

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Government Procurement"

GOVERNMENT PROCUREMENT

Draft Integrated Text

Having regard to paragraph 6 of the Chairman's summing-up of the June 1978 meeting of the Sub-Group "Government Procurement", the delegations of Canada, the European Communities, Japan, the Nordic countries, Switzerland and the United States put forward the following draft integrated text on government procurement for the consideration of participants, the objective being to reach agreement on a final text at the earliest possible date. The draft does not prejudice the negotiating position of any delegation on government procurement or with respect to any other area of the MTN.

AGREEMENT ON GOVERNMENT PROCUREMENT

(Draft Integrated Text)

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ANNEXES

Preamble

Parties 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 regarding 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 regarding 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 regarding 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:

PART I

Scope and Coverage

1. This Agreement applies to:

- (a) any law, regulation, procedure and practice regarding the procurement of products by the entities¹ subject to this Agreement. 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.² 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 the entities under the direct or substantial control of parties to this Agreement with respect to their procurement procedures and practices. Until the review and further negotiations referred to in the Final Provisions, the coverage of this Agreement is specified by the list of entities, and to the extent that rectifications or amendments may have been made, their successor entities, in Annex ...³

¹Throughout this Agreement, the word entities is understood to include agencies.

²Besides 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?).

³The question of "best endeavours" remains open for consideration.

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;
 - (b) as long as tied aid is practised by parties to this Agreement, to procurement made in furtherance of such aid to developing countries.

PART II

National Treatment and Non-Discrimination

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

(a) that accorded to domestic products and suppliers;

and

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

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 IIISpecial and Differential Treatment for Developing Countries

1. Signatories shall, in the implementation of this Agreement and through the provisions set out in the paragraphs below, give particular attention to the provisions affecting developing countries' rights and obligations and, in so doing, shall take into account the development, financial and trade needs of developing countries in the administration of the Agreement as a whole, in particular their need to:

- (a) safeguard their external financial position and ensure a level of reserves adequate for the implementation of programmes of economic development;
- (b) promote 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; and
- [(c) protect industrial units wholly or substantially dependent on government procurement.]

2. Signatories shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate the development of exports from developing countries consistently with the provisions of this Agreement.

3. With a view to ensuring that developing countries are able to adhere to the agreement and to use government procurement for the promotion of their development objectives, developing countries may negotiate specific and time-limited derogations from the rules on national treatment for certain entities or products, taking into account the degree of development

in the specific area concerned. Such derogations shall take effect upon signature only. After entry into force of this agreement the Committee shall upon request be enabled to grant, to any developing signatory country or any developing country wishing to become a signatory, similar specific and time-limited derogations. Each request to the Committee shall be accompanied by the relevant national laws, regulations and procedures and any other information that may be useful to the Committee for consideration of the matter.

4. With regard to offers presented by suppliers in developing countries, customs duties will apply in accordance with and within the limits of the General System of Preferences.

5. The signatories shall review periodically, on the basis of reports to be submitted by developing countries benefiting from derogations the operation and effectiveness of this Part, in the light of the objectives of economic development for developing countries and of their external financial and trade needs, and aiming, at a progressively greater assumption of obligations under the Agreement for developing signatories as their economic, financial and trade situation improves.

Special treatment for least-developed countries

/6. Signatories may grant the full benefit of the code for products originating from least-developed non-signatory countries to suppliers in those countries. This provision may be reviewed at the first general review and at periodic reviews thereafter.]

7. With regard to offers presented by suppliers in least-developed countries, tariff rates will apply in accordance with and within the limits of the GSP for the least-developed countries.

8. Developed signatories undertake to grant assistance to potential tenderers in the least-developed countries referred to in paragraph 6, in submitting their tenders, selecting the products which are likely to be of interest to entities of developed countries as well as to suppliers in the developing countries and assisting them to comply with technical regulations and standards relating to products which are the subject of the proposed purchase.

Technical assistance for developing signatory countries

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

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

- the solution of particular technical 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.

Information centre

11. Each developed signatory shall have 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 signatory developing countries and from any least-developed countries for information relating to the matters listed in the sub-paragraphs below. A group of signatories may set up a joint information centre.

12. 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.

13. 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.

14. 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.

PART IV

Technical Specifications¹

- (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 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.

¹Provisions with respect to technical specifications might need to be further examined in the light of the Code on Technical Barriers to Trade.

PART V

Tendering Procedures

1. Parties to this Agreement 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 15 below apply.

Qualification of suppliers

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

(a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers 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 shall not be used to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed purchase. Entities shall recognize as qualified suppliers such domestic or foreign

suppliers who 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 shall also be considered, provided there is sufficient time to complete 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 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;

(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 documentation

3. (a) Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex ... Such notice shall constitute an invitation to participate in either open or selective tendering procedures.
4. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each proposed purchase, invite tenders from the maximum number of domestic and foreign suppliers, consistent with efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

5. (a) In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex ..., a notice of the following:

- (i) the enumeration of the lists maintained;
- (ii) their headings, in relation to the products or categories of products to be purchased through the lists;
- (iii) the conditions to be filled by potential suppliers in view of their inscription on those lists and the methods according to which each of those conditions be verified by the entity concerned;
- (iv) the period of validity of the lists, and the formalities for their renewal.

(b) Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the list.

(c) if, after publication of the notice under paragraph 3 above, a supplier not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.

6. Suppliers requesting to participate in a particular proposed purchase shall be permitted to submit a tender and be considered, provided in the case of those not yet qualified, there is sufficient time to complete the qualification procedure.

7. Each notice of proposed purchase shall contain the following information:

(a) the nature and quantity of the products to be supplied, or envisaged to

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

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

- (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.7

8. If after publication of a notice to purchase but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, 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 one supplier with respect to a particular proposed purchase shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

9. Any prescribed time-limit 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.

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

(b) In selective procedures, the period for submitting an application to be invited to tender or for the receipt of tenders shall in no case be less than thirty days from the date of publication referred to in paragraphs 3 and 5 of this Part.

(c) The periods referred to in (a) and (b) above may be reduced 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 7.

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

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

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (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;
- (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.
13. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any interested /qualified/ supplier, and shall reply promptly to any request for explanations relating thereto.
- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

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 in writing directly or 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.

The tender must be confirmed promptly by letter 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 selective tendering procedures 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. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. To this effect, and in connexion with open procedures, entities shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process.

A report on the opening of the tenders shall be drawn up in writing. This report 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 under the procedures of Parts VI and VII of this Agreement;

(e) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from suppliers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract;

(f) unless in the public interest an entity decided not to issue the contract, 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 notices or tender documentation is determined to be the most advantageous;

(g) if it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range;

(h) In no case shall the award of a contract be made on the condition that the supplier licence the technology involved or other

similar conditions.⁷ Entities should refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. Where offsets are required, parties to this Agreement concerned shall take appropriate steps to minimize the size of offset and shall not favour suppliers from one party over suppliers from any other party.⁷

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) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been either collusive or do not conform 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;

(b) when, for works of art for technical reasons⁷ or for reasons connected with protection of exclusive rights, such as patents or copyrights, the products can be supplied only by a particular supplier and no reasonable alternative or substitute exists¹;

(c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the

¹One delegation reserved its position on the appropriateness of this sub-paragraph.

products could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the entity to purchase equipment not meeting requirements of interchangeability with already existing equipment;¹

Alternative 1

(e) when an entity purchases prototypes or products which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Purchases or products subsequent to such contracts shall be subject to paragraphs 1-14 of this Part;

Alternative 2

(e) when the products concerned are purchased in connexion with or following research, experiments, study or development and it is impracticable to seek competition.

16. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 15 of this Part. Each report shall contain the name of the purchasing entity, value and kind of goods purchased, country of origin, and a statement of the conditions in paragraph 15 of this Part which prevailed. This report 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 under the procedures of Parts VI and VII of this Agreement.

¹One delegation reserved its position on the appropriateness of this sub-paragraph.

PART VI

Information and Review

1. Any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, shall be published promptly by the parties to this Agreement in the appropriate publications listed in Annex ... and in such a manner as to enable other parties and suppliers to become acquainted with them. Parties to this Agreement shall be prepared, upon request, to explain to any other party their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from a country which is a party to this Agreement their procurement practices and procedures.
2. Entities shall, upon request by any supplier, promptly provide pertinent information [as they deem possible to disclose] concerning the reasons why that supplier's application to qualify for the suppliers' list was rejected, or why that supplier was not invited or admitted to tender.
3. Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded.
4. Upon request by an unsuccessful tenderer, the entity concerned shall promptly provide [such pertinent information as it deems possible to disclose] [the name of the winning tenderer and the contract price and other pertinent information] concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected.

5. Entities shall establish a contact point to provide additional information to any unsuccessful tenderer dissatisfied with the explanation for rejection of his tender or who may have further questions about the award of the contract. There shall also be procedures for the hearing and reviewing of complaints arising in connexion with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement will be equitably and expeditiously resolved between the suppliers and the entities concerned.

6. If an unsuccessful tenderer is dissatisfied with the explanation for rejection of a tender or the information provided by the entity, the government party to this Agreement of the tenderer may seek, without prejudice to the provisions under Part VII, such additional information on the contract award as may be necessary to ensure that the purchase was made fairly and impartially. The government of the entity concerned shall promptly provide information pertinent to the matter , including name and address of winner and winning contract amount .

7. Entities shall publish, not later than seven days after the award of a contract, and in the appropriate publication listed in Annex ..., information on each contract awarded under the provisions of paragraph 15, Part V. Such information will include purchasing entity, kind of goods purchased, value of contract, name of supplier, country of origin, and indication of the condition in paragraph 15, Part V which prevailed.

8. Available information concerning individual contract awards developed under the provisions of this Agreement shall be provided, upon a request, to any other party.

9. Confidential information provided to any party to this Agreement which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, shall not be revealed without formal authorization from the party providing the information.

10. Parties to this Agreement shall collect and provide to the Committee on an annual basis statistics on their purchases. Such reports shall contain the following information with respect to the total number and value of contracts awarded by all procurement entities covered under the Agreement:

- (a) statistics on estimated total value of contracts both above and below the threshold value, broken out by product (according to a recognized trade or other appropriate classification) and entity;
- (b) statistics on all contracts awarded above the threshold value broken out by entity products and country of origin of the product or if not possible, nationality of the supplier;
- (c) information on each contract awarded above the threshold value under single tendering procedures, including entity, value and kind of goods purchased, country of origin and statement of the conditions in paragraph 15 of Part V which prevailed.

PART VII

Enforcement of Obligations

Institutions

There shall be established under this Agreement:

1. A Committee on Government Procurement composed of representatives from each of the parties 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 parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives.
2. Ad hoc panels which shall carry out the responsibilities assigned to them under paragraph 7 of this Part.
3. Working parties or other subsidiary bodies which shall carry out such other functions as may be given to them by the Committee.

Consultation

4. Parties to this Agreement shall have procedures for the hearing and reviewing of complaints arising in connexion with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement shall be equitably and expeditiously resolved between the suppliers and the entities concerned.

5. If any party 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 party or parties, it may, with a view to reaching a satisfactory resolution of the matter, make written representations to the other party or parties which it considers to be concerned. Each party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding such representations as may be made by another party.

Resolution of disputes

6. If no mutually satisfactory solution has been reached between the parties concerned, the Committee shall meet at the request of any party to the Agreement within thirty days of receipt of such a request, to 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 a reasonable period of time from the time the matter was referred to it, the Committee /shall/ /may/, at the request of any of the parties concerned, establish and direct a panel, inter alia, promptly to:

- (a) examine the matter;
- (b) consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- (c) make a statement concerning the facts of the matter as they relate to application of the Agreement and such recommendations to the Committee as the facts warrant.

8. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal list of governmental persons experienced in the field of trade relations. This list may also include non-governmental persons. If a panel is requested, the Chairman, after securing the agreement of the parties to this Agreement directly concerned shall propose the composition of the panel, consisting of three or five members and preferably governmental, to the Committee for approval. Panel members shall serve in their individual capacities and not as governmental representatives or as representatives of any organization. Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. The parties directly concerned shall respond within a short period of time, e.g. seven working days, to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

9. Each panel shall develop its own working procedures. All interested parties, including third parties, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Any party to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government providing the information.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months.

11. Reports of panels shall be given prompt consideration by the Committee. The Committee shall take appropriate action on reports of panels within a reasonable period of time. Any recommendations by the Committee shall aim at the positive resolution of the problem at the highest possible level of trade liberalization.

12. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

13. If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee.

Balance of rights and obligations

14. (When disputes arise concerning the obligations under the Agreement, the parties to this Agreement shall exhaust the dispute settlement provisions under the Agreement. Any subsequent action would have to be examined in the light of the precise legal relationship between the Agreement and the GATT. Provisions to maintain the balance of rights and obligations will need to be developed.)

PART VIII

Exceptions to the Agreement

1. Nothing in this Agreement shall be construed to prevent any party to this Agreement from taking any action or disclosing any information which it considers necessary for the protection of its essential security interests, relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
2. 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 party from imposing or enforcing 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 and other non-profit institutions or of prison labour.

PART IX

Safeguards

(Some delegations consider it necessary to have a safeguard clause for particular procurement cases.)

PART X

Final Provisions

Signature and acceptance

1. This Agreement shall be open for signature in Geneva, at the headquarters of the General Agreement on Tariffs and Trade, from until by governments contracting parties to the General Agreement on Tariffs and Trade and by the European Economic Community whose schedules of entities are listed in Annex ... It shall also be open for signature by other governments undertaking to observe the provisions of this Agreement and such other provisions related to the effective application of rights and obligations as may be agreed.
2. This Agreement shall be accepted by each signatory party only after fulfilment of its respective constitutional procedures.
3. This Agreement may be accepted on behalf of any territory for which a government accepting this Agreement has international responsibility.

Reservations

4. Reservations may not be entered with respect to any of the provisions of this Agreement.

Entry into force

5. This Agreement shall enter into force on 1 January 1980 as among the parties which have accepted it. For each government which accepts thereafter, the Agreement shall enter into force on the thirtieth day following the date of such acceptance.

6. Each party to this Agreement shall take all necessary steps to ensure, not later than the date of entry into force of the Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities listed in its schedule, with the provisions of this Agreement.

Accession

7. Any government not a party to this Agreement may accede to it on terms to be agreed between that government and the parties to the Agreement.

8. Accession shall take place through signature of a Protocol of Accession to be deposited with the Director-General of the CONTRACTING PARTIES to the GATT.

Modification of schedules

9. Rectifications of schedules of a purely formal nature and minor amendments shall be notified to the Committee on Government Procurement and shall become effective provided there is no objection within thirty days to such rectifications or amendments.

10. Any modifications, other than those referred to in paragraph 9 above, may be made only in exceptional circumstances. In such cases a party proposing to modify its schedule of entities shall notify the Chairman of the Committee who shall promptly convene a meeting of the Committee on Government Procurement. The parties to this Agreement shall consider the proposed modification and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually agreed coverage provided in the Agreement prior to such modification. In the event of agreement not being reached on any modification taken or proposed, the matter may be pursued in accordance with the provisions contained in Part VII of this Agreement.

Review and negotiations

11. The Committee on Government Procurement shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to GATT of developments during the periods covered by such reviews.

12. Not later than the end of the fifth year from the entry into force of this Agreement and periodically thereafter, the parties thereto shall undertake /may sponsor/ further negotiations, with the objective of expanding membership of the Agreement, enlarging /reviewing/ the coverage of the Agreement on a mutually acceptable basis and, where appropriate, amending or improving the text of the Agreement having regard, inter alia, to the experience gained in its implementation.

In this regard, the Committee on Government Procurement shall, at an early stage, explore the possibilities of expanding the coverage of the Agreement to include service contracts.

Amendments

13. This Agreement may be amended at any time. Any decision to amend this Agreement shall be taken by /to be agreed/ and shall become effective for the parties accepting the amendments, upon acceptance by /to be agreed/ and thereafter for each other party upon its acceptance of the amendments.

Withdrawal

14. Any party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of ninety days from the date on which the written notice of withdrawal is received by the Director-General to the

CONTRACTING PARTIES to the GATT. The Director-General shall promptly inform all parties to this Agreement of receipt of a notice of withdrawal. Any party may, upon receipt of such information, request a meeting of the Committee on Government Procurement.

Non-application

15. This Agreement shall not apply as between any parties accepting this Agreement or government acceding thereto, if at the time of acceptance of the Agreement or of accession thereto, a party to the Agreement or the acceding government does not consent to such application.

Annexes

16. The Annexes hereto constitute an integral part of this Agreement.

Secretariat

17. This Agreement shall be serviced by the GATT secretariat.

Deposit

18. This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof pursuant to paragraphs 2 or 3 of this Part or of each accession thereto, pursuant to paragraph 8 to each signatory party to the Agreement.

Registration

19. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this..... day of..... nineteen
hundred and seventy-eight in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the schedules annexed hereto, each text being authentic.