1. This technical assistance note is a revision of document TA/W/4, which was made available in response to a number of requests from developing countries' delegations that the secretariat provide a summary of available background information, additional to that circulated in document MTN/NTM/W/16 on government procurement operations in developed countries.

2. As was foreshadowed in paragraph 1 of document TA/W/4, this revision has been prepared in the light of new information contained in the updated version of an OECD publication - "Government Purchasing Regulations and Procedures of OECD Member Countries" (Paris 1976), and other published sources. Because no systematic collection of information on the size or the product coverage of procurement operations has apparently been undertaken, such details are unavailable. Comprehensive information on government procurement activities in developing countries is also generally still unavailable.

3. The new information presented below relates to the regulations and procedures used in the area of government purchasing in (a) Australia and New Zealand; (b) the procedures for hearing and reviewing complaints, and additionally, (c) more detailed and up-to-date information in respect of the legal and regulatory framework, and procurement procedures and practices presently obtaining in the countries covered in document TA/W/4.

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1. The Group "Non-Tariff Measures" at its last meeting in July 1976 agreed to set up a Sub-Group "Government Procurement" which would hold its initial meeting in the latter part of October. It agreed that at this meeting the Sub-Group should organize its work in the light of the documentation available to it both from the GATT and OECD sources, having regard to any views expressed regarding requirements for additional material (MTN/NTA/21, paragraph 9).
4. The procurement procedures and practices outlined in relation to the countries covered in the succeeding paragraphs may be broadly categorized on the basis of (a) the method of opening tenders i.e., by public tender, selective tender and single tender and (b) the criteria available to the authorities concerned in the awarding of contracts such as automatic tender which is generally based on a "lowest bid" procedure, discretionary tender which may be based on several criteria, some of which are predetermined, and others permitting the awarding authorities a certain freedom of choice, and negotiated tender whereby the conditions of contract are freely negotiated by the awarding authority with the supplier. Automatic or discretionary tenders may be public or selective.

5. There appears to be considerable flexibility in the practices adopted by the countries examined in relation to the publicizing of tenders and the time period allowed between the opening and closing dates for bids. Broadly, media for the publicizing of tenders include local newspapers, the countries' Official Journals, bulletins or gazettes and certain trade journals and the offices of the countries overseas trade commissioners. The time period allowed for the presentation of bids appears to range from that of 2-3 weeks to 2-3 months depending essentially on whether the tender calls for the supply of standard or complex goods.

6. There appears to be no precise uniformity of procedures in OECD countries in relation to the hearing and reviewing of tenderers' / suppliers' complaints. However, a relatively common procedure seems to provide for complaints to go initially through administrative channels, commencing in some cases with the responsible authorizing officer, progressing to the head of the department or entity responsible for the purchase, the government minister under whose ministry the department or entity may be, and if no satisfactory solution has been reached, to the courts of law.

Australia

Legal and regulatory framework

7. Authority for purchasing carried out by the Australian Government is based on the Audit Act 1901-1973 and Treasury regulations and directions issued under it. All Australian Government departments are required to observe these regulations and directions. However, this legislation does not apply to purchasing by State Government departments and authorities.

Procurement procedures and practices

8. Three procurement procedures are normally utilized - public discretionary tender (in respect of all contracts the estimated costs of which exceed $A 5,000, unless dispensed with on special grounds); selective tenders (where those
requested to tender are selected from a list of potential suppliers) and single
tender. The calling of public discretionary tenders may be dispensed with where
the Secretary to the Department of the Treasury or an officer appointed by him
rules the procedure to be inexpedient, or impracticable, due to reasons of urgency,
the need to maintain compatibility with existing standardized equipment, the
existence of only one source of supply or the security classification of equipment.

9. There are no restrictions with regard to registration, residence or similar
requirements. Any firm may apply to be placed on tenderers' mailing lists.
Overseas firms are normally expected to lodge tenders through Australian agents
who would be responsible for the performance of any contract which they may be
awarded. Its objective is to ensure that there is a local representative to
arrange local delivery, to be responsible for attending to damage in transit,
arrange installation, provide after sales service and service of warranties.

10. As a general rule the lowest suitable tender is accepted. Other considerations
which may be taken into account include delivery dates, competence, type of
equipment and previous performance record.

11. Government purchases do not attract import duty. Therefore in order to provide
local industry with the same protection it enjoys under the tariff, government
purchasing authorities are required to add to a foreign bid the appropriate duty
element and primage for the purpose of comparing them with the local bids made.
In exceptional circumstances, individual cases may be referred for a Ministerial
decision on whether a local product should be accorded a preference over a foreign
product. Where an Australian tender and a foreign tender are similar in respect
of price, and availability, and meet the requisite specifications, the former may
be preferred as a result of a decision made by the Prime Minister. In the purchase
of defence equipment, the purchasing authority in evaluating bids, gives considera-
tion to opportunities afforded by overseas suppliers for local industry to compete
for the supply of some components of the purchase. The Australian Government has
no arrangements with other countries with regard to Government purchasing which
are not applicable to all OECD member countries.

Procedures for hearing and reviewing complaints

12. In the absence of any formal machinery for the hearing and reviewing of
complaints, a complaint may be lodged initially with the contract or tender board
which made the decision. In the absence of a satisfactory outcome, the case may
be submitted to the permanent head of the department or authority in which the
tender board is located, and failing that to the Minister concerned. Most contracts,
evertheless, have arbitration clauses which in specified situations call for the parties
concerned to appear before an independent arbitrator. Where purely legal matters
are involved, the dispute may be taken to an Australian court of law.
Canada

Legal and regulatory framework


14. The Department of Defence Production procures materials, equipment and supplies (including services) and Defence Construction (1951) Limited undertakes construction on behalf of the Department of National Defence. Both these agencies are governed by the Defence Production Act, 1951. The Government Contracts Regulations govern the contracts entered into by these agencies on behalf of civil departments.

15. The legislation and regulations mentioned above are applicable to departments, boards, commissions and departmental corporations which are to a large extent dependent upon parliamentary appropriations. They do not apply to autonomous bodies, that is bodies not dependent on parliamentary appropriations such as agencies and proprietary corporations.

Procurement procedures and practices

16. The regulations provide for three procurement procedures - public discretionary tender, selective discretionary tender and private contract. The application of these procurement procedures generally leads to the concluding of basically three types of contracts, each with different tendering requirements. These types of contracts could be categorized as Construction Contracts, Purchase Contracts and Service Contracts.

17. The Act and Regulations do not prescribe tendering requirements in relation to the Department of Defence Production and Defence Construction (1951) Limited. The Department of Defence Production does not rely on public advertisement for tenders to the same extent as other departments do, but on invitations to tender from lists of suppliers. Defence Construction (1951) Limited adopts tendering procedures similar to other departments except for classified works where tenders are invited from a representative list of suppliers.

18. Departments generally have the authority to enter into contracts up to and within a stipulated value or range of values, and under certain specified conditions and prescribed situations. Treasury Board (i.e. a ministerial Committee of the Privy Council) approval is required under most other circumstances.
19. No restrictions in relation to registration, residence or similar requirements are laid down for foreign suppliers. The main factors governing the choice of tender appear to be price, financial responsibility of the contractor, competence, adequacy of plant and equipment. Normally the tender is awarded to the lowest bidder taking into account the considerations mentioned above.

20. No existing Act or Regulations impose restrictions on Federal Government procurement from foreign sources. However, it is stated that it is customary to grant a small preference to goods of Canadian origin. Normally, the premium paid is to be less than 10 per cent and is based on the difference in the price of the foreign content of the goods the subject of tenders, rather than on the difference in price of the tenders. Preferences of 10 per cent or more may be granted under special circumstances. Tenders are invited from national suppliers for certain types of goods produced by industries whose maintenance is considered essential from a national defence point of view. The Treasury Board takes into account not only such factors as price, the quality of goods or services offered, the reputation of the bidder and the possibility of satisfactory follow-up services, but also the budget situation, the state of the economy and Canada's foreign trade position. Import duties and other charges are taken into account when foreign bids are being considered.

Procedures for hearing and reviewing complaints

21. Bidders or prospective bidders can appeal at any level above the contracting officer within the Central Purchasing agency up to and including the Minister of Supply and Services, in respect of reasons for them not being asked to submit a bid, or being unsuccessful in securing a contract. Complaints are normally reviewed within the specific procurement service. Enquiries can also be addressed to the Secretary of the Supply Administration who ensures that a response is given after all relevant factors are determined and evaluated. After having pursued these procedures, a complainant may, if he so wishes, request a review of his case by the Central Contracts Approval Agency (Treasury Board) or approach the Prime Minister's Office. Disputes arising out of the performance of a contract are normally referred to the senior departmental officials for resolution, failing which monetary claims arising from the dispute are referred to a contracts disputes board. Failing a satisfactory settlement either party may claim in the Federal Court of Canada.

France

Legal and regulatory framework

22. The rules governing procurement and the awarding of contracts are codified in the "Code of Government Contracts" the provisions of which are divided into four books. The provisions of Books I and II titled "General provisions" and "State contracts" respectively, were brought into force by Decree No. 64-729 of 17 July 1964, while those of Books III and IV, entitled "Contracts of local
authorities and their public utilities" and "Co-ordination of Government procurement at local level" were brought into force by Decree No. 66-388 of 28 November 1966.

23. All Central Government departments are required to adhere to certain general administrative rules called "Cahiers des Clauses Administratives Générales" (CCAG) in respect of contracts for current supplies and for industrial contracts 1 (Decree of 5 July 1965). There is also a "current supplies" CCAG in respect of contracts of local authorities and their public utilities.

Procurement procedures and practices

24. Competition for tenders on as wide a basis as possible is regarded as the underlying principle of the Code. The procedures used are: automatic tender, either public or selective, discretionary tender, either public or selective, and private contracts. In practice, discretionary tender procedure is used more frequently than the automatic tender procedure, while private contracts, often used for the procurement of current supplies, represents more than half the number of total procurements.

25. The circumstances and conditions under which private contracts may be concluded, as listed in Article 104 of the "Code des Marchés Publics", are where there is a sole supplier or holder of patent, technical necessity or substantive prior investment is required, research studies or experimental work is necessary, when a call for tenders has failed to produce a satisfactory response, in order to take over from a defaulting supplier, in cases of extreme urgency, and for reasons of secrecy.

26. Technical and financial criteria are used in deciding which suppliers may be invited to tender on the basis of the selective tender procedure. Previous performance in the execution of contracts is also taken into consideration, and the presence of a local representative may be required in certain circumstances.

27. In principle, equal treatment and similar opportunities are accorded both domestic and foreign firms when tenders are invited. However, when bids are equal, purchasing departments have been reminded that in order to avoid indiscriminate competition there is no reason why, given equal quality and price, the contract should not be awarded to a domestic supplier. One exception appears to be the electronic industry where the French Government has undertaken to make a certain part of its purchases from domestic sources. 2

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1 Industrial contracts concern products which are not standard catalogue, but special order products.

28. The practice of using procurement as a tool contributing to the implementation of development plans is not confined to the electronic industry. However, the administrative regulations stipulate that these provisions should not run counter to international agreements. In the field of public works and building contracts, the administrative regulations specify that equipment and materials used may be of French origin subject to international commitments. For national defence reasons, contracts for armaments impose specific conditions in regard to nationality, acquisition of a manufacturing licence or sales authorization, government supervision, and at times, the keeping of cost accounts (Article 25 of the General Administrative Clauses for Industrial Contracts).

29. France gives special preferences to certain social groups. Bids from producer co-operatives and agricultural producer societies are favoured over other domestic and foreign bids, provided the tenders are equal. One quarter of any contract may be assigned to these societies, as well as to workers and artistic co-operatives at the mean price fixed for the other shares2 (Article 63). It has been stated that, in practice, however, these provisions rarely apply.

Procedures for hearing and reviewing of complaints

30. A complainant could initially contact the official responsible for making the purchase, and failing a satisfactory outcome, his immediate superior (e.g. head of division or purchasing service) and thereafter the Government department under which the purchasing service operates. The petitioner may also refer the case to the Commission Centrale Des Marchés (an interdepartmental body whose general Secretariat comes under the Ministre de l'Economie et des Finances) which has powers under the Code for Government Contracts. If the use of these departmental channels fails to produce a satisfactory solution, the complainant has the right to take his case to the administrative tribunal and ultimately, if necessary, to the Conseil d'Etat.

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2This applies to cases where the service is divisible into shares.
Federal Republic of Germany

Legal and regulatory framework

31. The general law governing government procurement in the Federal Republic of Germany is: Reich Public Budget Regulations and Budget Principles Act of August 1969. The award of contracts for supplies and services is governed by the VOL which stipulates the required conditions.

32. The following public authorities have framed regulations supplementary to these conditions: the Federal Ministry of Defence; the Federal Ministry of Posts and Telecommunication; the Federal Ministry of the Interior and the Federal German Railways. The ordinances concerning prices for public contracts also apply and there are statutory rules by the Federal Government granting privileges to certain categories of bidders, in addition to which the Ministry of Defence grants special treatment to "medium-sized" firms when awarding contracts to them.

Procurement - procedures and practices

33. The conditions concerning contracts for supplies and services specifies three methods of procurement - public discretionary tender, selective discretionary tender and private contract. The method generally used is public discretionary tender, except where special circumstances warrant a deviation from this rule. Selective discretionary tenders may be used as a method of procurement where the nature and amount of work requires that the tenderer be particularly solvent, qualified, and that there be a fairly large number of qualified contractors. The provisions of the Industrial and Commercial Code governing business undertakings are applicable in judging a bidder's qualifications. Foreign bidders should apparently satisfy the conditions governing business undertakings in their own countries to receive consideration. Ordinance (VOL) specifies the conditions under which private contracts may be concluded, e.g. special reasons (protection of patents, special know-how), when the nature and amount of work involved cannot be adequately determined prior to the awarding of the contract, urgency, etc.

34. Contracts are generally awarded on the basis of tenders regarded as most economical. Factors which usually tend to influence authorities when deciding on the most economical bid include quality, date of delivery, after sales services, and spare parts availability in addition to price.

35. Under a Decree of 29 April 1960, foreign bids and products are treated on the same footing as domestic bids. The participation of foreign bidders in selective tenders depends on the nature and value of the services required and on whether the foreign products are better suited to the purpose envisaged than domestic products, and whether they are cheaper.
36. When deciding the award (on the basis of the "most economical bid"), customs and other duties leviable are added to the price of the foreign bid, unless they have already been included in the price submitted.

37. As an exception to the general principle of competition, tenders from the following categories are given special consideration with respect to the award of public contracts - expelled people and refugees from the Soviet Zone, individuals and firms in areas classified as "distressed areas", and peripheral regions bordering on the German Democratic Republic and West Berlin, victims of nationalist socialist persecution, victims of war and evacuees.

38. The Ministry of Defence is enabled to place a certain percentage of its contracts with suitably qualified "medium-sized" firms. The price preference granted these firms and the various groups of disadvantaged persons is stated to be from 5 per cent to 0.5 per cent according to a scale which depends on the value of the order.

Procedures for hearing and reviewing complaints

39. Due to the fact that the State uses fiscal policy instruments for carrying out its public responsibilities, contracts concluded between the Government - as tax gatherer - and private enterprise are purely private-law contracts whose conclusion, execution and completion are governed by the law of private contract, as are all questions arising therefrom. Any disputes arising from such contracts fall within the competence of the law courts.

40. A distinction must, however, be made between disputes arising during the period preceding the conclusion of a contract and while it is being executed. While redress for disputes arising in the course of the first phase has to be sought through official channels of the competent supervisory authority, contract conditions will provide the main criterion, in the redressing of any disputes arising during the course of the second phase.

Japan

Legal and regulatory framework

41. Central Government procurement is regulated by the following laws: Accounts Law (1947), Imperial Edicts No. 165 of 1947 and No. 558 of 1946.

Procurement procedures and practices

42. The use of the public automatic tender procedure has legal sanction. However, unless specified otherwise, the selective tender and private contract procedures are the most frequently used methods of government procurement.
43. The selective automatic tender procedure is applied when there is a paucity of bidders and the public automatic tender procedure is considered to be disadvantageous. It may also be applied if the contract involved does not exceed a value provided for in the budget, or in respect of an exceptional measure introduced by Cabinet Order. Private contract procedure is applied in situations of urgency and expediency and may also be applied if the contract does not exceed a specified value.

44. There is no legislation providing for preferences to domestic products and producers in Japan. The lowest bid below a predetermined ceiling price is normally successful under both public and selective automatic tender procedures. When there are two or more offers at the same price the successful bidder is chosen by the drawing of lots. All laws and regulations concerning government procurement in Japan are stated to grant equal treatment to domestic and foreign products and suppliers.

Procedure for hearing and reviewing complaints

45. The general procedural rules relating to the settlement of disputes between State and the citizen are applicable to government procurement. A complainant may apply initially to the contracting officer concerned, and failing satisfactory resolution, a complaint may be formally lodged with the contracting authority. If dissatisfied with the latter’s decision, he may take the case to the higher authority under which the contracting authority comes, and thereafter, to the ordinary courts of law, if necessary.

46. In relation to disputes arising from the performance of contracts, a complaint may in the first instance be made to the contracting officer, and if no amicable settlement is reached, the complainant’s sole recourse will be to bring a civil action under the code of civil procedure.

New Zealand

Legal and regulatory framework

47. The legal basis and criteria for government purchasing operations are provided by the Government Stores Regulations of 1960, together with the Government Stores Board instructions, and certain general Treasury regulations and instructions.

Procurement procedures and practices

48. Tender procedures used are open public tender (public automatic tender), selective discretionary tender, and single tender (private contract). Normally contracts are concluded as a result of competitive tendering. The majority of
tenders are by selective discretionary tender, with the single tender being used in emergency or single supplier situations.

49. There are no residency or registration requirements for firms wishing to tender for government contracts. Departments are expected to award contracts to the best public advantage. Contracts are generally awarded to the lowest bidder, particularly with respect to open public tender and selective tender procedures, provided the tender complies with specifications, delivery dates, and after sales service is available.

50. Government purchasing is carried out in the world market and no preferences are accorded to the goods of any country. When evaluating tenders, account is taken of all known contingent costs for foreign goods including import duties (at preferential or MFN rates as the case may be). The generally observed principle that a tender should go to the lowest bidder, provided it complies with other requirements, may sometimes be waived, if for economic reasons it is considered essential that it should go to a local industry; subject however to the price differential not exceeding certain specified limits.

Procedure for hearing and reviewing complaints

51. The regulations do not prescribe any procedure for the hearing and reviewing of complaints. The likely procedure in the event of a complaint would be the appointment by the Government of an independent arbitrator who would rule on it.

Norway

Legal and regulatory framework

52. The regulations concerning tenders are contained in Government Regulations of 4 July 1927. These regulations were revised in 1967, in view of Article 14 of the EFTA Convention. Norwegian procurement regulations are not applicable to publicly-owned enterprises which produce and sell their goods in competition with privately-owned enterprises. However, some autonomous and semi-autonomous agencies which do not fall under such a category are subject to the regulations, e.g. railways, telecommunications, etc.

Procurement procedures and practices

53. The regulations provide that bids can be sought by public discretionary tender, selective discretionary tender and private contract, under varying specified conditions and situations, e.g. public interest and security, favourable market conditions, paucity of suppliers, urgency, non-availability of any acceptable bids, artistic skill or specialized technical qualifications required, etc.
54. No special conditions are required of bidders. Foreign firms are not treated differently from domestic firms, but the purchasing agency may request that they nominate a Norwegian citizen as their agent.

55. Paragraph 24 of the Regulations states that the bid considered most advantageous to the State is to be preferred. The factors taken into consideration are price, transport costs, quality, time of delivery, service and standardization.

56. Foreign firms may be invited to tender in the same way as domestic firms. The former regulations implying a general preference favouring domestic goods was discontinued in 1967. Competition for tenders may in certain instances be limited to Norwegian producers and to producers in EFTA member countries adhering to Article 14 of the EFTA Convention, if it serves the objective of securing stable employment or in developing Norwegian industry.

Procedures for hearing and reviewing complaints

57. There are no special procedures for hearing and reviewing complaints but complaint procedures generally in force in government administration are followed. Complaints on measures taken by a subordinate body may be referred to the Ministry responsible which could in principle reverse them provided contractual obligations do not prevent such a procedure. Control is also exercised by the Auditor-General, both at the request of the Ministries and on the basis of individual complaints to him.

Sweden

Legal and regulatory framework

58. New regulations which replace the 1952 regulations governing government procurement by the Central Government and its agencies, were adopted by the King in Council in June 1973 and entered into force as the Royal Purchasing Proclamation in January 1974. Local governments are free to adopt their own procurement regulations, while government-owned business companies do not come under the procurement regulations. Local governments have, however, adopted a recommendation aiming at rules for their own procurement activities which closely follow those contained in the new purchasing proclamation.

Procurement procedures and practices

59. The new regulation applies to procurement of goods and services. Other than private contracts, two main forms of procurement procedures - strict tender (public or selective) and negotiated tender (public or selective) - are provided for. The purchasing entity chooses the procedure considered most economical and advantageous to it.
60. The basic criteria when assessing bids and awarding contracts appears to be one of most advantage to the State. The choice is made on purely commercial considerations such as price, quality, delivery terms, after-sales service, cost of maintenance, etc. The level at which the tender is decided varies with its nature and importance. While the purchasing entities administrative boards may decide on certain tenders, others could be decided upon at Government level. Any desired deviation from the rules laid down in the Purchasing Proclamation have to be referred to the Government for a ruling.

61. Government departments are authorized to seek bids from foreign suppliers. No preferences are granted to national products and Swedish and foreign goods are evaluated on an equal basis. For procurement necessary for national defence purposes other rules may apply. In case of competition between domestic and foreign products, only commercial considerations should influence the decision (circular letter from Permanent Under Secretary of the Ministry of Finance dated 8 July 1960). Customs duties and other charges are included in the price when foreign goods are considered. EFTA rules on government procurement are applied by Sweden, an EFTA member, to other EFTA member countries.

Procedures for hearing and reviewing complaints

62. Any dispute arising from the conclusion of a contract may be brought before the civil courts. The procurement regulation provides that once concluded a contract cannot be amended or rendered void by administrative decision. Any complaints or protests which can be lodged at any stage of the procurement process, must be directed to the purchasing agency concerned. A complaint addressed to the Government department concerned would normally lead to an investigation. Appeals for redress may also be addressed to the Chancellor of Justice (Justitiekans Pern) who has very wide powers of investigation, or to the Ombudsman, who performs a similar task on behalf of Parliament. The National Audit Bureau also exercises general control over the purchase and practices of purchasing entities. The procedures described are open to both Swedish and non-Swedish suppliers.

Switzerland

Legal and regulatory framework

63. The Federal Regulations relating to Government procurement apply only to buying services of the Confederation which includes e.g. Federal factories, munition factories and armaments works etc. They also apply to a limited extent
to the Federal Railways and to the Posts, Telephones and Telegraphs (PTT).

The main regulations in force are:

(a) For the buying services of the Federal Administration - the Order on Federal Administration Buying of May 1962 which applies to Federal procurement (excluding procurement for the PTT and Federal Railways), the Order of March 1971 dealing with work and supplies in Federal building and civil engineering, Federal Council instructions of December 1966 and complementary instructions of March 1973, to the services of the Federal Administration General Directorates of the PTT and Federal Railways responsible for the procurement of goods and equipment.

(b) For Federal Railways - Law on Federal Railway of June 1944.

(c) For Cantonal and Communal departments - these purchases are governed by Cantonal and local provisions.

Procurement procedures and practices

64. The usual method for inviting bids is that of selective discretionary tender. Private contract and public discretionary tender account for only a small proportion in the total value of purchases. The Federal Railways apply a flexible method of selection, under the selective discretionary tendering procedure in that bids are invited not only from Swiss suppliers and the usual foreign suppliers but also from enterprises who express a desire to tender, provided they are qualified to do so.

65. No special conditions are attached to foreign firms. Like national firms, only proof of their ability to carry out the order satisfactorily is required. There is no formal obligation for a foreign supplier to have a Swiss agent, although in practice this often proves to be the case as it is commercially advantageous. Swiss Government departments are empowered to make foreign purchases, as are the Swiss Federal Railway, cantonal and communal authorities, and semi-public services.

66. Similar criteria are applied to all tenders - whether Swiss or foreign - and a foreign bid need not be lower than the lowest Swiss one to be successful. The choice of supplier may be influenced, however, by consideration of security of supplies, and the geographical location of the supplying country. In practice, the Central Stationery and Supplies Office purchases both from home and abroad, as does the PTT, while the Military Technical Department has special rules for buying but is authorized to buy foreign when it offers substantial advantages in relation to price and/or quality and technical specifications.
67. Customs duties must be included in the purchase price, for all goods except in the case of defence and educational materials which are free of customs duty. Rough estimates appear to indicate that the proportion of foreign goods bought by the Swiss Government can vary in different years from one fifth to one third of total purchases.

Procedures for hearing and reviewing complaints

68. There is no formal procedure for the lodging and reviewing of complaints. Complaints could usually be made directly to the purchasing entity, who could be required to give a reply. An enterprise could seek redress by application to the supervising authority or holding the Confederation responsible for damages caused by an official in the execution of his duty. However, no such case has yet occurred.

United Kingdom

Legal and regulatory framework

69. Apart from the relevance of some general Treasury regulations, purchasing departments have full discretion to follow the practices best suited to their needs and the nature of the purchase, in their procurement activities.

Procurement procedures and practices

70. The procurement procedures applied are open public tender (public automatic tender), selective tender (selective discretionary tender), and single tender (private contract). There are no residential or registration requirements for firms desiring to bid for government contracts. With open public tender and selective tender procedures, contracts are normally awarded to the lowest bidder who is able to satisfy the relevant authorities regarding servicing, spare parts facilities and special delivery dates, if any. Private or single tender contracts are concluded by negotiations.

71. There is no statutory requirement, nor any guidance of a formal or informal character which stipulates that preference should be given to domestic firms and suppliers, except in the case of computers—

1Large business-type computers for Government use are purchased by single tender from International Computers Ltd., subject to satisfactory price, performance and delivery. In other cases, unless there is an overriding reason for compatibility with existing equipment, competitive tendering is used, subject to any requirements for compatibility within existing equipment.
e.g. the Treasury must give formal consent for purchases involving very large foreign orders, and reserves the right to refuse consent because of balance-of-payment reasons. Foreign firms receive equal treatment with domestic firms and are in general eligible for inclusion in purchasing departments' lists. However, reasons such as high transport costs of bulky articles, and the need for adequate maintenance and spares services, may militate against their inclusion. When evaluating tenders, account is taken of all known contingent costs for foreign goods including import duties (at preferential or m.f.n. rates), costs of inspection of manufacturer's factory or goods at the factory, and of spare parts service. Apart from EEC treaty arrangements and possible interdependence agreements with other NATO countries for the development and purchase of military materials, the Government has concluded no arrangements which are not applicable to all OECD members.

72. Administrative steps have been taken to bestow a measure of preference to: (a) firms located in areas designated "Development Areas" where high or persistent unemployment exists or is expected, and in Northern Ireland. If tenders equal in all respects are received from firms in such areas and other firms, the contract is normally offered to the former. Further, 25 per cent of a contract is normally offered to firms in development areas, even when their tenders were not the lowest submitted, so long as it does not increase the total cost of a contract to the Government, above the lowest tender received; (b) selected non-profit-making bodies, e.g. prison work shops and organizations for the employment of incapacitated and disabled persons.

73. In accordance with the practice reaffirmed by the Commonwealth Trade and Economic Conference in Montreal in 1958, purchasing departments intending to place orders abroad are expected to determine whether the goods concerned can be obtained on competitive terms within the Commonwealth.

74. The nationalized sector is possibly the most important area of preference for local suppliers. Certain nationalized industries purchase abroad only if substantially better quality and lower prices are offered than for similar United Kingdom products. These industries also place contracts in areas of high unemployment whenever possible.

Procedures for hearing and reviewing complaints

75. Any firm which has not been selected to tender or has been unsuccessful as a bidder, is free to appeal to the contracting authority. If the complainant is dissatisfied with the reply given by the contracting authority on either matter, it is free to make further representations to the Minister of the department concerned.
United States

Legal and regulatory framework

76. The key statutory bases for the conduct of procurement operations by the United States Federal Government are Title III of the Federal Property and Administrative Services Act of 1949 (41 USC, 251 et seq) and the former Armed Services Procurement Act of 1947 (now Chapter 137 of Title 10 of the United States Code - USC). The former governs the procurement of the General Services Administration (the Central Supply Agency) and is adhered to by most other civilian agencies, while the armed services purchasing agencies, NASA and the Coast Guard are governed in their procurement by the latter. The Armed Services Procurement Regulations issued by the Department of Defence about 1948 lay down uniform policies and procedures to be applied in the procurement of goods and services by military establishments. The Federal Procurement Regulations System established by the General Services Administration includes Federal Procurement Regulations (FPR) as well as individual agency procurement regulations, which are issued in conformity with FPR and which implement and supplement the FPR. Other statutory requirements relating to procurement are found in Titles 10 and 41 of the United States Code. The Buy American Act of 1933, Executive Order 10582 of 1954, as well as other laws and regulations relate to preferences granted to American products.

Procurement procedures and practices

77. Two basic procurement procedures are given statutory recognition - procurement by formal advertising\(^1\) (which is analogous to automatic public tender) and negotiated procurement (which embraces all methods outside "formal advertising" and exhibits features generally associated with discretionary tender, selective discretionary tender, and private contract). The method of negotiated procurement

\(^1\)Procurement by formal advertising takes place when written invitation for bids, accompanied by clear specifications are prepared and made available to prospective suppliers when suppliers are given adequate time to prepare and submit their bids to a specified office, when the bids are opened in public and prices and terms made available on request and when the contract is awarded to the bid which is in the best interest of the Government, price and other factors considered (usually the lowest bidder).
may be used in situations of national emergency, public exigency, for research and development work, for the securing of technical equipment, for the securing of goods for extra-territorial use, subsistence, medical and educational use, where there has been a paucity of bids, or sub-standard bids have been received in open competition, for security reasons, or the amount involved does not exceed US$2,500.

78. The principle that Government departments should award the contracts which are more advantageous to the Government, price and other factors considered, is limited so far as foreign products and producers are concerned by legislation and regulations giving preferences to domestic producers and products. The principal measure in this respect is the Buy American Act of 1933 (41 USC 10a to 10d) which covers government purchases for use in the United States. This Act obliges the Federal Government to restrict purchases for use within the United States to products "mined, produced or manufactured" in the United States, provided that in the opinion of "the head of Department or Agency concerned" it is not "inconsistent with public interest", the cost is not "unreasonable" and the supplies concerned are available in satisfactory quantity and quality.

79. An Executive Order 10582 issued in 1954, established specific guidelines for implementing the Buy American Act. It provides (a) that materials shall be considered of foreign origin if foreign products account for 50 per cent or more of the cost of all products used in materials, and (b) that a domestic price shall be considered unreasonable only if it exceeds the delivered cost of the foreign material including the duty by more than 6 per cent. The Executive Order provides for special preferences for small business concerns and concerns in labour surplus areas. This is accomplished by according such bidders a 12 per cent price preference rather than the usual 6 per cent, over foreign firms. It also allows department heads to circumvent the 6 per cent rule for reasons of national interest. Proposed procurements of over US$100,000 from foreign sources must be approved by the Secretary or Deputy Secretary of Defence.

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1. The interpretation given to this provision is that the final process of manufacture must have taken place in the United States; and the cost of the components which have been mined, produced, or manufactured in the United States must exceed 50 per cent of the cost of all the components.

2. The prices to be used in these comparisons are delivered prices, including transportation costs.

3. In 1962, the Defence Department took such action in order to reduce defence expenditures affecting a balance-of-payments deficit, and granted a 50 per cent preference to domestically produced materials. The preference was, however, measured exclusive of duty on foreign inputs. A 50 per cent increase was also made in the margins of preference granted American goods procured for extra-territorial use.
80. The Executive Order also states that its provisions would not affect the authority or responsibility of an Executive Agency to (a) reject any bid or offer for reasons of the national interest, not described or referred to in the Order, (b) to place a fair proportion of the total purchases with small business concerns, (c) to reject any bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for providing the same materials undertook to produce a significant part of it, in areas of substantial unemployment, as determined by the Secretary of Labour, and (d) to reject any bid or offer for materials of foreign origin if such action was deemed essential for national security interests, after receiving appropriate advice from the President or from the Director of the Office of Emergency Planning.

81. Furthermore, Section 5, of the Executive Order specifically exempts from its provisions any case where the Head of an Executive Agency proposing to purchase domestic materials determined: (i) that a greater differential than that provided in the Order between the cost of such materials of domestic origin and materials of foreign origin was not unreasonable; or (ii) that the purchase of materials of domestic origin was not inconsistent with the public interest.

82. Revised Armed Services regulations for procurement for use within the United States contain the following rules:

(a) Domestic products are to be preferred in all cases where the delivered domestic price is less than 50 per cent above the delivered price exclusive of duty of foreign products, or less than 6 per cent above the foreign price inclusive of duty. The formula which produces the higher constructive price of foreign products is the one to be used in making the comparison.

(b) Because, under the usual rules a domestic bid may have a considerable foreign content, and a "foreign" bid a substantial domestic content, deviations from the standard evaluation procedure may be considered for major procurements (e.g. over $250,000), and

This revision appears to have been motivated by a desire to bring the various procurement regulations into line with policies that had been especially adopted to correct a balance-of-payments deficit, and give higher priority to the idea of the "national interest", which is found in national legislation (i.e., the "national interest" clause of the Executive Order 10582).
(c) Procurements from foreign sources made because domestic products of the
same specifications are not available, must be referred to senior
officials for approval if the value of purchase exceeds $100,000.
Prior to approval the feasibility of foregoing the purchase, and using
an American substitute must be considered.

Within the limits laid down by the Buy American legislation and regulations and
practices set out in the foregoing paragraphs, Government departments are
authorized to make procurements abroad. Foreign products may be offered by
qualified sources both foreign and domestic in all instances of formally advertised
procurements and most instances of negotiated procurement.

83. United States procurement abroad for use abroad is not governed by either the
Buy American Act or the Executive Order 10582. Off-shore procurement procedures
differ in some respects from those applied to procurement for domestic use, and
are not entirely uniform among the various procuring agencies.

84. Procurement in Panama and Canada by certain federal agencies is excluded from
Buy American requirements under special bilateral arrangements. Certain military
items produced in Canada are exempt from both the price differential and the
content requirement and are treated as products of domestic origin. In addition
to the restrictions under the Buy American Act, the Defence Appropriation Act
includes a prohibition (the Berry Amendment) on the use of appropriated funds for
the procurement of any article of food, clothing, cotton, wool, or spun silk yarn
for cartridge cloth which has not been grown or produced in the United States (the
exceptions are items not available from United States sources and perishables).

85. Several other specific laws and regulations require the use of goods and
components of American origin for various purposes, particularly when public
financing is involved, e.g. in the field of shipbuilding, ship equipment, and low
rent housing. These requirements at times affect the purchasing of private firms,
and local governments as well as Federal departments and agencies.

86. More than twenty States and many local governments are also stated to
differentiate in their purchasing policies as between foreign and domestic products
and suppliers.¹

¹United States - Japan Trade Council, STATE "BUY AMERICAN" POLICY
Procedures for hearing and reviewing of complaints

87. The policies and procedures applicable are prescribed in the Federal Procurement Regulation (Section 1-2, 407-8) and the Armed Services Procurement Regulation (Section 2, 407-8). "Protests against Awards" cover objections by a bidder or other interested parties before and after the award of a contract. The provisions apply to both open and selective procedures.

88. Protests must be submitted initially to the purchasing agency itself and to the General Accounting Office (GAO). Efforts will be made within the purchasing agency to seek an amicable solution, but if a protest is filed with the GAO, the other parties concerned (i.e., other bidders and successful tenderers) are informed, and may make comments. As a general rule the award of the contract is held up pending the examination of the protest except in special cases of urgency. These regulations are due for amendment in the near future with a view to determining time-limits for the duration of the protest procedure both for the filing of protests and for their examination by the GAO and purchasing entities.

89. Since 1970, it has been possible to apply to the Federal courts for a decision concerning a protest. The Federal District Court may order an agency to postpone its decision, notably the award of a contract, or direct that it be awarded to a particular party. The Court of Claims has no injunctive powers but could award damages to the successful petitioner.

EFTA provisions in relation to government procurement

90. Article 14 of the Stockholm Convention which relates to government procurement and State trading, states that:

(i) Member States shall ensure the progressive elimination, during the period from 1 July 1960 to 31 December 1969, in the practices of public undertakings; of

(a) measures the effect of which is to afford protection to domestic production which would be inconsistent with this Convention if achieved by means of a duty, a charge with equivalent effect, quantitative restrictions or government aid; or

(b) trade discrimination on grounds of nationality in so far as it frustrates the benefits expected from the removal or absence of duties and quantitative restrictions on trade between member States.
(ii) In so far as the provisions of Article 15 are relevant to the activities of public undertakings, that Article shall apply to them in the same way as it applies to other enterprises.

(iii) Member States shall ensure that new practices of the kind described in paragraph 1 of this Article are not introduced.

(iv) Where Member States do not have the necessary legal powers to control the activities of regional or local government authorities or enterprises under their control in these matters, they shall nevertheless endeavour to ensure that those authorities or enterprises comply with the provisions of this Article.

(v) The Council shall keep the provisions of this Article under review and may decide to amend them.

(vi) For the purposes of this Article "public undertakings" means central, regional or local government authorities, public enterprises, any other organizations by means of which a member State by law or in practice, controls or appreciably influences imports from, or exports to, the territory of a member State.

91. The essence of Article 14 is that EFTA public undertakings should not discriminate in favour of domestic producers or protect them. Furthermore, public tenders are to be adequately publicized, with sufficient time allowed for tendering. Selective tenders are to be on such a basis that there are equal opportunities for domestic and other interested EFTA suppliers to compete and single tenders permitted only when competitive tenders are clearly impracticable or unreasonable. Member States agreed to exchange lists of public undertakings responsible for major

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1 Article 15 of the Stockholm Convention on restrictive business practices declares incompatible with the Convention certain practices and actions. These are "in so far as they frustrate the benefits expected from the removal or absence of duties and quantitative restrictions on trade between member States" -

(a) Agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or result the prevention, restriction, or distortion of competition within the area of the Association,

(b) Action by which one or more enterprises take unfair advantage of a dominant position within the area of the Association or of a substantial part of it.
procurement programmes, the lists containing such information as the type of goods normally purchased. It was also agreed that the operation of Article 14 would be kept under review by the EFTA Committee of Trade Experts. The provisions of the Article came into full force on 31 December 1966.

92. At the meeting of EFTA Ministers in Lisbon in October 1966, agreement was reached between the seven member States of EFTA and Finland on the interpretation to be given to the provisions of Article 14.

93. An explanation of the Lisbon Ministerial Agreement is provided in the Annex.
The Lisbon Ministerial Agreement Explained

Annex

Public Undertakings

Last October, Ministers of the seven Member States of EFTA and Finland agreed an authoritative interpretation of the article in the Stockholm Convention ensuring that public undertakings do not act in such a way that the benefits of the removal of trade barriers would be nullified or impaired. The interpretation is explained below.

The public undertakings in question assume a variety of forms. They may be contractors or distributors or manufacturing enterprises. They may be large purchasing agencies under direct control of central governments. To some degree or other they are offered products which are of EFTA origin; and if they were free to procure supplies or to trade on such non-commercial considerations as national origin they could circumvent the effects of the abolition of tariffs and quotas. In order to prevent this from happening, the Member Governments are to make widely known to all the relevant national authorities and agencies the contents of the agreement.

The removal of potential discrimination has a number of implications. Public tenders are to be adequately publicised, with enough time allowed for tendering. Selective tenders are to be on such a basis that there are equal opportunities for domestic and other interested EFTA suppliers to compete. And single tender is to be allowed only when competitive tenders are clearly improbable or unreasonable. Public concerns with an import or domestic sale monopoly are to take a liberal attitude towards including other EFTA products on their stock lists. The article gives further information on such questions.

To get full advantage of this freeing of trade, the manufacturer needs to know what the potential market is. The Member States are therefore to exchange lists of public undertakings responsible for major procurement programmes, and the lists are to contain such information as the types of goods normally bought.

Article 14 of the Stockholm Convention sets out the principles that are to guide EFTA public undertakings. Its essence is that public undertakings are not to discriminate in favour of domestic producers nor to protect them. The provisions of the Article came into full force on 31st December 1966.*

At the meeting of EFTA Ministers in Lisbon in October 1966, agreement was reached between the seven Member States of EFTA and Finland on the interpretation to be given to the provisions of Article 14. Since the buying and trading practices of public undertakings are based on many different statutory provisions in the countries of the Association, the agreement on interpretation will ensure that all governments implement the obligations in Article 14 in the same way. In some Member States the practices are governed by law, in others by administrative regulations. In many cases these have to be changed in order to fulfil the obligation of reciprocal non-discrimination which is common to all EFTA countries irrespective of the form of the national regulations which govern their practices. The purpose of the present article is to explain the interpretation in some detail. Like the decision of the Ministers, it is based on the conclusions and recommendations of a sub-committee of the Committee of Trade Experts that studied the implications of Article 14 at a series of meetings in 1964-1966.

Article 14 deals with two related but distinct problems: public procurement of goods and the trading practices of enterprises where the State controls or appreciably influences imports or exports of goods of EFTA origin. An example may help to distinguish these two aspects, and to show the coverage of Article 14. When an alcohol monopoly in a Member country buys stationery, this is public procurement. But its dealings in spirits are trading practices.

In principle the Free Trade Area Agreement is concerned only with rules for trade in goods of area origin. Although services, per se, are thus not covered, certain obligations under Article 14 are imposed on a public authority responsible for a service contract, for instance a public works contract which includes provisions as to the purchase of goods.

These obligations have been defined both by the report of the sub-committee and by the statement issued by Ministers. The sub-committee found “that conditions imposed by public undertakings on the purchase of goods by contractors under public works or service contracts are subject to Article 14 as they would be if the purchases were made by the public undertakings themselves”. And Ministers agreed that:

“Public undertakings shall not in making public works or service contracts impose any conditions on the purchase of goods by the contractors which would be incompatible with Article 14 and the findings of the report.”

The remainder of this article explains, in turn, the general interpretation of the obligations of Article 14, the application

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* The Stockholm Convention originally provided that the progressive elimination of the practices mentioned in Article 14 should be completed by the first of January 1970. The earlier date was substituted as part of the general acceleration of the EFTA timetable agreed by Ministers in May 1963.

of this interpretation in the separate fields of public procurement and of the trading activities of public undertakings, and the agreement reached by the EFTA Ministers on future co-operation and follow-up action to ensure the satisfactory working of Article 14.

Ministers agreed the following text:

"Article 14 contains an obligation for Member States to ensure that public undertakings in their procurement and trading practices do not afford protection to domestic production nor discriminate against suppliers or purchasers in other Member States. This obligation means that public undertakings as defined in paragraph 6 of the Article shall give equivalent treatment to domestic goods and other goods of EFTA origin and shall award contracts on the basis of commercial considerations.

The practices to which the obligations of Article 14 apply are those by which public undertakings conduct their procurement and trading activities whether they are based on formal rules and regulations, administrative instructions, etc. or initiated by the public undertakings themselves.

Public undertakings shall not in the exercise of their public powers engage in practices which would be tantamount to a circumvention of Articles 3-13 of the Convention, nor shall they in their economic activities make any agreements or arrangements with other enterprises, or make use of a dominant position, in a way which would be incompatible with Article 15.*

Monopolies as defined in Article 12(d) of the Convention shall be operated in accordance with Article 14.

In order to ensure that they are in a position to carry out their obligations under the Convention, Member Governments will review their laws, regulations and practices with a view to making such amendments as may be necessary to ensure the effective implementation of Article 14 and in particular to comply with the conclusions and recommendations contained in the various chapters of the report and the agreements set out in the foregoing and following paragraphs."

Public procurement—the authorities concerned

Which are the authorities in Member States that must now take the Article and the interpretation of it into account? The definition in paragraph 6 of the Article is so wide that it could cover any public procurement:

"For the purposes of this Article, 'public undertakings' means central, regional, or local government authorities, public enterprises and any other organization by means of which a Member State, by law or in practice, controls or appreciably influences imports from, or exports to, the territory of a Member State."

(a) Central government authorities
Central government authorities are all covered by the Article and the interpretation.

(b) Regional and local government authorities
The position of regional or local government authorities is defined in paragraph 4 of Article 14:

"Where Member States do not have the necessary legal powers to control the activities of regional or local government authorities or enterprises under their control in these matters, they shall nevertheless endeavour to ensure that those authorities or enterprises comply with the provisions of this Article."

The sub-committee studied the implications of the limitation in paragraph 4 of Article 14. They based themselves on the knowledge that the constitutional position varies considerably between Member States and that public procurement in one country might therefore fall under the EFTA obligations to a larger extent than public procurement in another country. This was dealt with as follows:

"Activities which in some Member countries are performed by central government or State-owned or State-controlled organizations and enterprises are in other Member countries the responsibility of regional or local authorities. The information available showed, however, that there were many similarities in the field of activities covered by regional and local authorities. They take part in varying degrees, depending on the country, in such public services as gas, water, electricity, public health and education, etc.

In most Member countries, the regional and local authorities enjoy an autonomous status and the central government authorities do not as a rule have legal powers to exercise direct influence on their procurement activities."

The sub-committee discussed the application of Article 14 to regional and local authorities and recalled that paragraph 4 of Article 14 takes account of the different constitutional structures of Member States. Where the central government authorities have no legal
power to control regional and local authorities, the Article nevertheless calls on them to endeavour to ensure that it is observed also by the authorities which they do not have the legal power to control."

The Ministers said on this point: "Member States are required to make use of any legal powers at their disposal to control or influence the procurement activities of regional or local authorities in order to ensure that the obligations contained in Article 14 are duly implemented by them. Member Governments will bring the obligations of Article 14 and the relevant findings of the report to the attention of these authorities. Member Governments having no legal powers at their disposal to control or influence the procurement activities of regional and local authorities will make the endeavour required of them in paragraph 4 of Article 14. In doing so they will bring the obligations of the Article and the relevant findings of the report to the attention of their regional and local authorities and recommend them to take all possible steps to ensure that their procurement activities comply with those obligations and findings."

Regional and local authorities are thus covered by Article 14 to the extent that central government authorities exercise direct influence on their procurement activities. Ministers furthermore decided that "grants to regional or local authorities shall never be made conditional on supplies being bought from national sources".

(c) State-owned or State-controlled organizations or enterprises

To an extent varying from country to country public undertakings concerned with procurement exist which are neither organized as central government authorities, nor as regional or local authorities. The examination of these undertakings by the sub-committee showed that both their legal status and their functions vary considerably. With regard to their legal status, the investigation covered both undertakings controlled by statutory public boards and companies on which the State otherwise exercises influence by means of public law (e.g. conditions attached to concessions, licences, privileges, etc.) and privately-operated companies on which State influence may be exercised on the basis of private law through shareholding, board membership, etc. As regards their economic function, these enterprises preponderantly fall in the public utility or manufacturing sectors, the former being responsible for a very substantial part of public procurement.

A representative list of the undertakings falling in this category was given by the sub-committee, comprising services dealing mainly with transport and communications and enterprises concerned with a wide range of production, e.g. energy, iron and steel, tobacco and alcohol. Fuller information can be obtained from the competent authorities in Member States, usually the Ministry of Trade.

The sub-committee found that Article 14 applies to these undertakings "to the extent to which the State by law or in practice controls or appreciably influences imports from other Member States" and Ministers decided that the interpretations and agreements concerning procurement by central authorities also apply to these undertakings to the extent that their practices are equivalent.

"Any influence exerted by Member States, whether as shareholders, through board membership or in any other way on the procurement activities of the State-owned or State-controlled organizations or enterprises is subject to the provisions of Article 14 and the findings of the report."

Ministers finally decided:

"Conditions imposed by the State on privately-operated enterprises or industries shall, even where no direct State interest exists, comply with the obligations of Article 14."

The field of application having thus been identified the rest of the text concerning the general agreement on public procurement is given below:

Public procurement -- general rules

"Member States are free to have any procurement system they wish provided that it has no discriminatory or protective effects. Legal stipulations involving obligatory preferences to national suppliers or which might lead to such preferences (even if not necessarily practised in a discriminatory way) shall not be maintained in relation to EFTA suppliers. None of the tendering methods used in Member countries seem to be inherently inconsistent with Article 14. However, any such method could be used in a discriminatory way. The following points shall therefore be borne in mind together with the objectives of Article 14:

(a) Public tender shall be adequately publicized and sufficient time for tendering shall be allowed.

(b) Selective tender shall allow equal opportunities for domestic and other EFTA suppliers to compete.

(c) Single tender shall be used only when competitive tender (public or selective) would be clearly impracticable or unreasonable.
Time-limits or special requirements which make it more difficult for an EFTA supplier than for a domestic supplier to compete for a contract shall not be imposed.

Article 14 does not contain any obligation to divulge the results of tenders. Although disclosure of tenders and awards may be an effective guarantee to secure impartial treatment, it may on the other hand decrease rather than promote competition. It may be misleading and is in fact often contrary to the wishes of the tenderers themselves. Other means to safeguard impartiality will be investigated in the light of the experience gained from the co-operation between Member States in this field.

The consideration of the bids and the awarding of contracts is in all Member States normally based on commercial considerations (price, quality, delivery terms, etc.), which are fully compatible with the principles laid down in Article 14. Non-commercial criteria are, however, applied in some cases. The application of such criteria will only be compatible with Article 14 if they do not in practice lead to protection or discrimination. The findings can be summarized as follows:

(a) Public undertakings shall be entirely free to seek supplies from other EFTA countries. When comparing domestic and foreign bids, duties, when levied, shall be included in the prices of the foreign bidders and tax revenues shall not be deducted from the prices of domestic bidders. Rules on possible rejection of unfair or unreasonably low bids shall apply to foreign and domestic bidders in exactly the same way.

(b) Prior control by the Treasury or any other government body of public purchases abroad is only compatible with Article 14 if it has no other purpose or effect than ordinary budget or audit control and places no additional burden on the purchasing authority which wants to buy abroad.

(c) Long-term agreements shall not be made in such a way as to exclude suppliers in other EFTA countries from competing.

(d) National security and public health considerations are compatible with Article 14 only to the extent that they can be justified under the provisions of Articles 12 and 18 in each specific case that may arise.

(e) Member States shall not disregard the possibilities of inviting suppliers in other Member countries to compete for development contracts or for the production element of them, at least after a reasonable period of time.

(f) Article 14 makes no provision for the use of discriminatory or protective procurement practices for the benefit of regional development areas, nor as a means against deflationary tendencies in the economy (including adverse trends in the employment situation) or against balance of payments difficulties.

The texts agreed by Ministers are largely self-explanatory. It should, however, be noted that references to the report by the sub-committee are made in each paragraph to indicate that the authorities applying them should use the report for authoritative guidance.

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Public procurement—specific recommendations

The sub-committee looked at a number of specific practices in different Member States and made recommendations on them. Ministers agreed with these recommendations, which will be taken into account in the review and follow-up procedure referred to at the end of this article.

Trading activities of public undertakings—general rules

The public undertakings covered by the interpretation given by Ministers have been identified above. The text concerning their trading activities is as follows:

"Article 14 does not prevent Member States from having any State-trading organizations they wish provided the practices of these undertakings do not lead to protection or discrimination in the sense of the Article. The practices of State-trading organizations enumerated in paragraph 102(a) to (e) of the report are incompatible with Article 14 if they result in protection to domestic production or in trade discrimination ' frustratiing the benefits expected from the removal or absence of duties and quantitative restrictions on trade between Member States'. State-trading organizations having the sole right to import and in certain cases also to sell in the domestic market shall be guided by the liberal and non-discriminatory attitude set out in paragraphs 108 and 109 of the report with regard to their import and distribution of EFTA products and the price fixing and taxation systems applied by them."

* Articles on security and other exceptions.
Here again the sub-committee looked at some special practices in some Member States and made recommendations that were accepted. The follow-up procedures will apply also to these practices.

**Tendering procedures**

Ministers agreed as follows:

"Apart from the abolition of rules and practices which are inconsistent with the obligations of Article 14, there is a need to take certain practical steps with a view to facilitating the expansion of EFTA trade in the public sector through closer co-operation between Member States in the field of public procurement.

In order to ensure that interested suppliers in other EFTA countries are given adequate access to tendering competitions, not least when selective tender is used, the following measures will be undertaken as an immediate step:

(a) Lists will be exchanged through the Secretariat of public agencies and enterprises responsible for major public procurements.

(b) These lists shall, in addition to the name and address of each agency and enterprise, contain such information as would be of particular interest to potential suppliers in other EFTA countries. Inter alia: a general description of the types of goods normally bought (specified in detail as far as practical): to the extent possible, an estimated value of yearly purchases for appropriate groups of goods and, where public tender is used, information about where the tender invitations are advertised.

(c) Information on major changes affecting the lists will also be exchanged.

(d) Furthermore, such guidance will be given to agencies and enterprises responsible for public procurement as is considered necessary in order that adequate opportunities to take part in tendering competitions are in fact given to interested suppliers in other EFTA countries and that their tenders are judged objectively.

Member Governments will discuss at short notice, on a bilateral basis, individual cases involving difficulties in connection with the participation of foreign EFTA bidders in competition for tenders, whether these are public, selective or single."

In order to facilitate commercial contacts between public agencies and enterprises responsible for public procurement and interested suppliers in other EFTA countries, Member Governments will consider certain suggestions by the sub-committee.

**Other measures agreed**

"To ensure that the obligations laid down in Article 14 are implemented Member Governments will make the provisions of the Article and the findings of the report widely known to all national authorities and agencies responsible for procurement or for trading activities: It will be emphasized that bids from domestic and other EFTA suppliers will be considered in accordance with the conclusions and recommendations contained in the various chapters of the report and the agreements set out in the foregoing paragraphs. The contents of the report and the agreements reached can be made known to interested trade organizations.

Any substantial changes in legislation, in other statutory regulations or practices with regard to public procurement or State-trading activities will be reported to the Association.

The Committee of Trade Experts is instructed to keep the operation of Article 14 under current review. In particular it shall, from time to time, call for reports on the measures taken by Member States to fulfill their obligations under the Article as interpreted in the report and in the foregoing paragraphs and on internal administrative experience of the operation of these measures. Information shall also be exchanged on the effectiveness of the agreement concerning co-operation on tendering procedures set out in paragraphs 37 to 40 above. The Committee of Trade Experts shall, whenever appropriate, recommend additional measures in order to ensure that the objectives of Article 14 are fully attained. The first review of the practical operation of the Article shall be initiated during the first half of 1968. The Committee of Trade Experts shall also from time to time inform the Council of the activities of other international organizations in the fields covered by Article 14 and evaluate their possible effects on EFTA trade."

From the account of the decision taken by EFTA Ministers to implement Article 14 it can be seen that while the approach is pragmatic, the agreement on Article 14 nevertheless constitutes a serious decision by Member States to increase competition by removing protection.

In view of the fact that this decision provides for no exceptions and that it shows the firm intention to implement Article 14 and to proceed further on the basis of experience, it constitutes a major step towards the strengthening of the Free Trade Area.