PROCUREMENT PROCEDURES TO BE ADOPTED BY
PARTICIPATING GOVERNMENTS

Proposals by the United States Government

(i) The non-tariff barrier

The United States wishes to call attention to the problem which in its view
must be the foundation of any further inquiry into government procurement policy.
The procedures by which government procurement is effected can constitute the first
and sometimes most pervasive restriction upon the importation of foreign goods by
national governments. The problem is twofold. First, competition of foreign
suppliers for a government contract may be prevented from the very outset if
procedures do not provide a meaningful opportunity to learn about the contemplated
contract and to enter the process of bidding or negotiation. Second, procedures
which have the effect of giving officials substantial discretion in awarding
contracts between domestic and foreign firms may result in de facto discrimination
against foreign suppliers, even though such discrimination is not required by law
or regulation.

Because the nature of these potential barriers is the absence of publicly
defined procedures and standards, it is impossible and will continue to be
impossible to make precise judgments as to their actual effect. That they do
result in some discrimination against foreign goods, however, is evident from
complaints registered by United States producers concerning these procedural
barriers. The directive proposed by the Commission of the European Economic
Community which provides in part for the elimination of such administrative
practices among member States with respect to public works contracts is further
evidence in support of this conclusion. Complaints have been registered by
numerous United States producers concerning these procedural barriers.

(ii) Action sought

The United States believes that any discussion of ultimate standards for
awarding government procurement contracts is pointless until regulations are
established that will serve, to the maximum extent possible, to minimize the
procedural barriers to the purchase of foreign goods described above.
First, the United States would request participating governments to publish all regulations and practices governing their procurement procedure. This procedural publication should identify: the method of publicizing contemplated contracts, criteria governing the eligibility of suppliers to compete for contracts, the different means by which suppliers invited to bid are chosen, a description of the methods such as bidding or negotiation which are used in selecting a supplier, the criteria for determining the method to be employed in particular cases, and the criteria which the responsible officer is required to apply in making awards. In the course of compiling such regulations and practices, it is anticipated that other governments would be afforded an opportunity to request further clarification if that should be appropriate.

Second, the United States would request participating governments to establish and promulgate specific procedures designed to minimize the potential discrimination described above. Although additional elements may become desirable as information about national procedures is made available, adoption of the following rules would be an important contribution to this end:

1. Where a list of firms invited to bid is in fact maintained, membership on the list should be open to any foreign supplier on terms and conditions equal to those applicable to domestic suppliers.

2. As a general rule, every proposed procurement which may result in an award in excess of $25,000 shall be publicized in a publication freely available to foreign suppliers; such advertising shall appear sufficiently early to allow firms which are not on current bidders (or tenderers) lists, but which maintain representation in the procuring country, a reasonable period of time in which to prepare bids, proposals or tenders.

3. In the case of procurements so publicized, prospective contractors (including foreign firms) which are not initially invited to bid, tender, or make a proposal, shall at their request be mailed or otherwise provided copies of invitations to bid, tender, or make a proposal, wherever feasible.

4. The evaluation of bids, offers, or tenders and the award of contracts shall proceed according to published standards.

5. As a minimum, the following information on contract awards exceeding $25,000 shall be published or otherwise made readily available to unsuccessful bidders, tenderers, or offerors:

   (a) The name and address of each offeror receiving an award;
(b) the items, quantities, and unit prices of each award; provided that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and

(c) in general terms, the reasons why the offeror's proposal was not accepted, except where the price information in (b) above readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(6) It is recognized that under certain circumstances exceptions or qualifications would have to be made to the above procedures. Such qualifications and the provisions for making such exceptions should be clearly and publicly stated.