Committee on Government Procurement

DRAFT MINUTES OF MEETING
OF 21 NOVEMBER 1986

Chairman: Mr. Y. Ikeda (Japan)

1. The Chairman took up at the outset a request he had received from the permanent Mission of the People's Republic of China, to be represented as observer in the meetings of this, as well as other, MTN Code Committees. The Parties to the Agreement had received copies of this request already.

2. The representative of the United States stated that her delegation needed more time to consider this matter, and that this should not be seen as anything but a neutral request.

3. The representative of the European Economic Community stated that her delegation would welcome the People's Republic as observer having noted that it had started negotiations on terms of membership as a GATT contracting party and had been accepted as a participant in the Uruguay Round, as stipulated in the Punta del Este declaration.

4. The representatives of Canada, Japan and Finland (also on behalf of Norway and Sweden) also supported the participation of the People's Republic of China as observer.

5. The representative of Switzerland stated that since the request was made to a number of Code Committees, the view of the CONTRACTING PARTIES would have been welcome. Inasmuch as the People's Republic of China was already an observer in the GATT Council, had requested GATT membership and took part in the Uruguay Round he thought that, nevertheless, the Committee had the necessary requirements for granting observer status.

6. The Chairman concluded that while opinions had been favourable one Party needed more time to complete its examination of the matter. He, therefore, proposed that it be reverted to at the Committee's next meeting.

7. It was so agreed.

8. The following agenda was adopted:

| A. Article IX:6(b) negotiations | Page |
| B. Stocktaking of the 1985 statistical reports | 8 |
| C. Other business | 8 |
| (i) Fixing of threshold in national currencies for 1987 | 8 |
| (ii) Panel candidacies for 1987 | 8 |
| (iii) Updating of 1986 annual review document | 8 |
| (iv) Next meeting; date and agenda | 9 |
A. ARTICLE IX:6(b) NEGOTIATIONS

9. The Chairman recalled that at the last meeting it had been agreed, among other things, that a few matters concerning textual improvements of the Agreement remained unsolved, relating to the threshold value and modalities concerning the equivalent of this value in national currencies, the publication of information after award, and leasing. The Committee and the Informal Working Group was to revert to these issues. The procedure for rectification matters had also been agreed so that when agreement was reached, a Protocol of Amendments could be drawn up rapidly (GPR/M/23, paragraphs 1-5).

10. The Informal Working Group had met again on 19-20 November and had resolved all outstanding matters of substance. On behalf of the Group, the Chairman presented the following substantive results of this work:

   (i) Proposed Committee decision on broadening (see Annex I);
   (ii) Proposed Committee decision on service contracts (see Annex II); and
   (iii) Proposed Committee decision on improvements, including detailed textual improvements to the Agreement (see Annex III).

11. He then made the statement reproduced at Annex IV.

12. The representative of Singapore stated that concerning Article V:new paragraph 3, on information prior to notice of proposed purchase, it was the understanding of her delegation that Singapore would, under the Agreement on the ASEAN Preferential Trading Arrangement, continue to give prior notice to other ASEAN countries before similar notices were published to non-ASEAN countries.

13. The representative of Canada drew the Committee's attention to the fact that when the negotiations had been launched three years ago to improve the Agreement and to expand its coverage on the basis of mutual reciprocity, it had been agreed that these would cover three elements. A package of needed improvements to the Agreement had been negotiated. However, no progress had been made in respect of extended entity coverage and service contracts, apart from decisions reaffirming the Committee's will to continue work. He asked the Committee to reaffirm that the Informal Working Group would continue expeditiously to carry out the work programme in all three areas.

14. The representative of the United States supported this request and suggested that the Informal Working Group be renamed the Informal Working Group on Negotiations. Important and difficult work lay ahead and her delegation expected that the Group, which had been mentioned in one of the decisions, would be as productive in the next phase as it had been in the first. The Committee should express its consensus that the second phase of the negotiations be undertaken as expeditiously as possible and that work on services and broadening be carried forward through the Working Group, with the guidance and supervision of the Committee itself, and by reporting to the Committee for ultimate decisions regarding the final outcome, just as had been the case in this first phase of the negotiations.

15. The representative of the European Economic Community also supported these suggestions, adding that further work, especially on broadening and services, would be necessary. Although one had to see the work in the light of the Uruguay Round, at least technical aspects could be handled in
the context of this Committee and, more appropriately, in the Informal Working Group.

16. The representative of Sweden agreed that work on all three fronts should be carried out expeditiously.

17. The representative of Hong Kong stated that Hong Kong would continue to participate fully and actively in the Committee and in the Informal Working Group.

18. The Committee took note of these statements made.

19. The Chairman stated that there appeared to be consensus to expedite work in all three fields mentioned in Article IX:6(b).

20. The representative of Canada noted that his delegation had objected to the coverage of leasing contracts as part of a package limited to improvements of the text of the Agreement. The reason for this was that Canada viewed leasing as expanding the scope and coverage of the Agreement and did not consider that it should be dealt with separately from that exercise. As noted earlier virtually nothing else had been achieved in this area in this first phase of negotiations. Moreover, Canada had sought to obtain from other Parties statistical information on the volume, nature and product coverage of their leasing contracts to determine what would be opened to competition and in which markets. Canada had not received such information and could easily conclude that in the case of leasing there was no mutual reciprocity. However, his delegation recognized that some Parties had made significant contributions to the overall package on improvements and in that spirit, it withdrew its objection to the coverage of leasing contracts.

21. The Committee took note of this statement.

22. The Chairman further stated that the Informal Working Group also recommended that the Committee take a decision on the way the threshold be calculated in national currencies (see Annex V).

23. The Chairman enquired whether there was consensus in the Committee that the results of the first phase of Article IX:6(b) negotiations be adopted. The Committee adopted the texts referred to in paragraph 10 above and the decision on threshold calculation which are set out in Annexes I, II, III and V.

24. The Chairman then enquired whether any delegation wished to make any specific points on the decisions taken.

25. The representative of Singapore stated that it was the understanding of her delegation that the decision on service contracts just adopted contained only an agreement to examine the appropriateness of expanding the coverage of the Agreement to service contracts. Based on that understanding, her delegation had joined the consensus to adopt the decision. It was also the understanding of her delegation that any change to the coverage of the present Agreement on Government Procurement which might result from the decision taken now would require the consensus decision of the Parties. Her delegation also drew the attention of the Committee to the decision taken by Ministers in Punta del Este to launch the Uruguay Round. This Committee had to take fully into account the
decisions including those on services contained in the Ministerial Declaration on the Uruguay Round. Her delegation wished to emphasize the need to improve the Agreement so as to make it more attractive for developing countries to accede to it. To date, only three developing countries had become Parties. It was extremely important that any changes to the Agreement should make it easier and encourage more developing countries to accede.

26. The representative of Singapore added, concerning Article VI:9 (to become Article VI:10(d)) on Statistics on the Use of Derogations, that while she had not objected to this provision, she would point out that it would be a difficult one for her authorities to implement.

27. The representative of Japan stated that with regard to the new Article V:3 his delegation's understanding was that this would not change the basic system of qualification in Japan as such.

28. The representative of Hong Kong stated that bearing in mind the importance of service contracts in the area of government procurement, the need to seize any opportunity which might arise to make the GATT responsive to changing economic trends, and Hong Kong's substantial trade share in the services sector which amounted to US $10 billion in 1985 and which it had developed over the years by following open market principles, he assured the Committee that Hong Kong would cooperate fully and would participate actively in the work envisaged in the Committee decision just adopted on service contracts. In this connection, he emphasized that the existing provisions of the Agreement, including the new provisions contained in the Committee decision on improvements, were very clear as regards the question of coverage: They continued to deal with the procurement of products. In future work on the question of the inclusion of service contracts in the coverage of the Agreement, to be pursued in the context of Article IX:6(b), it would be necessary to consider thoroughly all the matters set out in the decision on service contracts, to ensure that any new rules and principles which would emerge therefrom would genuinely meet the aim of the Agreement which was "to secure greater international competition in the government procurement market".

29. The representative of the United States stated that the Committee had taken a significant, if conservative, step forward on services. Having completed difficult negotiations in this area, the Committee was obliged by its terms to honour the well-balanced wording of the decision taken. She welcomed the statements of Hong Kong and Singapore in this regard. The text read that the Committee would work toward coverage of service contracts under the Agreement, but also that final positions on implementation were not yet determined. This statement very definitely incorporated two facets or ideas: (i) that it was indeed appropriate to cover service contracts. Here the wording said nothing more than that Governments should spend their money wisely and without mandated preferences based on nationality, no matter how one defined what was being procured, goods or services; and (ii) that, as the delegate from Singapore had reminded the Committee, some flexibility was built in on how to implement the results of the work. Furthermore, rather than defining the parameters of this flexibility, the Committee had purposely left open the "modality" of how the negotiations to cover service contracts take place, including a consensus and how it would be reached.
30. The representative of the United States added that paragraph 2 set out the aspects of the future work in order to implement the decision. The Committee would look at what the existing nature of the procurement of services was; and why or why not the format and disciplines of the present Code were strictly relevant to services procurement and if not, how one could make them so. The Committee was also asked to decide how it would like to proceed in order to determine what level of coverage each Party was to provide, if any. Meanwhile, all individual rights of the Parties were preserved. In all of this, she noted that the fundamental principles which were relevant to the coverage of goods remained relevant to the coverage of services. That was to say, this work was not so very different at its base from what had previously been endorsed and abided by. Finally, the Parties were all on record in this decision agreeing that they would not delay in getting on with this work. Noting previous statements she thought that this Committee could serve as a good example to other GATT contracting parties of how this issue could be approached in a reasonable fashion, with reasonable compromises, and with productive benefits for all.

31. Addressing the point raised concerning the difference between these negotiations and the discussions going on in the Uruguay Round, the representative of the United States reiterated what she had repeatedly stated in informal sessions: Factually, the Code discussions and the Uruguay Round discussions on services focussed on distinctly separate areas of purchases and barriers. The GATT's jurisdiction explicitly excluded government procurement, whether one was discussing goods or services. Uruguay Round discussions on services would take up issues associated with barriers to private sector trade in services. In the Code negotiations one was talking about the attitude and policies of Governments when they were buying services, not when they were regulating trade in services between private sector bodies. Thus, whether or not this Committee chose to discuss services contracts, changes to the Government Procurement Code would not be included as an agenda item in the other arena. She personally believed that the Committee had a much less-complicated route to travel because the scope of the problem was more limited - it was only about what Governments buy, the nature of the barrier was easier to define - it was a Government's preference to buy national, and the Committee had experience with an established framework on which to draw. Finally, she took note of the statements by Hong Kong and Singapore, encouraging all to work conscientiously, carefully, and expeditiously toward the goals, also bearing in mind the points she had just raised.

32. The Committee took note of the statements made.

33. The Chairman then declared this first phase of Article IX:6(b) negotiations, formally opened on 3 November 1983, as closed.

34. Turning to procedures for the entry into force of the new textual improvements of the Agreement, the Chairman noted that the Informal Working Group had discussed and hopefully settled all questions concerning rectifications of a purely formal nature that had to be made to the English, French and Spanish texts. These had already been inserted in the recommended draft Protocol of Amendments (incorporated in Annex III) as indicated therein. He suggested however that the Committee agree that delegations be given a bit more time to indicate further changes they wished to make on the last six paragraphs of the Protocol and any further textual rectifications of a purely formal nature that did not affect the substance or meaning of the amendments in any way, including rectifications
of the French and Spanish texts to bring them into line with the English text on which the negotiations had been based. Such rectifications, if any, would be communicated to the Chairman and would immediately be communicated to the Parties. If no indications to the contrary were given by a certain date they would be considered agreed upon. He thought this way of proceeding was required in order for the Protocol to be issued in January 1987, as was necessary for some domestic procedural reasons.

35. The Committee agreed on this way of proceeding, and fixed the dates of 9 December 1986 for comments, if any, and 18 December 1986 for final opinions on any such comments. The Committee authorized the Chairman to communicate, to the Director-General to the GATT, as soon as possible after 18 December 1986, the final text of the Protocol and the amendments to be inserted therein.

36. The Chairman then suggested that the question of giving additional precision to further work of the Informal Working Group be taken up at the next meeting of the Committee.

37. The representative of Canada, supported by the representative of the United States, suggested that Parties be invited to indicate in writing by the end of January 1987 any specific proposals on a detailed work plan to implement the three decisions taken.

38. The Committee so agreed.

39. The Chairman suggested that for the sake of transparency, the Informal Working Group should make progress reports on its future work to the Committee itself. The Committee so agreed.

40. The Chairman finally invited general statements.

41. The representative of Finland, also on behalf of Norway and Sweden stated that the Nordic countries were satisfied that a solution in the first phase of the Article IX:6(b) negotiations had finally been reached. However, given the long and persistent efforts undertaken during three years of negotiation they had expected more substantive results in a number of questions. The Nordic countries had made certain proposals in the course of the negotiations, believing that concrete and meaningful improvements of the Agreement could have been accomplished on the lines they had suggested. During the whole process they had emphasized the importance of finding ways to limit the use of single tendering. No results had been reached in this respect. The Nordic countries were also disappointed at the failure to reach an agreement on their proposal on separate publication, which was intended to address an important practical problem, i.e. a failure by certain Parties to implement the Agreement properly. The artificial linkage of this question to a proposal made at the last minute had in their view been most regrettable. The same went for their proposal on languages, which they considered to represent a major practical improvement to the functioning of the Agreement. They expected to have the opportunity to revert to these as well as to several other issues like the proposals on conciliation and reports on the use of derogations, during the next phase of the Article XI.6(b) negotiations. The Nordic countries emphasized the importance they attached to prompt implementation of the improvements agreed on and to progress in the matters covered by the decisions. At the same time they recognized that future work would have to be organized in the light of the decisions taken with respect to the organization of the Uruguay Round.
42. The representative of Japan stated that his delegation was satisfied and somewhat relieved that the Committee had concluded this first chapter of the Article IX:6(b) negotiations. In the course of the last three years the work had gone through difficult moments but an agreement had been reached due to the spirit of cooperation which characterized this Committee. As others had mentioned, difficult further work had to be done: how to enlarge the scope of the Agreement and how to include trade of services into the Agreement. In particular, in regard to the first question, the problem of privatization to which Japan attached much importance could not be left aside. It was therefore necessary to maintain the cooperative attitude in order to be able to complete the work entrusted to the Parties. His delegation was for its part resolved to make even greater efforts to contribute to the work of the Committee and sincerely hoped that the other Parties would do the same.

43. The representative of the United States stated that the package reached represented a significant step forward towards fulfilling part of the Article IX:6(b) mandate. In improvements some major breakthroughs had been made in increasing transparency, closing loopholes and bringing the Agreement more up-to-date with current procurement practices. All had made concessions and serious compromises had been reached. In many ways the next phase presented more difficult tasks and required no less serious commitments to address issues which to some extent had already begun. By agreeing to the package the Parties had given one another proof of negotiating abilities and had at the same time heightened the credibility of the Agreement and the Committee. The same vigour and creativity was required in the future work.

44. The representative of the European Economic Community stated that her delegation considered that to a certain extent significant progress had been achieved in the negotiations, in particular by the inclusion of leasing and certain improvements on publications. However, there was still room for many textual improvements, for instance concerning separate publications.

45. The representative of Switzerland stated that although his delegation was also not entirely satisfied with the results, it welcomed the completion of the negotiations after two extensions. Not only for the Committee, but for the GATT as a whole and for the new round of trade negotiations it was a positive sign that Governments were ready to improve their cooperation within the GATT. The results not only lead to improvements of the Agreement but also to a broadening of its scope through the lowering of the threshold value and the inclusion of leasing. He hoped that this would lead to a better functioning of the Agreement and better implementation on the part of national administrations.

46. The representative of Israel welcomed the result and the good spirit which had characterized this first step of negotiations. It addressed problems which had been referred to as short-term objectives. Medium-term objectives should be pursued further by the Informal Working Group. He supported the statement by Singapore concerning the position of developing countries and the need to make the Agreement more attractive to these. Further work should bear this concern in mind. His delegation was ready to continue cooperating with other Parties in these fields.
47. The representative of Canada reiterated that the package had made a small step towards increased scope and coverage of the Agreement. It was by no means satisfactory to his delegation which would actively pursue increased coverage in those areas where there was presently no international competition.

48. The representative of Austria stated that the results achieved were acceptable also for small countries. His delegation had contributed to this outcome and stood ready to participate in future work in this area.

49. The Chairman stated his satisfaction with the result achieved, which would not have been possible if each Party had not worked in a spirit of compromise and with great efforts.

50. The representative of Hong Kong stated that one had to be satisfied with the results achieved. Work ahead might be more difficult but given the spirit of cooperation prevailing in the Committee, he felt confident it would rise to the occasion.

51. The representative of Singapore stated that her delegation would continue to participate in the Informal Working Group and hoped to be able to contribute positively to achieving further results.

52. The Committee took note of the statements made.

B. STOCK-TAKING OF 1985 STATISTICAL REPORTS

53. The Chairman recalled that the Committee had agreed to take stock of the submissions for 1985, in order to ensure that the review of these statistics could indeed start at the February 1987 meeting. The secretariat had received and had circulated in the GPR/33/- series, the statistics from Hong Kong, Finland, Singapore and Sweden.

54. The Committee was given status reports from other Parties, who were in different stages of preparation.

55. The representative of Hong Kong expressed concern on the late presentation of statistics. The Chairman again urged delegations to submit 1985 statistics as soon as possible.

C. OTHER BUSINESS

56. The Chairman reminded delegations of the relevant provisions of the Agreement or subsequent Committee decisions relevant to:

(i) the fixing of thresholds in national currencies for 1987;

(ii) the invitation to nominate panel candidates for 1987; and

(iii) the agreement at the last meeting that the document emanating from the 1986 annual review (GPR/W/76) be updated by the secretariat to reflect also the present meeting (GPR/M/23, paragraph 32). He suggested that the secretariat be requested to do such an updating and to circulate a revised text to the Parties for comments before a GPR/- document was circulated. It was so agreed.
(iv) Next meeting(s)

The Committee reconfirmed that it would meet on 12 February 1987, and agreed on the following tentative agenda: (i) election of officers; (ii) follow-up on VAT Panel Report; (iii) review of 1985 statistics; (iv) implementation and administration of the Agreement; (v) continuation of Article IX:6(b) negotiations; and (vi) other business.

57. It was further agreed to set aside 13 February 1987 for a meeting of the Informal Working Group on Negotiations.
ANNEX I

COMMITTEE DECISION ON BROADENING

Recognizing the importance of expanding coverage to entities and those procurements of covered entities that are not now subject to the Agreement, the Parties agree to continue work on broadening pursuant to the provisions of Article IX:6(b).

Work in this area should include:

(a) the exchange of information on entities and those procurements of covered entities that are not now subject to the Agreement, bearing in mind the need to maintain a comparable level of mutually-agreed coverage, and that the provisions of Article III will apply to developing countries; and

(b) the consideration of approaches to the subject, including such possible new approaches as a review of the criteria to be applied for the coverage of the Agreement as well as the re-examination of Article IX:5(b) to address the issue of privatization of entities.

1The decision does not relate to those aspects of broadening dealt with in the separate decision on service contracts.
ANNEX II

COMMITTEE DECISION ON SERVICE CONTRACTS

Recognizing the importance of service contracts in government procurement,

1. Pursuant to Article IX:6(b) of the Agreement, the Parties agree to work toward coverage of service contracts under the Agreement, without prejudice to their final position on the implementation of such coverage.

2. The Parties agree to establish a work programme to carry out this decision. This work programme should include the following elements:

   (a) a detailed examination of the nature and scope of service contracts awarded by entities;

   (b) a determination as to whether the provisions of the Agreement can be applied to the service contracts examined under (a) above;

   (c) if not, how the provisions of the Agreement can be modified to apply to the service contracts under examination;

   (d) an exploration of the modality of negotiations on the coverage of service contracts.

3. In the context of this work programme the Parties note the importance of the principles of non-discrimination and national treatment.

4. The Parties agree to carry out the above work programme in the Informal Working Group with a view towards completing this work at the earliest possible date.
Recognizing the importance of improving the Agreement in the light of further experience, the Parties agree that its work programme will include continued work in this area pursuant to the provisions of Article IX:6(b).

Furthermore, the Parties adopt the attached textual improvements to the Agreement which, after completion of a rectification procedure, will take the form of a Protocol of Amendments.
The Parties to the Agreement on Government Procurement, (hereinafter referred to as the "Agreement"),

ACTING in accordance with Article IX:7 of the Agreement,

HEREBY AGREE to amend the Agreement as follows:

Article I:1(a)

- First sentence: delete "the procurement of products" and replace by "any procurement of products, through such methods as purchase or as lease, rental or hire-purchase, with or without an option to buy".

Article I:1(b)

- Replace "SDR 150,000" by "SDR 130,000".
- Add footnote (3) to first sentence:
  "This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article V:4."
- Second sentence: Replace "SDR 150,000" by "SDR 130,000".
- Third sentence: Redraft the language after the comma as follows:
  "the basis for application of this Agreement shall be either the actual value of similar recurring contracts concluded over the previous fiscal year or twelve months adjusted, where possible, for anticipated changes in quantity and value over the subsequent twelve months, or the estimated value of recurring contracts in the fiscal year or twelve months subsequent to the initial contract. The selection of the valuation method by the entity shall not be used with the purpose of circumventing the Agreement."
- Add the following after the amended third sentence:
  "In cases of contracts for the lease, rental, or hire-purchase of products, the basis for calculating the contract value shall be:

  (i) in the case of fixed-term contracts, where their term is twelve months or less, the calculation should be based on the total contract value for its duration, or, where their term exceeds twelve months, its total value including the estimated residual value;

  (ii) in the case of contracts for an indefinite period, the monthly instalment multiplied by forty-eight;

  (iii) if there is any doubt, the second basis of calculation is to be used, namely forty-eight months."
"In cases where a proposed procurement specifies the need for option clauses, the basis for application of this Agreement shall be the total value of the maximum permissible purchases, lease, rentals or hire-purchases, inclusive of optional purchases;"

Article II

Add new Article II:2

"2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement the Parties shall ensure:

(a) that their entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership;

(b) that their entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of paragraph 4 of this Article."

- Renumber paragraphs 2 and 3 to become paragraphs 3 and 4.

Article III:3:

- Replace "purchasing" in last sentence by "procuring"

Article III:7:

- The reference to paragraph 13 should be replaced by reference to paragraph 14.

Add new Article III:10:

10. "Technical assistance referred to in paragraphs 8 and 9 above would include translation of qualification documentation and tenders made by suppliers of developing country Parties from a GATT language designated by the entity, unless developed country Parties deem translation as burdensome, and, in that case, explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities."

- Renumber paragraphs 10-14 to become paragraphs 11-15.

Article III:10 (to become Article III:11)

- Replace "notices about proposed purchases" in first sentence by "notices about proposed procurements"; and replace "purchased or to be purchased" in first sentence by "procured or to be procured".

Article III:12 (to become Article III:13)

- Replace "purchase" in last sentence by "procurement".
Article IV:1  
- Replace "purchased" in first sentence by "procured".

Add new Article IV:4:

"4. Procurement entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement."

Article V:1

- The references to paragraphs "7" and "15" should be replaced by "8" and "16", respectively.

Article V:2(b):

- Add new sentence at the beginning of the existing provision:

"any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question."

- the present sentence "any conditions etc." should start with a capital letter. Semicolon at the end of present sentence should be replaced by period. The following sentence should be added thereafter:

"The financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity as well as its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;"

Article V:2(c)

- Replace "purchase" in first, second and third sentence by "procurement".

Article V:2(d)

- Add the following words between "shall ensure that" and "all qualified suppliers":

"suppliers may apply for qualification at any time; and that"

Add new Article V:2(f):

(f) "the Parties shall ensure that

(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for different procedures;

(ii) efforts be made to minimize differences in qualification procedures between entities;"
Article V:2(f) (to become Article V:2(g))

- Replace the words "(a) to (e) above" by "(a) to (f) above".

Add new Article V:3:

3. "Entities shall not provide to any potential supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition."

- Renumber Article V:3-16, to become Article V:4-17.

Article V:3 (to become Article V:4)

- Replace "purchase" in heading and first sentence by "procurement".

Article V:4 (to become Article V:5)

- Replace "purchase" in first sentence of both first and second part of this provision by "procurement".

Article V:4(a) (to become Article V:5(a))

- Redraft as follows:

"the nature and quantity, including any options for additional quantities, of the products to be supplied and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products to be procured;"

- Replace period after sub-paragraph 4(g) - to become 5(g) - by semicolon.

Add new Article V:5(h):

"(h) whether the entity is inviting offers for purchase, lease, rental or hire-purchase, or more than one of these methods."

Article V:5 (to become Article V:6)

- Replace "purchase" in first sentence by "procurement".

Article V:6(a)(i) (to become Article V:7(a)(i))

- Replace "purchased" by "procured".

Article V:6(c) (to become Article V:7(c))

- Replace the reference to "paragraph 3" by "paragraph 4".

Article V:7 (to become Article V:8)

- Replace "purchase" in first sentence by "procurement".

- Replace the reference to "paragraphs 2 - 6" by "paragraphs 2 - 7".
Article V:8 (to become Article V:9)
- Replace "purchase" in both sentences by "procurement".

Article V:9(a) (to become Article V:10(a))
- Replace "purchase" by "procurement".

Article V:9(b) (to become Article V:10(b))
- Redraft as follows:
  "Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the proposed procurement, the extent of sub-contracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the points of supply."

Article V:10(a) (to become Article V:11(a))
- Replace "thirty days" by "forty days" and "paragraph 3" by "paragraph 4".

Article V:10(b) (to become Article V:11(b))
- Replace "thirty days" and "paragraph 3" in the first sentence by "twenty-five days" and "paragraph 4 of this Article", respectively; and
- Replace "thirty days" in the second sentence by "forty days".

Article V:10(c) (to become Article V:11(c))
- Replace "thirty days" in the first sentence by "forty days"; and
- Replace "paragraph 3" and "thirty days" in the second sentence by "paragraph 4 of this Article" and "forty days", respectively.

Article V:10(d) (to become Article V:11(d))
- Redraft as follows:
  "(d) The periods referred to in (a), (b) and (c) above may be reduced in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 5 of this Article. In this case, the period for the receipt of tenders shall in no case be less than twenty-five days. The second or subsequent publication should include a reference to permit the identification of the first publication."

Add new Article V:11(e):
"(e) The periods referred to in (a), (b), (c) and (d) above may be reduced where a state of urgency duly substantiated by the entity renders impracticable the periods in question but shall in no case be less than ten days from the date of the publication referred to in paragraph 4 of this Article."
Add new Article V:11(f):

"(f) The Parties shall ensure that their entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender."

Article V:12 (to become Article V:13)

- Redraft first part as follows:

13. "Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of proposed procurement, except for paragraph 5(g) of this Article, and the following: ..."

Article V:14(h) (to become Article V:15(h))

- Add a sentence to the end of the existing provision as follows:

"In the limited number of cases where offset procurement opportunities or similar conditions are required, these requirements shall be included in the notice of proposed procurement and tender documentation;"

Note to Article V:14(h) (to become Note to Article V:15(h))

- The reference in the first sentence to "paragraph 14(h)" should be replaced by "paragraph 15(h)".

- Add a second sentence, to read:

"When known, these requirements shall be specified in the notice of proposed procurement and tender documentation."

Add new Article V:15(i):

"(i) options clauses shall not be used in a manner which circumvents the provisions of the Agreement;"

Add new Article V:15(j):

"(j) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation."

Article V:15 (to become Article V:16)

- The reference to "paragraphs 1-14" in the first sentence should be replaced by "paragraphs 1-15".

Article V:15(d) (to become Article V:16(d))

- Replace "purchase" by "procure".
- **Add footnote 4 at the end of this provision as follows:**

"4. It is the understanding that "existing equipment" referred to in Article V:16(d) includes software to the extent that the initial procurement of the software was covered by the Agreement".

**Article V:15(e) (to become Article V:16(e))**

- **Replace "purchases" in first sentence by "procures". In second sentence replace "purchases" by "procurements" and the reference to "paragraphs 1-14" by "paragraphs 1-15".**

- **Renumber footnote 3 to become footnote 5.**

**Article V:16 (to become Article V:17)**

- In second sentence, **replace "purchasing" by "procuring" and "purchased" by "procured".**

- **The references in first and second sentence to "paragraph 15" should be replaced by "paragraph 16".**

**Article VI:1:**

- **Introduce the following new paragraph 1:**

"1. Entities shall publish a notice in the appropriate publication listed in Annex II not later than sixty days after the award of a contract(s) under Article V:15 or 16.

These notices shall contain:

(a) nature and quantity of products in the contract award(s);
(b) name and address of the entity awarding the contract;
(c) date of award;
(d) name(s) and address(es) of winning tenderer(s);
(e) value of winning award(s) or the highest and lowest offer taken into account in the award of the contract;
(f) where appropriate, means of identifying the notice issued under Article V:4;
(g) the type of procedure used;
(h) where appropriate, justification according to Article V:16 for the use of such procedure."

- **Renumber present Article V:1-9, to become Article V:2-10.**

"6. It is understood that certain information on the contract award may not be published in cases of those contracts where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers."
Article VI:3 (to become Article VI:4)

- Replace the period at the end of the provision by comma, and add the following:

"the value or values of the tenders and the name and address of the winning tenderer. It is understood that the criteria contained in paragraph 9 of this Article are also applicable to the information requirements above."

Article VI:4 (to become Article VI:5)

- Replace "purchasing" by "procuring".

Article VI:6 (to become Article VI:7)

- Replace "purchase" in first sentence by "procurement". Replace "purchasing" in second sentence by "procuring".

Article VI:9 (to become Article VI:10)

- Amend first sentence as follows:

"The Parties shall collect and provide to the Committee on an annual basis statistics on their procurements covered by this Agreement."

Article VI:9(a) (to become Article VI:10(a))

- Delete the first word "global", delete semicolon at the end and add the following: "on a global basis and broken down by entities;"

Article VI:9(b) (to become Article VI:10(b))

- Amend as follows:

"(b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products according to a uniform classification system to be determined by the Committee, and country of origin of the product;"

Article VI:9(c) (to become Article VI:10(c))

- Amend as follows:

"(c) statistics, broken down by entity, and by category of product, on the number and total value of contracts awarded under each of the cases of Article V, paragraph 16 showing country of origin of the product;"

Add new Article VI:10(d):

"(d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in Annex I."
Article VII:1:
- After the word "Chairman" in second sentence, add "and Vice-Chairman".

Article VII:5:

The reference to "Article VI, paragraph 8" should be replaced by "Article VI, paragraph 9".

Article IX:3:

Footnote 4 should be renumbered footnote 7.

Annex II

The reference to "Article V, paragraph 3" in the title should be replaced by "Article V, paragraph 4". The word "Purchases" should be replaced by "Procurements".

Annex III

The reference to "Article V, paragraph 6" should be replaced by "Article V, paragraph 7".

Annex IV

The reference to "Article VI; paragraph 1", should be replaced by "Article VI, paragraph 2".

This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each Party to the Agreement and to each contracting party to the General Agreement on Tariffs and Trade a certified copy thereof and a notification of each acceptance of the Protocol.

This Protocol shall be open for acceptance, by signature or otherwise, by the Parties to the Agreement, until 1 October 1987, provided that the period during which this Protocol may be accepted may, by a decision of the Committee on Government Procurement, be extended beyond that date.

Reservations may not be entered in respect of any of the provisions of this Protocol.

This Protocol shall enter into force on the ninetieth day following the date of its acceptance by all Parties to the Agreement, provided that it shall not enter into force before 1 January 1988.

This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this ... day of ... one thousand nine hundred and eighty-... in a single copy, in the English, French and Spanish languages, each text being authentic.
ANNEX IV

CHAIRMAN'S STATEMENT BEFORE ADOPTION OF THE TEXT

Concerning Article IV - Technical Specifications:
It is understood that market research is permissible, provided that it
is not conducted in a manner which would have the effect of precluding
competition.

Concerning Article V:2(b) - Essential qualification conditions:
It is understood that the criteria of Article V:2(b) remain unchanged.

Concerning Article V, new paragraph 3 on Information Prior to Notice
of Proposed Purchase:
It is understood that market research is permissible, provided that it
is not conducted in a manner which would have the effect of precluding
competition.

Concerning Article V:9(b) (to become Article V:10(b)) - Delivery
Times:
It is understood that decisions can be taken on a case-to-case basis
since delivery times constitute an important element in the administration
of an entity's business. It is also understood that entities will not be
required to carry out any extensive research to take into account the
various factors listed in Article V:9(b).

Concerning new Article VI:1 - Publishing Information on Winning Bids:
It is understood that the understanding referred to in the footnote to
Article VI:1 will not be applied in such a manner that any entity may be
totally exempted from the obligation to publish the information stipulated
in Article VI:1. It is also understood that only certain elements of the
information in question may, depending on the nature of the contracts, be
exempted from publication.

Concerning new Article VI:10(d) - Statistics on the use of
Derogations:
It is understood that for the purpose of this provision, derogations
are those contained in Annex I as follows:

DEROGATIONS

Austria
Finland
Norway
Sweden
Switzerland

"When a specific procurement decision may impair
important national policy objectives the (Austrian)
(Finnish etc.) Government may consider it necessary in
singular procurement cases to deviate from the principle
of national treatment in the Agreement. A decision to
this effect will be taken at the (Austrian) (Finnish
etc.) cabinet level."

Canada

"Notwithstanding the above, this Agreement does
not apply to contracts set aside for small businesses."

EEC

"This Agreement does not apply to procurement by
entities otherwise falling under this Agreement made on
behalf of and under the specific procedure of an
international organization."
"This Agreement shall not apply to procurement by entities falling under this Agreement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes."

**Federal Republic of Germany**

"According to existing national obligations, the entities contained in this List shall, in conformity with special procedures, award contracts in certain regions which, as a consequence of the division of Germany, are confronted with economic disadvantages."

"The same applies to the awarding of contracts to remove the difficulties of certain groups caused by the last war."

**Italy**

"This Agreement shall not prevent the implementation of provisions contained in Italian Law No. 835 of 6 October 1950 (Official Gazette No. 245 of 24 October 1950 of the Italian Republic) and in modifications thereto in force on the date on which this Agreement is adopted."

**Japan**

"Where it is so provided under the laws and regulations existing at the time of the entry into force of this Agreement for Japan, entities contained in this list may award contracts to specific co-operatives or associations thereof in accordance with the special procedures."

**Singapore**

"The offer is conditional on the right of the Singapore Government to grant tenderers from the ASEAN countries a two and a half per cent or US $40,000 preferential margin in accordance with the provisions of the Agreement on ASEAN Preferential Trading Arrangements."

**United States**

"Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses."
ANNEX V

COMMITTEE DECISION

Exchange Rate Questions Relevant to the Threshold Requirement in Article I:1(b) of the Agreement

Bearing in mind the Decision taken at the first meeting of the Committee in January 1981 (GPR/M/1, Annex IV), and the decision to lower the threshold of the Agreement (contained in Article I:1(b)) to SDR 130,000, the Committee hereby amends, on a trial basis of two years, its decision of 1981 as follows:

- General

Each Party will calculate and convert for itself the value of the threshold of SDR 130,000 into its own national currency, it being understood that these calculations will be based on the conversion rates published by the IMF in its monthly "International Financial Statistics" (for the EC, the member States' currency equivalents of the ECU for determining the value of public contracts are calculated and published by the EC Commission; for Hong Kong, the Hong Kong dollar cross rate with, for example, the US dollar can be used to arrive at the conversion rate HK$/SDR). Parties will notify without delay to the Committee the method and result of their calculation, for possible examination and challenge in the Committee.

- Basis for calculation

The conversion rates will be the average of the daily values of the respective national currency in terms of the SDR over the two-year period preceding 1 October or 1 November 1987, with effect from 1 January 1988. For Israel, Japan, and Singapore the conversion rate will be established in the same way as above but the relevant date for the calculation will be 1 January 1988 (rather than 1 October or 1 November) and the newly-established conversion rate will take effect on 1 April 1988.

- Period of validity of national thresholds

Thresholds expressed in national currencies will be fixed for two years, i.e. calendar years for all Parties except Israel, Japan, and Singapore, where the fiscal year (1 April-31 March) will be used.

- Safeguard mechanism

If a major change in a national currency vis-à-vis the SDR during a year were to create a significant problem with regard to the application of the Agreement, the matter will be considered in the Committee.