REGIONAL ARRANGEMENTS/BENEFITS OF THE AGREEMENT

Pro mem:

/This Agreement does not prevent advantages over and above, or procedures other than, those contained herein being accorded or applied between signatories who are members of the same Customs Union or Free Trade Area. However, such advantages or procedures shall not have the effect of exempting the signatories concerned from any of their obligations under this Agreement./

/If any signatory accords to any other country an advantage greater than that provided for in this Agreement, the same advantage shall be accorded to all signatories./

PART XI

/PRO MEM/ DEFINITIONS

PART XII

/PRO MEM/ FINAL PROVISIONS