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COMMUNICATION FROM THE REPUBLIC OF KOREA

The following communication was received by the secretariat on 4 December 1987, with the request that it be circulated to all members of the Negotiating Group on MTN Agreements and Arrangements.

Agreement on Government Procurement

INTRODUCTION

Due to, inter alia, the lack of flexibility and clear criteria used in negotiating entity offers and the lack of transparency of tendering procedures, the Agreement on Government Procurement has been signed by only a limited number of countries. With the objectives of facilitating adherence of non-signatories to the Agreement and without prejudice to the possibility of additional submission of proposals in the future, the delegation of the Republic of Korea suggests that negotiations be held to deal with the following issues relating to the Agreement on Government Procurement.

A. DIFFERENCES IN GOVERNMENT PROCUREMENT SYSTEM

The centralized procurement system used by many non-signatories generally broadens the effect of market opening when these non-signatories accede to the Code. This broadening effect is due to the fact that a centralized procurement system tends to increase the percentage of total contract value which is in excess of the threshold value.

The examination of the statistical data on government procurement submitted by the signatories and a study of government procurement practices of some non-signatories seem to indicate that the average percentage of the total contract value in excess of the threshold value of the signatories is lower than that for certain non-signatories which employ the centralized procurement system. Thus, if they were to accede to the Code, certain non-signatories which employ the centralized procurement system would be at a relative disadvantage in contrast to some signatories which employ the decentralized procurement system. Hence, this anticipated disadvantage is a disincentive to accession.

In order to encourage further accessions and expand the scope of the Agreement, Korea proposes that this Group examine the idea of allowing due consideration of the differences in percentage of the total contract value in excess of the threshold value of the offer list during the course of entity negotiation for accession with respect to the scope of the entity list. This could be accomplished by amending the provision on accession of Article IX:1(b).

B. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES
(Article III, Article IX:1)

(a) Flexibility in the Process of Entity Negotiation

Article III:1, 4 and 5 require the Parties, in the process of implementing and administering the Agreement, to take duly into account the special and differential needs of developing countries. However, these provisions have not been properly implemented in the process of entity negotiations between parties to the Agreement and the developing countries which have wished to accede to it.

Korea, therefore, believes that the accession of developing countries to the Code would be facilitated by ensuring that the spirit of special and differential treatment for developing countries mentioned in Article III:1 is fully applied to the negotiations on accession of developing countries. This could be accomplished by incorporating the concept of special and differential treatment in the provisions on accession in Article IX:1(b).

(b) Gradual Expansion of Entity Lists

According to Article III:14, developing country Parties could gradually increase the entity lists after their accession in the course of further rounds of negotiation provided in Article IX:6. Korea believes that the incorporation of the aforementioned principle in Article III:3 could encourage the accession of developing countries to the Code.

C. TENDERING PROCEDURES (Article V)

Article V:2(c) provides that the process and the time required for evaluating the qualifications of suppliers shall not be used as a means of keeping foreign suppliers off suppliers' lists or from being considered for proposed purchases. However, signatories' practices are often characterized by short response deadlines or restrictive pre-qualification requirements, and therefore, act as important obstacles for non-signatories to accede to the Code.

In this connection, Korea believes that the decisions of the Code Committee under Article IX:6(b), such as extension of the period for the receipt of tender, would not be sufficient to enhance the transparency of the tendering procedures. Korea, therefore, believes that the Code should be amended through negotiations in this Group on increasing the amount of

time allowed for bid submission and improving tendering procedures to ensure maximum possible competition and easing pre-qualification requirements.

D. INFORMATION AND REVIEW (Article VI)

The Korean delegation recognizes that the lack of accuracy, consistency and uniformity of statistical data on government procurement provided by Code signatories makes it difficult for non-signatory countries to assess the benefits accruing from accession and for signatories to evaluate the implementation of the Agreement. Korea proposes negotiations on amending Article VI:9 to expand the scope and improve the quality of information furnished by Parties, through the introduction of a more detailed breakdown of product categories, statistical analyses and improved means of comparing signatories' presentations.