

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

Original: English

SCOPE OF COVERAGE OF THE AGREEMENT WITH PARTICULAR REFERENCE TO LEASING. GOVERNMENT LEASING PRACTICES

Notes by the Delegation of the United States

By letter of 19 June 1981 the delegation of the United States transmitted for circulation to the Committee the two United States notes which are reproduced below.

Scope of coverage of Agreement with particular reference to leasing

At the last meeting of the Committee, it was agreed that further discussion on the scope of coverage of the Agreement would be useful. The United States takes this opportunity to outline briefly its views on this issue, particularly as it relates to the area of leasing.

As we have stated before, the United States believes that the Agreement on Government Procurement should be interpreted as applicable to procurement through leasing. Recognizing that there is no consensus on this issue, we believe it is worthwhile to consider certain definitional and practical concerns regarding leasing practices as they might relate to the Agreement, if leasing is not to be considered covered.

In regard to definitional questions, we believe that the Committee should consider how leases with commitment to buy and leases with option to buy should be treated, if leasing is not considered to be covered by the Agreement. In our view, leasing with commitment to buy is equivalent to an outright purchase with the leasing element serving as a financing arrangement. Leasing with option to buy poses more complex questions. For instance, does the option to buy make such an arrangement equivalent to outright purchase? If this is not the case, would execution of the option to buy be subject to the Agreement? We would be interested in the views of other delegations on these questions.

Turning to a practical problem, we note that a number of Parties pre-designate contracts as being subject to the Agreement on the basis of procurement officers' estimates of contract value. We also understand that some Parties issue announcements inviting offers either to sell or to lease. We would be interested to know whether any Parties that currently pre-designate also issue invitations to tender containing such an option. If there are such Parties, we would like to

know how their procurement officials treat such proposed procurement contracts. Specifically, do they pre-designate as code-covered such proposed contracts?

United States Government leasing practices

At the last meeting of the Committee, the delegation of the United States suggested that Parties submit information on their leasing practices. This note briefly describes United States leasing practices.

As a matter of policy, United States procurement officials procure through leasing whenever leasing is judged to be the most cost effective method of procurement. In some cases announcements of bidding opportunities invite bidders to provide an offer to lease, and only an offer to lease. In other cases, where it is unclear whether purchase or lease is the most cost effective method of procurement, bidders are invited to provide offers either to sell or to lease. Finally, in some instances leasing arrangements may include an option to buy.

The United States Government has found leasing to be an effective method of procurement for data processing equipment, office machinery, telecommunications equipment, and automobiles.

The United States would welcome an exchange of more detailed information within the Committee on this subject.