SCOPE OF THE AGREEMENT ON GOVERNMENT PROCUREMENT WITH REGARD TO CERTAIN COMMERCIAL TRANSACTIONS

Communication by the Delegation of the European Communities

The delegation of the European Communities made the following communication available to the Committee at its meeting of July 1981.

1. At its meeting on 9 April 1981 the Committee on Government Procurement discussed the scope of the Agreement with particular reference to the question of leasing and similar transactions. The European Communities reiterates its position that by their legal nature and consequences such transactions fall outside the scope of the Agreement. However for the purpose of assisting the discussions at the forthcoming July meeting, the European Communities submit the following consideration aimed at clarifying the situation with regard to the scope of the Agreement.

2. The Agreement on Government Procurement covers only purchases of products, that is to say, transactions by which the entity concerned acquires ownership of the product or products it requires. In the vast majority of cases the application of this criterion will serve to delineate the scope of the Agreement as far as the nature of the transaction is concerned. There may however be certain difficulties in its application in a very limited number of cases.

3. The case of hire purchase transactions affords a useful example. Here the acquisition of ownership is postponed until the last of a series of payments spread over an agreed period has been made. Such transactions, however uncommon at the level of central government, would be considered as falling within the scope of the Agreement, since they oblige the parties to proceed to the passing of ownership. This example contrasts sharply with other types of transaction otherwise presenting apparently similar characteristics such as leasing with an option to purchase, where this element of obligation is lacking.

4. The European Communities therefore propose that for the purpose of deciding whether a particular transaction falls within the scope of the Agreement on Government Procurement, reference should be made to the criterion whether, as in the case of contracts of purchase, the transaction in question generates obligations between the parties to transfer and accept ownership in the products concerned.