

Working Group on Transparency
in Government Procurement

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PROPOSAL FOR A WORK PLAN TO BUILD ON THE PROGRESS OF THE WORKING GROUP

Communication from the United States

The following communication, dated 26 September 2002, has been received from the Permanent Mission of the United States with the request that it be distributed to all Members.

Overview

1. The Working Group has made considerable progress since its establishment in 1996 toward fulfilling its mandate: *"to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement"*. It has examined extensively policies and practices related to transparency in government procurement. The breadth of the Working Group's consideration of these issues is reflected in the Secretariat's May 2002 *"Documents of the Working Group on Transparency in Government Procurement"* (WT/WGTGP/W/32). They include the following:

- Members made 34 submissions on a wide variety of specific issues.
- Members provided information on their national procedures and practices.
- UNCITRAL provided information on its *Model Law on Procurement of Goods, Construction and Services*.
- Intergovernmental organizations provided information on their transparency-related work.
- The Secretariat provided information on transparency-related provisions in existing international instruments on government procurement procedures and national practices.
- The Checklist of Issues has been repeatedly revised and is currently in its sixth iteration.
- The Working Group held 14 formal meetings to consider all of this information.

2. This study had laid the foundation for the substantial progress that the Working Group has made in developing elements of an agreement on transparency in government procurement. The United States makes this submission to offer an approach for the Working Group to build on this progress to complete its work by the Fifth Ministerial.

Benefits of a Transparent Government Procurement System

3. Transparent government procurement systems engender benefits not only for domestic and foreign suppliers, but also ultimately for the governments themselves and their citizens. The full disclosure of information is essential to a predictable and efficient government procurement process. The use of transparent and predictable procedures will help to ensure that governments obtain the greatest value for their money, resulting in the purchase of better quality goods and services and leading to more efficient use of public resources. This will enable Members to provide more social services, economic and social infrastructure and other public goods to their citizens. Transparent procurement systems will also provide an important tool for Members to combat corruption in public procurement.

4. Ensuring transparency of government procurement systems also has ramifications beyond the government procurement sector. Transparent and predictable procurement procedures are a critical element of good economic governance. They help build public confidence in the management of government affairs, establish a stable and predictable commercial and investment environment, encourage long-term business commitments and provide a solid foundation for sustained economic growth and development.

Objective of an Agreement

5. Every WTO Member conducts government procurement and in doing so follows its own procedures and practices. Some of these are formal requirements; others are informal or ad hoc; some are set out in writing; others are not transparent. Some circumscribe the authority of procuring entities; others give wide latitude to the procuring entities, which can affect the transparency of the procurement process.

6. A number of Members have used the *UNCITRAL Model Law on Procurement of Goods, Construction and Services* as the basic model for their procurement systems. Members also follow World Bank Guidelines (*Guidelines for Procurement under IBRD Loans and IDA Credits and the Guidelines for Selection and Employment of Consultants by the World Bank Borrowers*) in undertaking certain types of procurement.

7. While Members use a myriad of procurement procedures and practices, there is no common set of transparency provisions. Thus, the primary focus of the agreement should be to establish core transparency elements that suppliers throughout the world can be assured of finding in the procurement system of every Member.

8. An agreement on transparency in government procurement will be an important addition to the rules-based international trading system. Applying the principles of transparency that lie at the heart of the WTO to government procurement provides an opportunity for Members to extend and build-on their commitments to ensure the transparency of trade-related measures, as reflected in Article X of GATT 1994 and GATS Article III.

Completion of the Mandate of the Working Group

9. A multilateral agreement on transparency in government procurement does not need to be a complex undertaking, nor one that is overly burdensome, in order to accomplish its objective. The Doha Ministerial Declaration has narrowed its scope by limiting its parameters to "transparency aspects" and explicitly providing that an agreement will neither restrict domestic preferences nor require market access commitments.

10. Over the course of the next 12 months, leading up to the Fifth Ministerial, the task before the Working Group is to refine the extensive discussions that it has had on the potential elements of an agreement, as reflected in the Checklist of Issues, and to identify specific elements that are necessary to ensuring the transparency of government procurement procedures and practices. At this juncture, it is not necessary for the Working Group to decide how a particular element would be addressed in the agreement. In the Working Group's first post-Doha meeting in May, the Working Group informally began this process. For example, there appeared to be a general sense that publication of information on national legislation and procedures relating to government procurement is a necessary element of a transparent procurement system.

11. In carrying out this work, the United States suggests that the Working Group consider organizing the elements of an agreement into the following four categories of Elements:

1. General parameters of a potential agreement
2. Transparency of procurement systems
3. Transparency of specific procurements
4. Operational provisions to fulfill the objectives of a potential agreement

12. The Working Group should systematically over the next three to four meetings work through the issues identified in the Checklist of Issues and for each category decide the elements that may be appropriate for inclusion in a transparency agreement.

13. Some issues, such as the application of the WTO Dispute Settlement Understanding to a transparency agreement, may call for special consideration. The United States looks forward to making further contributions on these issues and engaging in discussions in the Working Group.

Conclusion

14. An agreement on transparency in government procurement is no less important now than it was when the Ministers added this issue to its agenda at the Singapore Ministerial. The predictability and certainty provided by a transparent rules-based government procurement system can complement other efforts to ensure the full integration of all Member economies into the global trading system. The United States believes that all Members have a shared interest in accelerating, rather than delaying, progress toward the creation of such an environment.
