ARTICLE I

Scope and Coverage

1. This Agreement applies to any law, regulation, procedure or practice regarding procurement by entities covered by this Agreement, as specified in Annexes 1 to 5.¹

2. Procurement under this Agreement includes procurement through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy. Contracts covered by the provisions relating to contracts for products and services may include any combination of products and services which are covered by this Agreement.

3. All exceptions to the Agreement shall be subject to negotiation, with a view to their eventual complete withdrawal. This provision is without prejudice to Article XX.

Valuation

4. If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, 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

¹Throughout this Agreement, the word entities is understood to include agencies.

²Annex 1 contains central government entities (Category A).
Annex 2 contains regional and local government entities (Category B).
Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement (Category C).
Annex 4 lists services, covered by this Agreement.
Annex 5 contains specifications on covered construction services.
All Annexes include relevant thresholds.
used with the purpose of circumventing the Agreement. 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, namely (ii), is to be used.

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

National Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services originating within the customs territories (including free zones) of the Parties, treatment no less favourable than:

(a) that accorded to domestic products, services and suppliers; and
(b) that accorded to products, services and suppliers of any other Party.

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 or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article III.

[3. Having regard to the provisions of paragraphs 1 and 2, Parties shall not enact nor maintain any law, regulation, procedure or practice which requires or encourages domestic entities to discriminate against foreign products, services or suppliers in the award of contracts. Furthermore, Parties shall in their implementation and administration of this Agreement, exercise all reasonable and available control and influence over entities to ensure that rules and principles concerning national treatment and non-discrimination are upheld. [This shall apply in particular to entities falling under Category C but which are not covered by this Agreement.] Parties shall not be required to increase their influence or control over procuring entities not covered by this Agreement in order to satisfy the obligations of this provision.]

3 Including price preferences, local content requirements, terms of licence, authorisation, funding and/or bidding rights (including challenge procedures).
4. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, and other import regulations and formalities.

ARTICLE III

Rules of Origin

1. The Parties shall apply the rules of origin according to the provisions of the GATT Agreement on rules of origin concerning non-preferential purposes, to products imported for purposes of government procurements.

2. Before the entering into force of the harmonisation, the Parties shall not apply rules of origin which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same Parties.

3. After the establishment of the harmonised rules of origin, if technical problems arise in the administration of these rules, the Committee, on request of any interested Party, shall seek the Technical Committee on Rules of Origin to provide advice on appropriate solutions.

4. As regards services Parties shall apply mutatis mutandis the principles of the Agreement on rules of origin and shall co-operate with a view to resolving technical problems.
(Article III on Special and Differential Treatment for Developing Countries will become Article IV.)

ARTICLE IV

Special and Differential Treatment for Developing Countries

In paragraphs 3, 4, 5, 11, 12 and 13 of the previous Article III the words "or services" will in all places follow the words "or products". Paragraphs 1, 2, 6-10, 14 and 15 remain unchanged.
(Old Article IV will become new Article V.)

ARTICLE V

Technical Specifications

1. Technical specifications laying down the characteristics of the products to be procured such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling; or the processes and methods for their production; and requirements relating to conformity assessment procedures prescribed by procurement entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Any technical specification prescribed by procurement entities shall, as far as possible:

(a) be in terms of performance rather than design or descriptive characteristics; and

(b) be based on international standards where such exist, otherwise national technical regulations, recognized national standards, or building codes.

3. There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tenders.

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.

[5. In the field of telecommunications, Parties shall ensure access to technical information about relevant public network interfaces, when necessary for manufacturers or other providers of terminal equipment to design or adapt their products to work with network equipment in services.]

---

4 For the purposes of this Agreement, an international standard is a standard adopted by a body whose recognized activities are in standardization and whose membership is open to the relevant bodies of at least all the Parties to this Agreement.
ARTICLE VI

Tendering Procedures

I. General Provisions

1. The Parties shall ensure that the tendering procedures of their entities are operated in a non-discriminatory manner and that they are consistent with the provisions below.

Definitions

2. Open tendering procedures, for the purposes of this Agreement, are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement, are those procedures under which, consistent with paragraph 8 and other relevant provisions of this Article, those suppliers invited to do so by the entity may submit a tender. [[Competitive] negotiated tendering procedures, for the purposes of this Agreement, are ...]. Single tendering procedures, for the purposes of this Agreement, are those procedures where the entity contacts suppliers individually, only under the conditions specified in paragraph 16 below.
ARTICLE VII

Qualification Procedures

Qualification of suppliers

1. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between domestic and foreign suppliers. Qualification procedures shall be consistent with the following:

(a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;

(b) 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. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers. 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;

(c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed procurement. Entities shall recognize as qualified suppliers such domestic or foreign suppliers who meet the conditions for participation in a particular proposed procurement. Suppliers requesting to participate in a particular proposed procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

(d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;

(e) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by
entities shall also be notified of the termination of any such lists or of their removal from them;

(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;

(g) nothing in sub-paragraphs (a) to (f) above shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

2. 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.
ARTICLE VIII

Notice of Proposed Procurement

(Old Article V:4 is new VIII:1)

1. Entities shall in all cases publish a notice of each proposed procurement in the appropriate publication listed in Annex II of the Practical Guide. Such notice shall constitute an invitation to participate in either open, selective [or [competitive] negotiated] tendering procedures.

2. Each notice of proposed procurement, referred to in paragraph 1 of this Article, shall contain the following information:

   (a) the nature and quantity, including any options for additional quantities, of the products to be supplied or services to be provided 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 or services to be procured;

   (b) whether the procedure is open, selective [or [competitively] negotiated];

   (c) any date for delivery of goods, for starting/planned completion of constructions, and for delivery of services;

   (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;

   (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;

   (f) any economic and technical requirements, financial guarantees and information required from suppliers;

   (g) the amount and terms of payment of any sum payable for the tender documentation;

   (h) whether the entity is inviting offers for purchase, lease, rental or hire-purchase, or more than one of these methods;
(i) the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of Article XVI, will be entertained;

(j) that the procurement is covered by this Agreement.

3. The entity shall publish in one of the official languages of the GATT a summary of the notice of proposed and planned procurement containing at least the following:

(i) subject matter of the contract;

(ii) time-limits set for the submission of tenders or an application to be invited to tender; and

(iii) addresses from which documents relating to the contracts may be requested;

(iv) the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of Article XVI, will be entertained.

4. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each proposed procurement, invite tenders from the maximum number of domestic and foreign suppliers, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

5. (a) In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex III of the Practical Guide, a notice of the following:

(i) the enumeration of the lists maintained, including their headings, in relation to the products or categories of products to be procured through the lists;

(ii) the conditions to be fulfilled by potential suppliers in view of their inscription on those lists and the methods according to which each of those conditions be verified by the entity concerned;

(iii) the period of validity of the lists, and the formalities for their renewal.

(b) Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
(c) If, after publication of the notice under Article VIII:1, a supplier not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.

6. Suppliers requesting to participate in a particular proposed procurement shall be permitted to submit a tender and be considered provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VII and VIII. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

7. If after publication of a notice of a proposed procurement but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular proposed procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.
ARTICLE IX

Time-Limits to Prepare and Submit Tenders

1. (a) Any prescribed time-limit shall be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the proposed procurement, the extent of sub-contracting anticipated, the normal time for transmitting tenders by mail from foreign as well as domestic points, [and whether the entity operates in a commercial environment].

(b) 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, the realistic time required for production, de-stocking and transport of goods from the points of supply, [and whether the entity operates in a commercial environment].

2. new text awaited (old Article V:11)

(a) In open procedures, the period for the receipt of tenders shall in no case be less than forty days from the date of publication referred to in Article VIII:1.

(b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than twenty-five days from the date of publication referred to in Article VIII:1; the period for receipt of tenders shall in no case be less than forty days from the date of issuance of the invitation to tender.

(c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than forty days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in Article VIII:1, there shall in no case be less than forty days between those two dates.

(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 Article VIII:2. 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.
(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 Article VIII:1.

(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 X

Tender Documentation

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT.

2. 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 Article VIII:2(g), and the following:

   (a) the address of the entity to which tenders should be sent;

   (b) the address where requests for supplementary information should be sent;

   (c) the language or languages in which tenders and tendering documents must be submitted;

   (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;

   (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;

   (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;

   (g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;

   (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products or services, customs duties and other import charges, taxes and currency of payment;

   (i) the terms of payment;

   (j) any other terms or conditions;

   (k) the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of Article XVI, will be entertained.
Forwarding of tender documentation by the entities

3. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.

(b) In selective competitive procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate and shall reply promptly to any reasonable request for explanations relating thereto.

(c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.
ARTICLE XI

Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

(a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy;

(b) the opportunities that may be given to tenderers to correct unintentional errors between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice;

Receipt of tenders

The receipt of tenders shall be consistent with the following:

(c) a supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide;

Opening of tenders

The opening of the tenders shall be consistent with the following:

(d) all tenders solicited under open, selective [and competitive] negotiated procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings as well as the availability of information from the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. To this effect, and in connection
with open procedures, entities\(^6\) shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. Information on the opening of tenders shall be retained for a period of three years. It shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVII and XIX of this Agreement;

**Award of contracts**

The award of contracts shall be consistent with the following:

(e) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from suppliers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract;

(f) unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products or services, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous;

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

(h) option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

\(^6\) [Groups A and B entities.]
ARTICLE XII

Negotiated Tendering Procedures

(new text is awaited) (old V:15(g))

1. If it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range.
ARTICLE XIII

Offsets

1. [Entities should normally refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, Parties concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one Party over suppliers from any other Party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one Party shall not be favoured over suppliers from any other Party. 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;]

OR

[1. Entities shall not, in the qualification and selection of potential suppliers, products or services, or in the evaluation of bids and award of contracts, impose, seek or consider offsets [that have as their objective the encouragement of local development or the improvement of balance of payments accounts].

Replacement of the second of the two "Notes" to the Agreement relating to the above provision

2. Having regard to general policy considerations, including those relating to development, developing countries may [at the time of accession] negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They [shall be set forth in an Annex to this Agreement] [may] include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the GATT secretariat and included in the notice of proposed procurement and other documentation.]

Offsets [in government procurement are measures used to encourage local development or improve the balance of payments accounts and] include localisation, local content, licensing of technology, investment requirements, counter-trade or similar requirements.
ARTICLE XIV

Use of Single Tendering

(a new text is awaited)

1. [The provisions of Articles VI through XIII governing open and selective tendering procedures need not apply in the following conditions, provided that single tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or protection to domestic producers or service providers:

(a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been either collusive or do not conform to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;

(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the entity to procure equipment not meeting requirements of interchangeability with already existing equipment;

(e) when an entity procures prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products shall be subject to Articles VI through XIII.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1 of this Article. Each report shall contain the name of the procuring entity, value and kind of goods procured, country of origin, and a statement of the conditions in paragraph 16 of this Article which prevailed. This report shall remain with the entities
concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVII and XIX of this Agreement.]
ARTICLE XV

Self-Denial

1. To implement the self denial commitments in Article II:3 of this Agreement, Parties shall:

   (a) deposit and maintain with the GATT secretariat a current statement concerning the means of control or influence exercised over procuring enterprises, including, but not limited to, partial ownership; management or budget control; and safety, health or environmental inspections;

   (b) make transparent and available in advance the general requirements imposed regarding the obtaining of any licence, authorization, or funding they provide in the specified areas;

   (c) make available the terms of any licence, authorization, or funding provided in the specified areas;

   (d) ensure that any bidding rights - including the right to challenge any law, policy, practice, or procedure or any aspect of the procurement process - accorded to national suppliers or suppliers of national products or services shall be extended immediately and unconditionally to all Party suppliers and suppliers of Party products or services on the same terms.

2. Parties shall not be required to increase their influence or control over procuring enterprises not listed in Annexes 1 through 5 in order to satisfy the obligations of this provision.]
[ARTICLE XVI

Transparency

1. In each notice of proposed procurement, and in the tender documentation provided in Article X, Parties [shall] [may] ensure that entities indicate the terms and conditions under which tenders will be entertained from suppliers and contractors situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:

(a) specify their contracts in accordance with Article V (technical specifications) of this Agreement;

(b) publish the procurement notices referred to in Article VIII, paragraphs 1, 2 and 3, including, in the version of the notice referred to in paragraph 3 of Article VIII (summary of the notice of proposed procurement) which is published in a GATT language, an indication of the terms and conditions under which tenders shall be entertained from suppliers or contractors situated in countries Parties to this Agreement.

2. [Countries, not Parties to the Agreement, which comply with the above procedure, shall be entitled to inform Parties and to attend the Committee established under Article XIX of this Agreement as observers.]
(old Article VI)

ARTICLE XVII

Information and Review

1. Entities shall publish a notice in the appropriate publication listed in Annex II of the Practical Guide not later sixty days after the award of a contract(s) under Article XI or XIV. These notices shall contain:

(a) nature and quantity of products or services 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 VIII:1;
(g) the type of procedure used;
(h) where appropriate, justification according to Article XIV for the use of such procedure.

2. Any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, shall be published promptly by the Parties in the appropriate publications listed in Annex IV of the Practical Guide and in such a manner as to enable other Parties and suppliers to become acquainted with them. The Parties shall be prepared, upon request, to explain to any other Party their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from a country which is a Party to this Agreement their procurement practices and procedures.

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.
3. Entities shall, upon request by any supplier, promptly provide pertinent information concerning the reasons why that supplier's application to qualify for the suppliers' list was rejected, or why that supplier was not invited or admitted to tender, or not considered to fall within the competitive range, as the case may be.

(new text on shorter deadlines for Category C entities is awaited)

4. Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded, 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.

5. Upon request by an unsuccessful tenderer, the procuring entity shall promptly provide that tenderer with pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer.

6. Entities shall establish a contact point to provide additional information to any unsuccessful tenderer dissatisfied with the explanation for rejection of his tender or who may have further questions about the award of the contract. There shall also be procedures for the hearing and reviewing of complaints arising in connection with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement will be equitably and expeditiously resolved between the suppliers and the entities concerned.

7. The government of the unsuccessful tenderer, which is a Party to this Agreement, may seek, without prejudice to the provisions under Article XIX, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.

8. Available information concerning individual contract awards shall be provided, upon a request, to any other Party.

---

9 A text is expected concerning Group C entities.

10 This sentence might be overtaken by the Challenge Article.
9. Confidential information provided to any Party which 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, shall not be revealed without formal authorization from the party providing the information.

10. The Parties shall collect and provide to the Committee on an annual basis statistics on their procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

   (a) for A [and B] entities, statistics on estimated value of contracts awarded, both above and below the threshold value on a global basis and broken down by entities; for C entities statistics on estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities.

   (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems and country of origin of the product or service;

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

   (d) statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in Annexes 1 through 5.
ARTICLE XVIII

Challenge Procedures

(i) Consultations

1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, Parties [may] [shall] encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

(ii) Challenge

2. Parties shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

3. Parties shall provide their challenge procedures in writing and make them generally available.

4. [Suppliers shall have reasonable access to [pertinent] information concerning the procurement in question, provided that entities shall not be required to disclose confidential information whose disclosure would be contrary to the public interest or prejudice legitimate commercial interests.] Parties shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for 3 years.

5. [To allow for the correction of a breach of the Agreement in cases in which challenge systems do not provide for the possibility of contract termination, all competing suppliers shall be notified of the award decision and a period of no fewer than seven days shall be provided between the date of the notification of disappointed suppliers and the date the procuring entity and a successful supplier formally enter into the contract.]

[6. The interested supplier may be required to initiate a bid challenge and notify the procuring entity within specified time limits [of learning of the alleged breaches of the procurement procedure] [no later than [10] days after the basis of the complaint is known or reasonably should have been known].]

7. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement [and whose membership is secure during the term of appointment]. A review
body which is not a court shall either be subject to judicial review or shall have procedures which ensure that:

- participants can be heard before an opinion is given or a decision is reached;
- participants can be represented and accompanied;
- participants shall have access to all proceedings;
- [proceedings can take place in public];
- opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- witnesses can be presented;
- documents can be disclosed.

8. Challenge procedures shall provide for:

(a) Rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. [Such action shall normally result in suspension of the procurement process. However], procedures may provide that over-riding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;

(b) An assessment and a possibility for a decision on the [justification] of the challenge;

(c) Correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for bid preparation or protest.

[9. With a view to the preservation of [the] commercial [and other] interests involved, the challenge procedure shall normally be completed [within [x] days].]

* See footnote over
The European Community considers that an effective challenge procedure requires a framework of guaranteed independence under court supervision. Assessment of the balance of interests should be made by the body which hears the challenge. Challenges should inter alia give rise to judgements, having the force of law, on the substance of the challenge.

The European Community regards suggestions that contracts should be overturned without regard to the rights of the parties to the contract as fundamentally unacceptable. Such a procedure would be detrimental to natural justice and would lead to inefficient procurement practices.
Enforcement of Obligations

(old Article VII becomes new Article XIX)

1. Institutions

(old Article VII:1)

2. Enforcement

[Except as otherwise provided for in this Agreement, consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the rules and procedures of Articles XXII and XXIII of the General Agreement, and the dispute settlement rules and procedures as adopted by the CONTRACTING PARTIES.]
ARTICLE XX

Exceptions to the Agreement

(Old Article VIII becomes new Article XX. No changes to the existing text.)
ARTICLE XXI

Final Provisions

1. Acceptance and accession

(a) This Agreement shall be open for acceptance by signature or otherwise, by government contracting parties to the GATT and by the European Economic Community whose agreed lists of entities are contained in Annexes 1 through 5.

(b) Any government contracting party to the GATT not a Party to this Agreement may accede to it on terms to be agreed between that government and the Parties. Accession shall take place by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(c) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession, and whose agreed lists of entities are contained in Annexes 1 through 5.

(d) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(e) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement.
3. **Entry into force**

This Agreement shall enter into force on [1 January 1993] for the governments which have accepted or acceded to it by that date. For each other government, it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

4. **National legislation**

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

5. **Rectifications or modifications**

(a) Rectifications of a purely formal nature and minor amendments relating to Annexes 1 through 5 to this Agreement shall be notified to the Committee and shall become effective provided there is no objection within thirty days to such rectifications or amendments.

(b) Parties may withdraw entities which are listed in Annex .. [lists of entities in electricity, urban transport, airports and water supply] or in Annex .. [lists of entities in telecommunications] without compensation if the following conditions are satisfied:

- the entity ceases to be under the dominant influence of the public authorities. This shall be taken to mean that the public authorities, severally or collectively shall not:
  
  (a) hold the major part of the undertakings subscribed capital;
  
  (b) control the majority of the votes attaching to shares issued by the undertaking;
  
  (c) be in a position to appoint more than half of the members of the undertaking's administrative managerial or supervisory body; and

---

11 For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Economic Community.
- the entity ceases to provide or operate a relevant activity on the basis of a network or to exploit a geographical area for the purposes of a relevant activity; or

- while still providing or operating a relevant activity on the basis of a network, or exploiting a geographical area for the purpose of a relevant activity. It ceases to do so on the basis of special or exclusive rights granted by a competent authority of the Party, insofar as other entities do in fact provide or operate similar activities on the basis of an alternative network or networks covering the same geographical area, or exploit the same geographical area, for the purpose of providing the same activity, in direct competition with the entity concerned.

Note
In the event of an entity being withdrawn by virtue of this provision, the Party remains covered by Article ...

OR:

[(b) If upon the public offering of shares of an entity listed in Category C Annex ..., such entity no longer is subject to governmental control, the relevant Party may notify the Committee of such action and:

(i) seek agreement of other Parties to transfer the entity from Annex ... [C-II]; such transfers shall not be allowed without the approval of other signatories. When such transfers are made, Parties shall undertake the self-denial obligations set forth in Article ... with respect to the privatised entity; or

(ii) withdraw altogether the entity from the obligations of this Agreement pursuant to the provisions of paragraph 5(c).

With respect to the above modifications of a Party's coverage, Parties retain their rights under Article IX:5(c), but may waive their rights to compensation if they agree that the balance of rights and obligations under the Agreement are not affected.]

(Article IX:5(b) becomes XXI:5(c));

(c) Any modifications to lists of entities other than those referred to in sub-paragraphs (a) and (b) may be made only in exceptional circumstances. In such cases, a Party proposing to modify its list of entities shall notify the Chairman of the Committee who shall promptly convene a meeting of the Committee. The Parties shall consider the proposed modification and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually agreed coverage provided in this Agreement.
prior to such modification. In the event of agreement not being reached on any modification taken or proposed, the matter may be pursued in accordance with the provisions contained in Article XIX of this Agreement, taking into account the need to maintain the balance of rights and obligations at the highest possible level.

6. Reviews and negotiations

(a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the periods covered by such reviews.

(b) Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement on the basis of mutual reciprocity, having regard to the provisions of Article IV relating to developing countries.

7. Amendments

The Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

8. Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

9. Non-application of this Agreement between particular Parties

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.
10. **Notes and Annexes**

The notes and annexes to this Agreement constitute an integral part thereof.

11. **Secretariat**

This Agreement shall be serviced by the GATT secretariat.

12. **Deposit**

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof, of each rectification or modification thereto pursuant to paragraph 5 and of each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1 and of each withdrawal therefrom pursuant to paragraph 8, of this Article.

13. **Registration**

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

*Done at Geneva this [ ] in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the lists of entities annexed hereto.*
TRANSITIONAL PERIOD

1. [As regards the coverage by [list of Parties] of entities in Annex 2 [and the coverage by [list of Parties] of services included in Annexes 4 and 5] the Parties concerned commit themselves to seek to obtain the broadest possible coverage.

By 1 July 1992, the Parties concerned shall submit to the GATT secretariat for examination by all Parties their Annexes of coverage of subcentral entities [or their list of covered services] [and their list of entities in the area of energy in Annex 3]. Provided, in the case of subcentral entities, that the [expenditure on goods and services] [covered procurement, above the thresholds], of covered entities exceeds 85% by value of the [expenditure on goods and services] [covered procurement, above the thresholds] of all the entities of the Party concerned at the first level below central government plus municipal governments which cover a population of 500,000 or more [and, in the case of services, the covered service procurement, above the thresholds of services included in Annexes 4 and 2, these lists shall be considered acceptable.

By October 1992, Parties reserve the right to make changes to their Annexes of subcentral entities [and of services] covered by the terms of the attached Agreement, in response to acceptable coverage specified in (1) above, except that they shall in no case reduce their coverage below the 85% level described in that paragraph.]

[2. On 1 January 1993, the attached Agreement on Government Procurement shall enter into force for Parties that have accepted or acceded to it by that date. Parties shall deposit appropriate documentation of their acceptance or accession by such date with the GATT Secretariat.] On 1 January 1993, the Agreement on Government Procurement currently in force shall become null and void.]
ANNEX 5

DEFINITION OF CONSTRUCTION AND RELATED ENGINEERING SERVICES

A Construction services contract is a contract which has as its objective the realisation by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification. A complete list of this Division is attached.

Pro Memoria

The CPC definitions for Division 51 would be included in the Practical Guide to the GATT Agreement on Government Procurement.