1. At the meeting of the Group on 6-7 June 1988 a number of suggestions were made concerning further secretariat work.

2. The Chairman stated that "the background note (MTN.GNG/NG8/W/18) would be revised to cover (i) the procedures concerning accession referred to above", in more detail; and (ii) information on developments in the Article IX:6(b) negotiations concerning broadening the Agreement in as much detail as possible." (MTN/GNG/NG8/7, paragraph 30)

3. "Following a suggestion concerning the possibility of compiling and analysing statistics furnished by Parties, the Chairman said that the secretariat had informed him that proposals for more comprehensive analyses of statistics had been tabled by some delegations in the Committee on 16 October 1987 (document GPR/W/83) and had been taken up again on 18 March 1988. The discussions had been inconclusive and would continue at a meeting in October 1988. The secretariat might be in a position to update the background note for the October meeting of the NG8, indicating developments and, if possible, statistical data." (idem, paragraph 31)

4. The present addendum has been prepared in response to the above.

(a) Procedures concerning accession

5. The accession issue taken up in the Negotiating Group (ref: MTN.GNG/NG8/W/9) concerns accession of GATT contracting parties. The relevant provision of the Agreement in this respect is Article IX:1(b) which states that "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."

\[1\text{ i.e. in paragraphs 24-29 of MTN.GNG/NG8/7.}\]
At its first meeting held on 15 January 1981, the Committee on Government Procurement adopted the following text:

"1. A contracting party interested in accession according to Article IX:1(b) would communicate its interest to the Director-General, submitting relevant information, including an offer by way of a list of entities having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article III.

2. The communication would be circulated to Parties to the Agreement.

3. The contracting party interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement.

4. Upon completion of the consultations and a decision by the Committee agreeing to the terms of accession including the list of entities, the acceding contracting party would deposit with the Director-General to the CONTRACTING PARTIES to the GATT an instrument of accession which states the terms so agreed. The text of the acceding contracting party's list of entities in English, French and Spanish would be annexed to the Agreement." (GPR/M/1, Annex II, L/5101, Annex II).

The Director-General received a communication from Chile with reference to the above procedures in November 1982. In December of the same year, this observer "informed the Committee that his delegation had communicated to Parties his Government's firm decision to accede to the Agreement. Pending an official entity offer and in order to accelerate the procedures adopted by the Committee concerning accession this delegation tabled a list of public entities. A further, official communication which would include figures on purchases made by the entities concerned would expectedly be submitted to the secretariat ...." (GPR/M/6, paragraph 5). Reverting to the matter in February 1983, the delegation stated that it had circulated an offer of entities. "A number of delegations had given comments and raised questions concerning the offer and on administrative procedures in his country. While he was not yet in possession of all details necessary for starting the negotiation process, he reaffirmed his Government's decision to accede to the Agreement. The interested Parties would be informed as soon as all requested information was available. He also expressed satisfaction with the Committee's decision at the present meeting aimed at expediting the accession process." (GPR/M/7, paragraph 7). As noted in MTN.GNG/NG8/W/18, paragraph 12, and Corr.1 this case was not pursued further in the Committee. The secretariat does not have information as to whether consultations with individual Parties were held.

At the end of the Tokyo Round, negotiations on the entity lists of four contracting parties remained incomplete. Three of these (India, Jamaica and Nigeria) have apparently not pursued negotiations since the
entry into force of the Agreement. To the secretariat's knowledge, the fourth contracting party, (the Republic of Korea), as well as one other contracting party, (the Philippines), have held consultations with at least some Parties, without reference to any particular procedure, and without these leading to their accession.

9. Consultations conducted by Korea are not reflected in the Minutes of the Committee.

10. The Philippines initiated exploratory bilateral talks with some of the Parties in 1981 (GPR/M/3, paragraph 4; GPR/M/4 paragraph 4). Canada and the United States, in October 1981 and the EEC and Japan, in February 1982, informed the Committee that they had engaged in consultations on the matter (GPR/M/4, paragraphs 5 and 7; GPR/M/5, paragraphs 5 and 6). The observer for the Philippines informed the Committee of developments in December 1982 (GPR/M/6, paragraph 4); February 1983 (GPR/M/7, paragraph 11); and May 1983, when it stated that "the consultations had been resumed with some developed country Parties but her delegation was disappointed to find that obstacles it had faced in the initial consultations remained." (GPR/M/8, paragraph 3).

11. At the meeting of 24 February 1983, the observer for Israel stated that his delegation "had informed the Parties in a note dated 25 January 1983 of his Government's intention to explore the possibility of adhering to the Agreement. A list of entities proposed for inclusion in the Agreement had been attached. Additional information had been given in a further note of 28 January 1983 transmitted to the Parties. His delegation had subsequently met with delegations who had expressed the desire to consult. In the course of recent consultations two further entities had been added, thus significantly improving the offer. These consultations had been fruitful and should in his opinion have advanced the negotiations ...." (GPR/M/7, paragraph 8).

12. At the same meeting, the Committee adopted a further decision concerning accession which was intended to provide a complementary procedure for GATT contracting parties to accede to the Agreement during periods when the Committee on Government Procurement was not holding its sessions. It was this decision which the delegation of Chile referred to in the statement quoted in paragraph 7 above. Before, its adoption, "the Chairman recalled that under the procedures adopted by the Committee (GPR/M/1/Annex II; L/5101/Annex II) the Committee had to agree to the terms of accession, including the list of entities, before an acceding country might deposit with the Director-General the instrument of accession, stating the terms so agreed. Delay might occur because some months normally lapsed between each Committee meeting. Although it is always possible to call a special meeting to consider the accession of a new country, he suggested that another an perhaps more practical procedure might be available." (GPR/M/7, paragraph 4; ref. also L/5466, paragraph 3).
13. The decision reads as follows:

"In pursuance of the Committee's decision at its first meeting concerning accession of contracting parties to the Agreement (L/5101, Annex II; GPR/M/1, Annex II), the Committee agreed at its meeting held on 24 February 1983, that a country interested in acceding to the Agreement on Government Procurement might avail itself of the following procedure if it so desired:

(i) An acceding country, once its consultations with the Parties are completed, will submit to the Director-General the terms agreed, including its list of entities to be included in Annex I of the Agreement;

(ii) The secretariat will circulate this communication to the Parties, inviting them to confirm in writing within thirty days, whether they accept the terms of accession as set out; and

(iii) Once all the members of the Committee have given their consent, the Committee will be considered to have taken the decision called for in the procedures adopted at the Committee's first meeting, and the acceding contracting party would be free to deposit its instrument of accession with the Director-General." (GPR/M/7, Annex I; L/5466, Annex I).

14. At the meeting of the Committee on 25-26 May 1983, the observer for Israel stated, with reference to Article IX:1(b), inter alia, that

"in accordance with the procedures adopted by the Committee concerning accession of contracting parties to the Agreement (L/5101, Annex II), Israel had held consultations with the Parties on the terms for its accession to the Agreement. These consultations had been successfully concluded; the terms agreed upon were the following:

1. Israel agrees to apply the Agreement on Government Procurement to the present Parties to the Agreement.

2. Israel accepts the list of entities which has today been circulated in the Committee on Government Procurement and which you have before you, as an integral part of the Agreement in accordance with paragraph 10 of Article IX thereof.

It is Israel's understanding that the present Parties will apply the Agreement to Israel" (GPR/M/8, paragraph 7)

"Israel therefore intended to deposit with the Director-General to the GATT, in accordance with Article IX:1(b) and following a decision by the Committee in accordance with the procedures adopted by the Committee, its instrument of accession which would state the terms agreed." (idem, paragraph 8).
15. The Committee "agreed that the terms of accession outlined by Israel were those which had been agreed with all Parties to the Agreement". (idem, paragraph 12).

16. The instrument of accession was deposited on 30 May 1983, whereupon Israel became a Party to the Agreement as of 29 June 1983.

17. The fact that the acceding government referred to the 1981 procedures and not the 1983 procedures reconfirms that both procedures are available.

18. Article IX:9 of the Agreement provides the possibility for non-application between particular Parties. The Committee has not discussed in relation to one another paragraphs 1(b) and 9 of Article IX. Non-application (without explicit reference to paragraph 9 of Article IX) applies to Greece, Portugal and Spain. These countries have no agreed entity lists and their situation should be seen in the light of the fact that the EEC as a Community is Party to the Agreement. The decision concerning Greece, taken in January 1981 (GPR/M/1, Annex V) and those concerning Portugal and Spain in December 1985 (GPR/M/20, Annex I) are identical in substance and read as follows:

"Considering that [Greece had become; Portugal and Spain would become] a member State of the European Economic Community as from [date]; and

Noting that an agreed list of entities for [Greece, Portugal, Spain] in accordance with the provisions of Article I and IX has not been included in Annex I of the Agreement,

the Committee decides that the Agreement shall be considered to apply as between each Party and [each of these countries] only when such Party has agreed to the list of entities for [each of these countries] to be included in Annex I of the Agreement."

19. There are no rules on how the Committee shall take decisions except that it is for the members to take them. The Committee has since its inception worked on a consensus basis. Only the Committee can decide on interpretation and it has never dealt with a concrete case of differing views on an accession.

(b) Developments in the Article IX:6(b) negotiations

20. The secretariat's understanding is that the request made to it (see paragraph 2 above) was meant to cover negotiations on broadening of the Agreement in the broad sense, i.e. including work on service contracts.

21. The first phase of the Article IX:6(b) negotiations was concluded on 21 November 1986, with the following 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." (GPR/M/24, Annex I)

22. The following decision was taken 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." (GPR/M/24, Annex II)

23. The following is based on the progress reports on work in the Informal Working Group on Negotiations given by the Chairman, on his own responsibility, in the Committee on Government Procurement.
24. The Informal Working Group on Negotiations met on 13 February and 18-19 May 1987 to look into the question of a detailed work plan and other procedures, bearing in mind the above-mentioned Committee Decision and subsequent decisions of a procedural nature, made in February 1987 (GPR/M/25, paragraph 63). Draft work programmes were prepared in both areas and were subsequently circulated in GPR/W/81 as a starting point for discussion. Any participant who so wished, would have the opportunity of submitting alternative texts or amendments to the secretariat for distribution to the participants in negotiations in the week of 22 June 1987, the objective being to reach agreement on the detailed plan at the next meeting of the Informal Working Group (GPR/M/26, paragraph 45).

25. The Informal Working Group met again on 8-9 July and 14-15 October 1987 and adopted work programmes in both areas, subject to one provisional reservation. The programme on broadening consisted of a first stage in which an examination would be carried out on the basis of submissions received from the Parties, with a view to clarifying the possible spheres of application which the Agreement might appropriately cover. In a second stage, the programme calls for elaboration of the appropriate approaches to expand the Agreement. The situation will be reviewed thereafter. In the area of service contracts a first stage was identified, consisting of an examination of the nature and scope of such contracts, with a view to clarifying the applicability of the Agreement to these service contracts, and to identifying the problems to be further examined, without prejudice to the final position of Parties on the implementation of such coverage. The examination would be conducted on the basis of information from the Parties. With respect to target dates, it was understood that the inability of one or more Parties to make submissions on time, would not prevent the other Parties from proceeding with the work. Neither would it prejudice the position of any Party nor the flexibility with which the programme should be carried out, so as to allow all Parties to proceed with the work in a unified and harmonized manner. Two Parties noted their understanding that the proposed target dates carried no obligation on the members of the Informal Working Group and were indicative. One Party made a reservation on the proposed target dates (GPR/M/28, paragraph 13).

26. The Informal Working Group held its next meeting on 16-17 March 1988. In the area of broadening of the Agreement, a useful discussion took place with the benefit of a number of submissions from certain delegations, towards the objective in the first stage of the work programme concerned with clarifying the possible spheres of application which the Agreement might appropriately cover. A number of delegations supplied lists of government and government-affiliated agencies or sub-agencies not presently covered by the Agreement. A first discussion took place on what might constitute appropriate criteria and relevant considerations in order to determine the possible coverage of a broadened agreement. As a result of the discussions, a number of issues were identified which might be relevant to the future consideration by the Group in pursuance of the above-mentioned objective for the first stage. Delegations which considered it useful might, if they so wished, provide procurement data
which could assist the Group in its further considerations of potentials for broadening. In the case of service contracts, a number of delegations supplied information on the procurement of services, in a format agreed at the previous meeting of the Group. These submissions were a contribution to the examination of the nature and scope of service contracts, with a view to clarifying the applicability of the Agreement to such contracts, and to identifying potential problems. This exercise was expected to be the main purpose of a further meeting on 7-8 July 1988, when it was hoped that more submissions would be available (GPR/M/30, paragraph 38).

27. In response to a point made by an observer, at the Committee’s meeting on 18 March 1988, that broadening of the Agreement could also be achieved through broader participation, and to a question as to whether the Group took full account of the provisions for special and differential treatment contained in Article III, the Chairman replied that it seemed to him that the particular concept of broadening mentioned was something that members of the Informal Working Group no doubt had in mind. He thought that most members would envisage the notion of broader participation in the Agreement as being an excellent objective. However, he thought the work of the Group thus far had tended to concentrate rather more on technical issues concerned with definitional matters rather than on broad parameters. He would therefore characterize the discussion as not having really dealt with broader participation. Particular aspects of special and differential treatment had not been discussed, for much the same reason. However, the notion of special and differential treatment had been specifically recognized in the work programme of the Group (idem, paragraphs 39-40).

28. When the Informal Working Group met on 24-25 May 1988, it agreed on the following concerning broadening of the Agreement, without prejudice to further work in this area and to subsequent negotiating positions of individual delegations:

"Code coverage would normally result from individual Parties' own cost/benefit analyses, including in particular whether the additional procurement opportunities justify the additional costs of implementation - overall and on an entity-by-entity basis - and negotiations aiming at a balance of rights and obligations (overall and, possibly, by sector). Delegations would have to take into account a wide variety of differing constitutional, administrative, political and legal situations and traditions, and differences in development, financial and trade needs.

In considering techniques and modalities of negotiations on broadening as well as other relevant issues to be addressed in the second stage of the work programme, a number of additional elements might be appropriate and might need to be taken into account in considering one or more of the groups listed below.

*Bearing in mind that the provisions of Article III will apply to developing countries.
Group A: Central government entities, including those operating at regional and local levels.

Group B: Regional and local government entities:

(a) over which the central government could ensure compliance with obligations under the Code;

(b) over which the central government could not at present ensure compliance with obligations under the Code.

Group C: Other entities whose procurement policies are substantially controlled by, dependent on, or influenced by central, regional or local government:

(a) over which the central government could ensure compliance with obligations under the Code and which are engaged in:

(i) non-competitive activities;
(ii) competitive activities;

(b) over which the central government could not at present ensure compliance with obligations under the Code and which are engaged in:

(i) non-competitive activities;
(ii) competitive activities.

Group D: Other entities whose procurement policies are not substantially controlled by, dependent on, or influenced by, central, regional or local government, including cases where they are engaged in commercial activities.

Entities in Groups A, B and C may be the subject of negotiations on broadening.

Entities in Group D shall not be the subject of negotiations on broadening. The government should refrain from interference with transactions of these entities, including their procurement activities." (L/6411, Annex I)

29. The Group met again on 7-8 July 1988 to continue work on service contracts. The basis for discussions was provided by replies to a questionnaire to indicate possible problem areas in applying the Code to such contracts. Amongst issues discussed were the application of national treatment, the right of establishment, and the movement of labour. The meeting permitted useful clarifications to be made in respect of such technical issues as the applicability of service contracts, to the current price threshold, the tendering and other procedures that are applicable to procurement of goods. (idem)
30. The Group reverted to both broadening and service contracts on 4-6 October 1988. In the former case, it began the task of elaborating the appropriate approaches to expand the Code. The elements that are to be taken into account in this exercise are, inter alia:

(i) techniques and modalities of negotiations;
(ii) appropriateness of partial modifications or exemptions of Code provisions to accommodate a possible broadening; and
(iii) a mechanism to evaluate and - if necessary - adapt coverage to a new situation such as privatization.

31. These elements were addressed with reference to the situation of each of the entity groupings (A-D) identified at the May 1988 meeting (see above). A number of "non-papers" were tabled to assist the Group in these considerations. A number of factors were singled out as particularly important; these were (i) cost/benefit concerns; i.e. whether increased procurement opportunities justify additional costs of implementation; and (ii) the need for an overall balance of rights and obligations, also referred to as broad equivalence of concessions. To assist the next stage of the exercise, the secretariat has been requested to carry out the task of preparing a synthesis document to identify convergences of views expressed in both the non-papers and by oral statements at the meeting.

32. In the area of service contracts the Group reverted to some of the questions discussed before, notably the values of service procurements by governments, and in this context the question of refining the data both in respect of types of entities and types of services; problems concerning the calculation of contract values for threshold purposes; problems relating to technical specifications; and the question of goods content in service contracts. The Group agreed that further information should be presented, as well as clarifications of coverage in terms of entities and in terms of specific characteristics and nature of each type of service contracts. It was also agreed that the secretariat would carry out further work to assist the Group in its task but that, in recognition of the requests imposed on the secretariat in the area of broadening, this work would be deferred.

33. What has been referred to as "bid challenge system" could be an element of enforcement. Some have suggested that this would be an improvement to the Code. The Group was informed about how protest and dispute procedures in procurements operated in the United States, and about the draft EC directive commonly called the "Compliance Directive" (L/6411).

(c) Compilation and analysis of statistics

34. In response to the request made by the Group (see paragraph 3 above) the following is the additional information which exists at present.

35. The Committee on Government Procurement reverted to a number of questions concerning improved statistics, including the question of further
analysis and transparency, at its meeting on 7 October 1988. The following are the main problems:

(i) the question of a "uniform classification system to be determined by the Committee" (as required by the new Article VI:10) was discussed in detail. A number of suggestions were made and explanations of technical and practical problems were given. It was agreed that delegations look further into the possibility of agreeing on classifications based on the 2-digit, or possibly 4-digit, level of the Harmonized System. The matter would be reverted to at the next meeting;

(ii) the question of a uniform application of definition of origin (where the revised Article VI:10 stipulates that origin of product be used as the basis) was also discussed. One delegation considered uniformity in this respect to be a key element in the monitoring of obligations. It was agreed that members explain, if possible in writing, what rules of origin are used for (a) the implementation of Code obligations; and (b) the statistical reports. One Party noted that a new reporting basis would require major change in its present system of data collection. This delegation, as well as another delegation which was in a similar situation, were examining the problems involved.

36. The Committee decided that in order, inter alia, to ensure meaningful comparisons of statistics of different Parties, a proposed secretariat statistical analysis and circulation of summarized statistics be deferred until the questions mentioned above had been settled.