

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/211

19 December 1978

Special Distribution

---

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Government Procurement"

## AGREEMENT ON GOVERNMENT PROCUREMENT

Taking into account points raised in bilateral and plurilateral consultations, as well as comments and suggestions made in the Sub-Group, the following text has been put together by a number of delegations for consideration of the Sub-Group. It will be noted that certain questions in the text remain for further examination.

The text does not prejudice the negotiating position of any delegation with regard to its contents.

AGREEMENT ON GOVERNMENT PROCUREMENT

INDEX

	<u>Page</u>
Preamble	4
Part I     Scope and Coverage	5
Part II    National Treatment and Non-Discrimination	6
Part III   Special and Differential Treatment for Developing Countries	7
- Objectives	7
- Coverage	7
- Agreed exclusions	8
- Technical Assistance for Developing Signatory Countries	8
- Information Centre	9
- Special Treatment for Least-Developed Countries	9
- Review	9
Part IV    Technical Specifications	11
Part V     Tendering Procedures	12
- Qualification of Suppliers	12
- Notice of Proposed Purchase and Tender Documentation	13
- Submission, Receipt and Opening of Tenders and Awarding of Contracts	17
- Use of Single Tendering	19
Part VI    Information and Review	20
Part VII   Enforcement of Obligations	22
- Institutions	22
- Consultations	22
- Resolution of Disputes	22
- Enforcement	24
- Balance of Rights and Obligations	25

	<u>Page</u>
Part VIII Exceptions to the Agreement	26
Part IX Final Provisions	27
- Signature and Acceptance	27
- Reservations	27
- Entry into Force	27
- Accession	27
- Modification of Schedules	28
- Review and Negotiations	28
- Withdrawal	28
- Non-application	29
- Annexes	29
- Secretariat	29
- Deposit	29
- Registration	29

#### ANNEXES

Tied Aid	30
Lists of Entities referred to in Part I, Paragraph 1(c)	31
Publications utilized by Participants for the Publication of Notices of proposed Purchases - Part V, Paragraph 3	32
Publications utilized by Participants for the Publication annually of Information on Permanent Lists of Suppliers in the case of Selective Tendering Procedures - Part V, Paragraph 6	33
Publications utilized by Participants for the Prompt Publication of Laws, Regulations, Judicial Decisions, Administrative rulings of General Application and any Procedure regarding Government Procurement covered by this Agreement - Part VI, Paragraph 1	34

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;

Recognizing that in order to achieve their economic and social objectives to implement programmes and policies of economic development aimed at raising the standard of living of their people, taking into account their balance-of-payments position, developing countries may need to adopt agreed differential measures;

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 IScope and Coverage

## 1. This Agreement applies to:

(a) any law, regulation, procedure and practice regarding the procurement of products by the entities<sup>1</sup> 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 SDR 150,000 or more.<sup>2</sup> No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 150,000. 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 and other designated entities 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 I.

2. Parties shall inform their regional and local governments and authorities within their territories of the objectives, principles and rules of this Agreement, in particular the rules on national treatment and non-discrimination, and draw their attention to the overall benefits of liberalization of government procurement.<sup>3</sup>

---

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

<sup>2</sup>The question of a double threshold and its effects on Parts II and VII is not resolved.

<sup>3</sup>The question of parties not encouraging regional and local governments and authorities to take action inconsistent with the provisions of this Agreement remains to be resolved.

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 customs territories of the 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 III

#### Special and Differential Treatment for Developing Countries

##### Objectives

1. Parties to this Agreement shall, in the implementation and administration of this Agreement, through the provisions set out in this Part, duly take into account the development, financial and trade needs of developing countries, including the least-developed countries, in particular their need to:

(a) safeguard their balance-of-payments 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;

(c) support industrial units so long as they are wholly or substantially dependent on government procurement;

(d) encourage their economic development through regional or global arrangements among developing countries presented to the CONTRACTING PARTIES to GATT and not disapproved by them.

2. Consistently with the provisions of this Agreement, parties to it shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and of those at the lowest stages of economic development.

##### Coverage

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



Agreed exclusions

4. Developing countries may negotiate with other participants in the MTN mutually acceptable exclusions from the rules on national treatment with respect to certain entities or products that are included in their lists of entities having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in paragraph 1(a)-(c) above shall be duly taken into account. Developing countries participating in regional or global arrangements among developing countries referred to in paragraph 1(d) above, may also negotiate exclusions to their lists, having regard to the particular circumstances of each case, taking into account, inter alia, the provisions on government procurement provided for in the regional or global arrangements concerned and taking into account, in particular, products which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, developing countries parties to this Agreement may modify their lists of entities in accordance with the provisions for modification of such lists contained in Part IX, paragraphs 9 and 10 of this Agreement, having regard to their development, financial and trade needs, or may request the Committee to grant exclusions from the rules on national treatment for certain entities or products that are included in their lists of entities, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(a)-(c) above. Developing countries parties to this Agreement may also request, after entry into force of the Agreement, the Committee to grant exclusions for certain entities or products that are included in their lists in the light of their participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(d) above. Each request to the Committee by a developing country party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 above shall apply mutatis mutandis to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 above shall be subject to review in accordance with the provisions of paragraph 13 of this Part.

Technical assistance for developing country parties

8. Developed country parties to this Agreement shall, upon request, provide all technical assistance which they may deem appropriate to developing country parties in resolving their problems in the field of government procurement.

9. This assistance which shall be provided on the basis of non-discrimination among developing country parties shall relate, inter alia, to:

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

#### Information centre

10. Developed country parties to this Agreement shall establish, individually or jointly, information centres to respond to reasonable requests from developing country parties for information relating to, inter alia, laws, regulations, procedures and practices regarding government procurement, notices about proposed purchases which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products purchased or to be purchased, including available information about future tenders. The Committee may also set up an information centre.

#### Special treatment for least-developed countries

11. Having regard to paragraph 6 of the Tokyo Declaration, special treatment shall be granted to least-developed countries parties to this Agreement and to the suppliers in those countries with respect to products originating in those countries, in the context of any general or specific measures in favour of the developing countries parties to this Agreement. Parties may also grant the benefits of this Agreement to suppliers in least-developed countries which are not parties, with respect to products originating in those countries.

12. Developed country parties shall, upon request, provide assistance which they may deem appropriate to potential tenderers in the least-developed countries 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 least-developed countries and assist them to comply with technical regulations and standards relating to products which are the subject of the proposed purchase.

#### Review

13. The Committee shall review annually the operation and effectiveness of this Part and after each three years of its operation on the basis of reports to be submitted by the parties to this Agreement shall carry out a

major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Part II, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 to 6 of this Part shall be modified or extended.

14. In the course of further rounds of negotiations in accordance with the provisions of Part IX, paragraph 12, developing countries parties to this Agreement shall give consideration to the possibility of enlarging their schedules of entities having regard to their economic, financial and trade situation.

PART IVTechnical Specifications

- (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.

PART V

Tendering Procedures

1. Parties to this Agreement shall ensure that the tendering procedures of their entities are consistent with the provisions below.<sup>1</sup> Open tendering procedures for the purposes of this Agreement are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement are those procedures under which, consistent with paragraph 7 of this Part, those suppliers invited to do so by the entity may submit a tender. Single tendering for the purposes of this Agreement, is a procedure where the entity contacts suppliers individually, only under the conditions specified in paragraph 15 below.

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 in order 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;

---

<sup>1</sup>The question of a double threshold and its effects on Parts II and VII is not resolved.

(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 by the entities concerned of the decision in this regard. 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. Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex II. Such notice shall constitute an invitation to participate in either open or selective tendering procedures.

4. 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.]

5. 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.

6.(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 III, a notice of the following:

- (i) the enumeration of the lists maintained, including their headings, in relation to the products or categories of products to be purchased through the lists;
- (ii) 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;
- (iii) 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.

7. 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 under paragraphs 2-6 of this Part. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

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 re-issued the notice, the amendment or the re-issued 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.(a) 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.
- (b) Consistent with the entity's own reasonable needs, any delivery date shall take into account the normal time required for the transport of goods from the different points of supply.
- 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 not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than thirty days from the date of the publication referred to in paragraph 3; the period for receipt of tenders shall in no case be less than thirty days from the date of issuance of the invitation to tender.
- (c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than thirty days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 3, there shall in no case be less than thirty days between those two dates.
- (d) The periods referred to in (a), (b) and (c) above may be reduced either where a state of urgency duly substantiated by the entity renders impracticable the periods in question or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4 of this Part.
11. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of these 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 should 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 supplier requesting to participate 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) entities should normally refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. Where such requisites are part of a contract, parties to this Agreement concerned shall minimize the size and shall not favour suppliers from one party over suppliers from any other party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one party shall not be favoured over suppliers from any other party.<sup>1</sup>

---

<sup>1</sup>One delegation reserves its position.

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 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 exists<sup>1</sup>;
- (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the 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;
- (e) when an entity purchases prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent purchases of products shall be subject to paragraphs 1-14 of this Part.<sup>1</sup>

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.

---

<sup>1</sup>One delegation reserved its right to revert to 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 IV 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 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 purchasing entity shall promptly provide that tenderer with pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer.
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. The government of the unsuccessful tenderer, which is a party to this Agreement, 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. To this end, the purchasing government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the

government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the party which gave the information to the government of the unsuccessful tenderer.

7. Available information concerning individual contract awards shall be provided, upon a request, to any other party.

8. 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.

9. 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 contracts awarded by all procurement entities covered under the Agreement:

- (a) global statistics on estimated value of contracts awarded, both above and below the threshold value;
- (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system;
- (c) statistics on the total number and value of contracts awarded under each of the cases of Part V, paragraph 15.

## PART VII

### Enforcement of Obligations

#### Institutions

1. There shall be established under this Agreement a Committee on Government Procurement (referred to in this Agreement as "the Committee") 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 to consult on any matters relating to the operation of the Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the parties.

2. The Committee may establish ad hoc panels in the manner and for the purposes set out in paragraph 7 of this Part and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

#### Consultations

3. 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 mutually satisfactory resolution of the matter, request in writing consultations with the party or parties in question. Each party shall afford sympathetic consideration to any request from another party for consultations. The parties concerned shall initiate requested consultations promptly.

4. Parties engaged in consultations on a particular matter affecting the operation of the Agreement shall provide information concerning the matter subject to the provisions of Part VI, paragraph 8, and attempt to conclude such consultations within a reasonably short period of time.

#### Resolution of disputes

5. 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 investigate the matter, with a view to facilitating a mutually satisfactory solution.

6. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 5 within three months<sup>1</sup>, the Committee shall<sup>2</sup>, at the request of any party to the dispute establish a panel 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 make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

7. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connexion, each party to this Agreement shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the parties to this Agreement would be willing to make available for such work. If a panel is requested, the Chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

---

<sup>1</sup>One delegation suggested that the three month period should begin with the initial request in writing for consultation under paragraph 3.

<sup>2</sup>One delegation reserves its position on the word "shall".



8. Each panel shall develop its own working procedures. All parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a party it shall inform the government of that party. 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 or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

9. 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 from the date the panel was established.

#### Enforcement

10. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action [within thirty days of] [promptly after] receipt of the report, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more parties to the Agreement; and/or
- (c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter at the highest possible level of trade liberalization.

11. If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

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

Balance of rights and obligations

13. If the Committee's recommendations are not accepted by a party, or parties, to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a party or parties to this Agreement to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other party or parties, as is determined to be appropriate in the circumstances.

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 not 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 institutions or of prison labour.<sup>1</sup>

---

<sup>1</sup>One delegation reserved its right to revert to this paragraph.

## PART IX

### 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 I. It shall also be open for signature by other governments, whose schedules of entities are listed in Annex I, 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 in accordance with the provisions of Article XXVI:5(a) and (b) of GATT, provided that GATT is being applied in respect of such territories; and each such territory shall be treated as though it were a party to this Agreement.

#### 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 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, taking into account the need to maintain the balance of rights and obligations at the highest possible level.

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 third year from the entry into force of this Agreement and periodically thereafter, the parties thereto shall undertake further negotiations, with a view to broadening and improving the Agreement, on the basis of mutual reciprocity.

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.

Withdrawal

13. 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

14. 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

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

#### Secretariat

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

#### Deposit

17. 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 party to the Agreement.

#### Registration

18. 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.

ANNEX

Tied Aid

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by parties to this Agreement.

ANNEX I

LISTS OF ENTITIES REFERRED TO IN PART I, PARAGRAPH 1(C)



ANNEX II

PUBLICATIONS UTILIZED BY PARTICIPANTS FOR THE  
PUBLICATION OF NOTICES OF PROPOSED PURCHASES -  
PART V, PARAGRAPH 3

ANNEX III

PUBLICATIONS UTILIZED BY PARTICIPANTS FOR THE  
PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT  
LISTS OF SUPPLIERS IN THE CASE OF SELECTIVE  
TENDERING PROCEDURES - PART V, PARAGRAPH 6

ANNEX IV

PUBLICATIONS UTILIZED BY PARTICIPANTS FOR THE  
PROMPT PUBLICATION OF LAWS, REGULATIONS,  
JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF  
GENERAL APPLICATION AND ANY PROCEDURE  
REGARDING GOVERNMENT PROCUREMENT COVERED  
BY THIS AGREEMENT - PART VI, PARAGRAPH 1