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**Committee on Government Procurement**  
**Negotiations under Article XXIV:7 of the GPA 1994**  
**Comité des marchés publics**  
**Négociations au titre de l'article XXIV:7 de l'AMP 1994**  
**Comité de Contratación Pública**  
**Negociaciones en el marco del párrafo 7 del artículo XXIV**  
**del ACP 1994**

**CHECKLIST OF ISSUES RAISED IN INFORMAL CONSULTATIONS  
REGARDING MODALITIES FOR THE REVIEW OF THE  
AGREEMENT ON GOVERNMENT PROCUREMENT<sup>\*,\*\*</sup>**

*Revision*

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\* English only.

\*\* Pursuant to the relevant Decision of the Committee on Government Procurement ([GPA/CD/5](#) (16/11/2023)), this document (informal document symbol: gpa60) was derestricted on 8 November 2023.

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The following attempts to set out points made by Parties to the Agreement in the informal consultations held since February 1997 pursuant to the decision of the Committee in its 1996 Report to the Ministerial Conference that it would "undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7(b) and (c)" ([GPA/8](#), paragraph 22).

The list may not be exhaustive and will, of course, need to be amended and updated as further discussion develops.

## **A. AREAS TO BE CONSIDERED**

1. The point has been made that the key to the review lies with the issue of simplification and improvement of the Agreement and that, if this aspect were to be satisfactorily resolved, then the other two elements of the review would also largely have been addressed. In this connection, it has been suggested that an improved and simplified Agreement would be likely to result in a reduction in the number of exceptions to the Agreement and would therefore lead to a more uniform application. On the other hand, the point has been made that the work on all three elements of the review should be advanced simultaneously and in parallel. The concept of reciprocity had been at the basis of the rationale for the present coverage of the Agreement. Therefore, it could not reasonably be expected that a mere improvement and simplification of the Agreement would lead to the expansion of its coverage.

2. It has been stated that the elements of the review on the elimination of discriminatory measures and practices which distort open procurement and on the expansion of the coverage of the Agreement were linked in many respects. Since it might be difficult to make a distinction between these two aspects, future negotiations on the two issues should be held simultaneously.

3. It has also been stated that the discussion of the review item on discriminatory measures should not be made dependent on the discussion of the other two elements of the review.

### **1. Simplification and improvement of the Agreement**

#### **(a) General**

4. It has been emphasized that simplifying and providing greater flexibility to the procedures under the Agreement should not lead to a weakening of commitments and thus result in less open markets. Rather, simplification should aim at obtaining effective but more easily applicable disciplines and should improve the balance between the advantages of certain requirements and the administrative burden of complying with them. Compatibility between the concepts of simplification and effective disciplines should be secured. For example, any flexibility on the requirements on deadlines should be accompanied by the elaboration of objective criteria for providing sufficient time for bidding by domestic and foreign suppliers.

5. With regard to the Committee's stated aim that the review shall seek the expansion of membership by making the Agreement more accessible to non-Parties ([GPA/8](#)), the point has been made that improving and simplifying the procedural provisions of the Agreement would increase its appeal to non-Parties. Simplifying the Agreement would also help in promoting the common objective sought by the review of the GPA, of the Working Group on Transparency in Government Procurement and of the Working Party on GATS Rules which is to establish a set of rules and principles that could ultimately be adopted on a multilateral basis.

6. The point has been made that Parties should take into account the costs that may have to be borne by procuring entities and suppliers in adapting to new changes in the procedures under the Agreement which has been in force for less than two years. Simplification of the provisions should be limited to what is absolutely essential for the purposes of the efficiency of procurement regimes.

#### **(b) Enforcement and monitoring mechanisms**

7. The point has been made that an approach of providing greater flexibility and more general principles may result in the need for a re-examination of the mechanisms aimed at ensuring the effective enforcement of the Agreement. There was room for the improvement of the functioning of

the Agreement by increasing the effectiveness of the existing enforcement mechanisms that guaranteed the rights of suppliers. The suggestion has been made that Parties should consider to what extent Article XX on bid challenge procedures had been effective in achieving this objective. In addition to the bid challenge mechanism under Article XX and dispute settlement procedures between governments under Article XXII, independent enforcement agencies could be established in individual Parties to address allegations of violations of the principles of the Agreement by aggrieved suppliers or investigate and monitor the application of procurement rules and procedures on their own initiative since suppliers might often be reluctant to bring cases against procuring entities.

8. Regarding enforcement and monitoring mechanisms, a suggestion has been made to add new paragraphs 9 to 11 to Article XX concerning the establishment of independent authorities which would read as follows:

"9. With a view to ensuring effective implementation and operation of this Agreement at all levels, Parties undertake to establish an independent authority specialized in public procurement. This independent authority shall:

- serve as a contact point for the rapid, informal solution of problems encountered in gaining access to contracts;
- provide useful advice to contracting entities;
- have the power to intervene on its own initiative to check procurement practices in order to promote efficiency and to ensure that mandatory reporting requirements are complied with;
- be competent to receive any complaints from natural or legal persons concerning the application of this Agreement and competent also to lodge formal complaints or otherwise take administrative or judicial action against contracting entities in case of breach of this Agreement in the context of a procurement procedure;
- perform surveillance and monitoring tasks;
- promote the use of preventive mechanisms aiming to ensure that the market functions properly;
- have sufficient resources to perform its tasks effectively.

"10. Parties shall notify the Committee of the authorities existing or established in their respective jurisdictions. Parties shall make clear the relationship between the independent authority and the review body.

"11. Parties shall consider the establishment of special direct links between existing independent authorities providing for regular contacts and regular exchange of information with a view to giving rapid and adequate solutions to problems arising in the application of the Agreement and to generally improving the functioning of the Agreement."

9. With respect to the proposed new paragraphs 9 to 11, the following points have been made:

- the nature of the relationship between such independent authorities and authorities in charge of auditing public expenditure needed further clarification;
- the role of giving advice to the purchasing entities described in the first three indents of paragraph 9 and that of the enforcement and monitoring of applicable rules should be dissociated;
- individual countries could decide which authority should fulfil the task of enforcement and monitoring. This task could be entrusted to an existing body, for example to a court of auditors, and would not require the creation of new institutions.

10. A note addressing this issue, in particular in the light of the EC's own experience on the enforcement and monitoring mechanisms of public procurement rules, has been circulated in Job No. 3871.

11. The following have been mentioned as among the other mechanisms which could be envisaged to guarantee transparency of procurement proceedings and accountability of procurement agencies and to limit the scope for arbitrary dealings and discrimination in procurement practices: publication of a schedule of prices offered which would show whether the contract had been awarded to the lowest price bidder; and a declaration that all complaints, including anonymous complaints, would be investigated.

12. In this connection, a view has been expressed that a review of the operation of Article XX should be without prejudice to whether or not Parties should consider alternative enforcement mechanisms. Another view has been that a layer of obligations relating to enforcement and monitoring mechanisms additional to the challenge procedures of Article XX might deter non-Parties considering membership of the Agreement. Other views expressed on the matter have questioned the way in which independent mechanisms could operate in Parties with federal governments. On the other hand, the point has been made that independent enforcement mechanisms offered the possibility of arriving at rapid resolution of disputes and also avoiding the inconvenience of formal court proceedings. Provisions requiring the establishment of such mechanisms would provide an additional incentive to non-Parties to join the Agreement.

### **(c) Information technology**

#### **(i) General**

13. It has been suggested that, in accordance with the terms of Article XXIV:8, the Agreement should be adapted to take into account advances in the area of information technology since the conclusion of the Agreement.

14. In this connection, it has been suggested that the text of the Agreement should be amended to provide flexibility and to clarify any ambiguities with respect to the use of information technology.

15. With respect to the Canadian proposal on information technology (Job No. 3887), it has been stated that the consideration of specific changes to existing Articles would be premature before the Committee had had a full discussion of the role of information technology.

16. It has also been said that any modifications should be limited to allowing the use of information technology in parallel with the paper system currently in use.

17. The need to continue the information-gathering process in response to the revised questionnaire on information technology was referred to.<sup>1</sup>

18. It was also said that, in view of the objective of expanding the membership of the Agreement, technical cooperation could be provided to those countries that did not have the means to use information technology in government procurement.

#### **(ii) Non-discrimination**

19. It has been stated that information technology should be accommodated in such a way as to enhance rather than undermine the basic objectives of transparency and non-discrimination in the Agreement and not to put at a disadvantage the suppliers of actual or potential Parties less well-equipped in information technology or without adequate links to international networks. Concern has been expressed that, unless appropriate safeguards are established, the use of information technology in government procurement may lead to *de facto* discrimination against foreign suppliers. It has also been mentioned that the use of information technology may create or widen the gap

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<sup>1</sup> Responses to the revised questionnaire ([GPA/W/24](#)) were submitted by Norway ([GPA/W/24/Add.1](#)), Canada ([GPA/W/24/Add.2](#)), Korea ([GPA/W/24/Add.3](#)), Hong Kong, China ([GPA/W/24/Add.4](#)), the European Community ([GPA/W/24/Add.5](#)) and the United States ([GPA/W/24/Add.6](#)).

between entities and suppliers which can effectively operate in the information age, and those, in particular SMEs, which cannot, thus creating a competitive advantage in favour of the former group.

20. The point has been made that the non-discrimination aspect of the use of information technology should be considered against the background of the existing procedures and practices under the Agreement. The paper-based method of publication and other tendering procedures might also have some form of unequal impact on different suppliers. The discussion of this matter should focus on the relative discriminatory effects of introducing information technology. Attention has been drawn to the arguments put forward in section 1(c)(iii) below as to why electronic dissemination of tender information would be more effective in reaching all interested suppliers than paper-based methods.

21. The comment has been made that the Canadian proposal on information technology (Job No. 3887) did not treat the issue of non-discrimination satisfactorily. Any provisions on the use of information technology which would allow entities to favour only those suppliers who had access to information technology would be inconsistent with Articles VI:4 and VII:2 of the Agreement.

22. The point has also been made that fears that technical and content-related compatibility issues in connection with the use of information technology might lead to *de facto* discrimination against foreign suppliers were largely resolved through the use of the Internet. Nevertheless, Parties' willingness to accept electronic bids would proceed at different speeds because of considerations related to security of data transmission issues and feasibility for large and complex bids.

### **(iii) Publication requirements**

23. Some delegations have advocated or indicated their readiness to explore providing entities with a choice as to whether to use hard copy or information technology in all aspects of procurement practices, including tendering procedures and actual purchasing.

24. Suggestions have been made concerning the provisions of the Agreement relating to publication requirements (Article IX on invitation to participate regarding intended procurement; Article XI on time-limits for tendering and delivery; Article XVII on transparency; Article XVIII on information and review as regards obligations of entities); and Appendices II and III to reflect the practice of electronic publication of notices (Job Nos. 3887 and 5211). These are reproduced in Attachment 1 to this note.

25. In this connection, the view has been expressed that the provisions on the use of electronic publications should be set out as an option rather than as a requirement in the Agreement. The Agreement should not exclude the possibility of publishing in hard copy version. On the other hand, views have been expressed that the Agreement should allow Parties to review the need for continuing with paper-based publication, for example for advertising tenders in the area of advanced technological systems and information technology. Publication of information on tendering opportunities only through the use of electronic media should be sufficient to meet the relevant requirements under the Agreement.

26. It has been stated that increased transparency of procurement opportunities was one of the main benefits of the electronic dissemination of tender notices. The Internet permitted viewing of notices anywhere in the world, regardless of where those notices may have originated. It has been suggested that the Agreement should include provisions requiring Parties to provide, in the GPA Appendices, the addresses of any Internet sites that gave procurement opportunity information in their country. This would help suppliers from countries Parties to the Agreement to locate and easily access information on procurement opportunities that was currently published electronically. Parties should also update and supplement this information as necessary. On the other hand, a view has been expressed that providing addresses of Internet sites in the GPA Appendices should not be a requirement in the Agreement. In most countries, tender notices were authentic only in hard copy form published in a government gazette. With the present technology it was not possible to verify the date of appearance of the electronic version of tender notices on the Internet whereas there could be no problem in proving the date of publication of the hard copy form. Another suggestion on this matter has been that the WTO Home Page could be used to provide the addresses of sites with information on procurement opportunities in individual countries.

27. The point has been made that advances in information technology had the greatest potential for achieving efficiency gains in public procurement in the area of the publication of procurement opportunity information. Electronic publication would have the following benefits:

- the timeliness of dissemination of tender notices and documents to all suppliers irrespective of their location. Transmission of paper copies of voluminous documents by mail were subject to delays which varied depending on the distance. Suppliers saved time by receiving information of procurement opportunities on a real-time basis and by ordering tender documents instantaneously;
- the extension of the reach of dissemination of information to suppliers. The experience of Parties showed that the number of suppliers using electronic publications was substantially higher than those who subscribed to hard copy publications;
- the cost-effectiveness of obtaining information. The cost of subscription, downloading and printing of electronic publications was significantly lower than the cost of publishing and mailing documents in the paper format; in particular, those suppliers who may be interested in only a few specific tendering opportunities per year would not need to subscribe to numerous paper publications;
- the increased rapidity of obtaining information. Searching by word, the code number or the date of issue of notices for specific products or services in user-friendly versions of electronic publications was less time-consuming and costly than the process of scanning through and obtaining hard copy publications on procurement opportunity;
- the widening of the scope of accessible data. The establishment of links between tender notices and tender documents and any other information relevant to a procurement would widen the scope of the information available to suppliers. For example tender notices published in the electronic version of the US Commerce Business Daily had links to the US Federal Acquisition Virtual Library which provided policy guidance and information on current trends in procurement procedures as well as data on procurement legislation.

28. It has been suggested that, in order to ensure continued open access by all suppliers, Parties choosing to only utilize electronic publishing methods should use an electronic system that was accessible on the Internet. Alternatively, Parties could use other electronic means as long as they provided convenient and universal access through a single point of entry and were accessible to suppliers in GPA Parties at minimal or no cost.

29. In this connection, the view has been expressed that, while information on procurement opportunities could be stored in a decentralized manner, there should be a provision in the Agreement requiring Parties to guarantee access to the relevant information in their countries through a single point of entry.

30. It has been said that a requirement to publish tender notices on the Internet would discriminate against those Parties who did not have the necessary resources to maintain two parallel systems, especially if publications on the Internet were to be in a non-national language. In addition, a country that used a non-western alphabet would have the additional cost of maintaining electronic data systems in the characters of both alphabets.

31. In this connection, it has been mentioned that governments had been increasingly devolving the activities relating to information technology to private sector service providers which might imply that access to tender information and documentation would not be free of charge to suppliers. It has been suggested that Parties should have the flexibility to consider, having regard to overall policies, whether to charge a reasonable fee.

32. It has been suggested that Parties could be invited to provide addresses of any sites on the Internet that give information on procurement opportunities in their countries. There was also a need to examine how information was structured in national databases. Parties using information technology for tender notices were invited to describe their relevant experience. In this respect, it has also been mentioned that some national electronic tendering systems may not cover all procurement covered by the Agreement.

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**(iv) Electronic submission and receipt of tenders and other communications between the tenderer and the procuring entity**

33. Suggestions have been made concerning the provisions of the Agreement relating to submission of tenders (Article XIII:1 and Article IX:6) and to communications between tenderers and the procuring entity (Article X:4) to allow entities to require electronic submission of bids and to allow electronic means for other communications (Job Nos. 3887 and 5211 (1997) and Job No. 3842 (1998)). These are reproduced in Attachment 1 to this note.

34. The view has been expressed that it was premature to consider a requirement to provide all tender documents, in particular in the case of complicated works contracts, electronically on the Internet. Another view was that interested parties could be given incentives to offer on-line access to electronic versions of tender documents on the Internet, for example by reducing the required deadlines.

35. It has been mentioned that technical and content-related compatibility issues for the receipt of electronic bids could be resolved, particularly for routine transactions, through the use of the Internet. Widely available (and free) readers, such as the Adobe Acrobat Reader, would permit the sender and the recipient of a bid to be able to read and, if desired, print information in various word processing formats. Using the Internet, "fill-in-the-blanks" bids could be completed on-screen or downloaded and e-mailed by return to the procuring organization.

36. Also, a suggestion has been made that the GPA should not require entities to submit paper copies of tender confirmations.

37. It has also been said that, for suppliers other than of standardized and off-the-shelf products and services, electronic tendering could be more costly and time-consuming where tender documents were voluminous since the traditional methods of transmission were less costly than downloading and printing them.

38. Reference has also been made to legal and technical difficulties relating to the electronic submission of bids and transmission of documents between the tenderer and the procuring entity through public networks. In this connection, it has been suggested that the Agreement should contain provisions that address the use of electronic signatures. The UNCITRAL Model Law on International Commerce, particularly Articles 5-7 relating to the legal recognition of data messages, writings and signatures, could provide guidance to revising the GPA in these areas. It has been said that such issues as the confidentiality and security of data contents of tenders and the legal effects of electronic signatures required careful consideration.

**(v) Ease of access to databases and use of information tools**

39. It has been suggested that the ease of access to information sources (including establishing links between databases and ensuring interoperability) and use of information tools (including search devices and common nomenclatures) were some of the issues that should be addressed in this area.

40. With respect to ease of access to databases, it has been stated that databases generally differed in terms of their contents as well as their structure. The ease of use of information tools should be improved by harmonizing the presentation of information. This would also contribute to ensuring interoperability between the various systems. The full benefit of information technology could only be achieved if agreement on harmonized standards for coded information could be reached. This would facilitate the use of search devices to browse through the information contained in different databases. In this connection, it has also been stated that it would be necessary to develop tools that would make it possible to access databases in different languages. It has also been suggested that a harmonized multilingual procurement vocabulary system should be used to describe purchases, as has been done at European Community level with the CPV (Common Procurement Vocabulary). CPV attributed a nine-digit code to some 6,000 terms commonly used in the procurement process. The use of standard terms in the CPV made it easier for potential suppliers of goods and services to understand contract notices and to identify the type of procurement contracts that were of particular interest to them. The CPV also helped to establish procurement statistical databases. Furthermore, the use of multilingual CPV in the eleven official languages in the European



Union and of the standard forms provided in it had facilitated the translation of, at least, the most important elements of procurement notices.

41. With respect to ease of use of information tools, it has been said that access to essential procurement information would become more difficult because of the increase in the number of databases. A solution should be found whereby interested suppliers could search for information in a multitude of databases through a single search engine, for example one that could be developed jointly by the GPA Parties on the WTO website.

42. It has also been suggested that Parties should share information on their experience relating to the technical aspects of this matter.

#### **(vi) Deadlines**

43. Some delegations have advocated or indicated their readiness to explore reducing the minimum time-periods required in the various stages of the procurement process in order to improve the efficiency of the procurement process.

44. The point has been made that any reduction in time-periods should be linked to the time saved by using electronic means and should not lead to discrimination against distant suppliers.

45. It has also been stated that the rationale underlying the specific deadlines in the GPA 1994 should be carefully considered before attempting any revision of the relevant provisions. Some objective criteria would need to be developed in this respect in order to ensure equal opportunity to bid to all suppliers, foreign or domestic. It was also mentioned that the current deadlines had been set up to ensure that bidders were informed of the procuring opportunities well in advance of the time for submission of bids. The deadlines in the present Agreement had been extended to 40 days from the 30 days set out in the Tokyo Round Agreement on Government Procurement of 1979. Some countries voluntarily extended the deadlines to 50 days.

46. Suggestions have been made concerning the deadlines set out in the Agreement (Article XI) to take account of electronic tender and electronic bid receipt (Job Nos. 3887). These are reproduced in Attachment 1 to this note. On the other hand, the following points have been made to caution against any premature reduction in deadlines:

- while information technology advances certainly helped to shorten the time for submission, publication and dissemination of tender notices and tender documents, the time needed to prepare tenders was likely to remain the same in most cases. As long as submission by normal mail and electronic tools coexisted, it may be premature to allow entities using electronic transmission the advantage of shorter deadlines; however, the GPA Parties might consider accepting shorter deadlines for pilot projects or certain sectors which were especially suitable for electronic tendering;
- it may be premature to conclude that information technology could shorten tendering deadlines because the time gain arising from electronic transmission of documents could be relatively small compared to the total time needed for the preparation of responsive bids.

#### **(vii) New issues related to electronic commerce**

47. It has been stated that a wider use of electronic tools could put into question the traditional approach of government purchasing as it opened the way to full electronic tendering or electronic commerce between purchasers and suppliers. In addition, new electronic tools provided opportunities for purchasing entities to cooperate via the exchange of information, ideas and experiences. This option would require further consideration of data privacy and security aspects, interoperability of systems, and of legal questions such as the acceptance of digital signatures and electronic receipts. The traditional behaviour of contracting entities inviting suppliers to tender could be put into question by new technological opportunities which would facilitate, for example, electronic qualification procedures, tendering of framework contracts and the selection of off-the-shelf products from electronic catalogues.

#### **(d) Other substantive provisions of the Agreement**

48. The desirability of simplifying some of the substantive rules of the Agreement and providing greater flexibility where possible under those rules has been widely stressed. It was suggested that, in doing this, Parties should consider to what extent the provisions of the current Agreement actually contributed towards achieving its objectives.

49. It has been suggested that consideration might be given to whether some provisions of the Agreement could be expressed in terms of more general principles, which were already implicit in the Agreement.

50. The following areas where improvements might be considered were mentioned:

- providing further clarity in the provisions relating to some areas of tendering procedures;
- providing flexibility in the procedures on the use of a notice of planned procurement in Article IX:3;
- providing flexibility in open and selective tendering procedures;
- providing further flexibility in the procedures in Articles XIV and XV;
- date procurement technologies such as purchasing from electronic catalogues;
- adapting the contents of specific provisions to take account of new phenomena (partnerships between private and public sectors, multiplication of Build Operate Transfer (BOT) projects), which were difficult to classify under the structure of the current Agreement. On the other hand, a view has been expressed cautioning against any extension of the scope of the Agreement involving these types of phenomena;
- aligning the provisions of Article XXIII on Exceptions to the Agreement to the relevant provisions under the GATT.

#### **(e) Statistical reporting**

##### **(i) General**

51. It has been said that statistical reporting is an area where simplification and streamlining of requirements should be considered. The statistical requirements under the Agreement were unduly complex, time-consuming, burdensome on both Parties and individuals and costly, notably because of the expansion of the coverage of the new Agreement. They were seen to be disproportionate to information to be derived from the statistics and in terms of the actual benefits to individual purchasers and suppliers. On the other hand, the point has been made that statistical reporting was an essential tool for enhancing transparency and monitoring compliance by Parties with the obligations of the Agreement. Moreover, statistical reporting provided a useful information basis to suppliers and purchasers on the functioning and development of public procurement markets. In any amendment of the existing requirements, Parties should try to strike a balance between the advantages of having less onerous requirements and the disadvantages of *de facto* providing for less transparency.

52. Non-papers on this topic have been circulated as Job Nos. 5212 (in 1997), 3246, 3855 and 3869 (in 1998).

##### **(ii) Creating greater flexibility in GPA statistical reporting**

53. It has been suggested that, in order to help reduce the administrative burden on Parties in collecting statistical data and producing reports to the Committee on Government Procurement, the Agreement should permit greater flexibility in terms of the manner in which statistical data were reported. Increased flexibility would allow Parties to submit reports that more closely conformed to

each Party's domestic procurement reporting practices for collecting and reporting public procurement statistics, thereby reducing the administrative burden of preparing reports. Areas in which increased reporting flexibility might be considered included:

- permitting Parties to submit GPA statistical reports on a fiscal rather than a calendar year basis; or
- allowing Parties to report aggregate annual obligations per contract rather than the total value of contracts awarded, considering that the duration of many contracts was longer than one year.

54. It has also been suggested that Parties should explore further flexibility in the reporting of statistics for Annex 2 entities based on experience during the first years of implementation of the GPA. Given the decentralized nature of these procurement systems for many Parties, consideration could be given to not requiring a specific format for these statistics.

55. The point has been made that any measures permitting variation or flexibility in statistical reporting, however, should ensure a sufficient minimum level of statistical reporting by all Parties. Parties must continue to submit statistical data that are comparable in scope and breadth.

56. Finally, it has been suggested that Parties wishing to vary the manner in which they report statistical data to the Committee under the Agreement should be required to provide written notification to the Committee, and, in the absence of any objection within 30 days, the variance would become effective.

### **(iii) Statistics on the estimated value of contracts awarded (Article XIX:5, subparagraph (a))**

57. The point has been made that the Committee had so far not devised any method for estimation in accordance with the provisions of Article XIX:5, subparagraph (a) which required entities listed in Annex 1, i.e. central government, to report on the estimated value of contracts awarded both above and below the threshold value. Until a proper method for such estimation was prescribed, both with respect to reliability and efficiency, reporting according to this provision would not be consistent between Parties. The relevant provisions of Article XIX:5(a) should be discarded or, alternatively, be amended to cover only procurement above the threshold value for Annex 1 entities. On the other hand, it has been said that this type of statistics was necessary for the assessment of Parties' compliance with the Agreement.

58. Another suggestion has been that the Agreement should include an exception for procurements of very small value (a *de minimis* exception) to the Article XIX:5 requirements that statistical data for Annex 1 entities must be provided for tenders below GPA thresholds. Such a *de minimis* exception would eliminate Annex 1 reporting requirements for procurements below an agreed-upon amount. This would be likely to ease the administrative burden on Parties, as many Parties may not ordinarily collect detailed statistical information on small-value procurements. Moreover, data on these smaller procurements tended to be less relevant to the underlying purposes for reporting statistical information under the Agreement, including the aim to achieve greater transparency and also to further GPA compliance monitoring efforts.

### **(iv) Uniform classification systems (Article XIX:5, subparagraph (b))**

59. It has been suggested that the classification for statistical reporting should be done by standard customs classification, CPV classification or similar widely used standards. As most contracts covered several different products, a uniform and efficient method for dividing contract value according to different product categories would provide enhanced consistency of reported procurement. It has also been said that Parties should be allowed to report statistics in other types of nomenclatures than that established under the GPA if the reporting was done only at the two-digit level (major category groups) accompanied by a description of those groups.

60. With regard to uniform classification systems, the point has also been made that, for the time being, it was very difficult to provide statistical reports based on the classification systems adopted for goods and services (the 26 product categories and the UNCPC) because no table of

correspondence with the Common Procurement Vocabulary (CPV) existed. But this situation should soon disappear with the publication of a new CPV in 1998 and the possible establishment of a table of correspondence between the CPV and the other two uniform classifications systems.

**(v) Contracts awarded under limited tendering procedures (Article XIX:5, subparagraph (c))**

61. With regard to statistics relating to categories of entities in Annexes 1, 2 and 3 falling under each of the cases of limited tendering permitted under Article XV, the point has been made that the obligation to report on procurement by each procedure seemed to be too burdensome. Under ordinary circumstances, the share of total procurement accounted for by limited tendering procedures would be rather low. In any event, the information provided under this provision was inadequate in that it did not provide elucidation of the legality of the application of the limited tendering procedure employed in each case. It has been suggested that this provision should be simplified by limiting the requirement to the provision of statistics on the number and the total value of contracts awarded in all cases where limited tendering was used, rather than having a breakdown under each case in which limited tendering was permitted under Article XV. This would also enable the protection of the confidentiality of commercially sensitive information.

62. Another suggestion has been to replace this provision by a provision allowing Parties to request additional information with respect to specific contract awards under limited tendering procedures in any other Party.

**(vi) Statistical reporting of derogations (Article XIX:5, subparagraph (d))**

63. It has been suggested that there should be no requirement to report procurement under the derogations to the Agreement referred to in Article XIX:5(d). The following have been mentioned as reasons for the deletion of subparagraph (d): the provision was difficult to understand for those who were unaware of the context of derogations and was also difficult to comply with and monitor; and the advantages of such publication of such information were limited.

64. In this connection, it has also been said that, if such reporting requirements were to be continued, Parties should reach a common understanding on what was meant by the term "derogations" for the purposes of statistical reporting. It has also been stated that the provision of this type of statistics was essential for transparency purposes.

**(vii) Reporting in national currency**

65. The point has been made that it had been the practice under the GATT Agreement on Government Procurement to report statistics based on Special Drawing Rights (SDRs). Permitting GPA Parties to submit statistical reports in national currencies rather than SDRs would help ease the administrative burden on Parties of converting data into SDRs. In fact, Parties might find statistical data prepared in national currencies to be more useful than information provided in SDRs. Parties should list a conversion rate into SDRs in their statistical reports. In this connection, the comment has been made that statistical reports should be comparable for each Party over time and between Parties. Computer programs were now available for the conversion of values expressed in national currencies into SDRs.

**(viii) Additional areas where statistical reporting may be useful**

66. The point has been made that Parties were not currently required to report to the Committee on the total amount of government procurement (both GPA and non-GPA) taking place under each of the Annexes. This was an area where statistical reporting would be useful, but would only slightly increase administrative demands on Parties.

**(ix) Encouraging timely reporting of statistical data**

67. The point has been made that the Agreement currently only required that each Party submit procurement statistics on an annual basis and did not set a deadline for the submission of statistical information. Under the GATT Agreement on Government Procurement, which also did not contain a deadline for the submission of statistical reports, it often took as long as two years following the end

of a reporting period for Parties to submit statistical reports. It has been suggested that, with the objective of ensuring that statistical data were disseminated in a fashion that preserved their usefulness, GPA Parties should be encouraged to submit reports on a timely basis. It has been said that twelve months following the end of a Party's reporting cycle would generally be a reasonable period of time for submission of statistical data.

**(x) The use of information and communication technology**

68. The point has been made that more complete statistical data on public procurement could be obtained by utilizing the advantages offered by Information and Communication Technology (ICT). The suggestion has been made that Parties would be able to apply, under the conditions specified for, a general waiver from all the statistical reporting requirements, or a more specific waiver which only covered, for example, Annex 1 entities. This waiver should only be granted if certain conditions were met by the alternative system being used. In particular, Parties should be required to operate a system which enabled interested parties to access data on awarded contracts through one single entry point. Furthermore, the data provided should include information on at least the following: price information (provided confidentiality of commercially sensitive information was ensured); type of contract authorities; contractor's country (or subcontractor); number of offers received; type of contract or categories of products or services; award procedure chosen (open or limited); date of award of contract; and date of publication of tender notice.

**(xi) Other issues relating to statistical reporting requirements**

69. In order to ensure the effective implementation of the requirements in Article XIX:5, the following suggestions have also been made:

- the information content of statistical reporting requirements should be uniform among Annexes 1-3;
- a commonly accepted format for statistical reporting should be developed;
- statistics should be submitted in a WTO language;
- the possibility of using statistics on total public procurement from national accounts should be considered.

**(f) Article-by-Article review of the Agreement**

**Article I**

***paragraph 1***

70. It has been suggested that footnote 1, which contained wording relevant to the interpretation of the obligations under the Agreement, should be made part of the main text of paragraph 1. This would specify the coverage of the Agreement in a more direct way. In this connection, the point has been made that the term "as specified in Appendix I" reflected the negotiated understanding concerning the reciprocity-based coverage of the Annexes to Appendix I.

***paragraph 2***

71. It has been suggested that this paragraph should also include a reference to new forms of procurement under "Build Operate and Transfer" (BOT) operations and joint ventures.

***paragraph 3***

72. The point has been made that there was scope for improvement and clarification in the language of this paragraph.

***paragraph 4***

73. It has been suggested that the provisions of the Agreement on valuation of contracts should take account of the use of new technologies in procurement which allowed procuring entities to slice up contracts. Individual contracts with values below the relevant threshold values resulting from such practices should also be subjected to the Agreement so as not to limit its coverage.

74. Suggestions have also been made that the review of Article I should be taken up with Appendix I and that Appendix I should be reviewed on the basis of a negative list approach.

## **Article II**

75. It has been said that purchasers in the private sector had the practice of maintaining open running contracts with several suppliers instead of awarding a contract to a single supplier. A master contract signed initially with several suppliers did not specify a value. Purchasers subsequently proceeded with the procurement by ordering from electronic catalogues. With the application of information technology, government entities might use this method of purchasing more commonly. This might present some ambiguity in the valuation of contracts under the Agreement.

### ***paragraph 1***

76. It has been suggested that footnote 2 be amended to read:

"This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of the publication of the notice in accordance with Article IX and at the time of first contact with supplier in the case of limited tendering."

77. It has also been suggested that the language of footnote 2 should be aligned with that of Article I:4 on threshold values.

## **Article III**

### ***paragraph 2, subparagraph (a)***

78. The point has been made the term "foreign affiliation or ownership" seemed to apply both to Parties and non-Parties to the Agreement. It has been suggested that the consistency of the scope of this provision with that of Article III, paragraph 1, should be reviewed. In this connection, the point has also been made that certain Parties treated an established supplier as a domestic supplier regardless of its affiliation or ownership.

## **Article IV**

79. It has been suggested that the issue of rules of origin of services should be taken up in the discussion concerning the extension of the Agreement to services.

## **Article V**

80. It has been suggested that Article V on Special and Differential Treatment for Developing Countries should be updated, for example by providing further flexibility in the evaluation of offers from developing countries with respect to non-discriminatory treatment and in the application of the procedural provisions. The issue of granting non-reciprocal access to developing countries to procurement markets of Parties might be among the areas that could be explored. The provisions should also be improved to take into account the specific interests of developing countries and to give developing countries additional incentives to join the Agreement.

## **Article VI**

### ***paragraph 1, subparagraphs (a) and (b)***

81. It has been suggested that there should be a hierarchy between paragraphs (a) and (b) since the provisions of subparagraph (a) should be the rule and those of subparagraph (b) the exception.

**paragraph 3**

82. A view has been expressed that the prohibition in this paragraph to require or refer to a particular trademark or trade name did not take into account the realities of procurement practice. Another view expressed has been that the underlying principle was important and should be kept.

**(g) Improving the structure of the Agreement**

83. It has been suggested that the structure and the presentation of the Agreement should be improved *à droit constant* in order to render it more logical and easy to follow by entities and suppliers. This could be achieved by rearranging the provisions so that they more closely followed the normal process of public purchasing; grouping the provisions in accordance with their purposes in order to bring the structure of the GPA more into line with the practice followed in other WTO agreements; removing provisions whose applicability had expired, for example those relating to the entry into force of the WTO and transitional periods in Article XXIV:3(a), (b), (d) and (e); and shortening certain Articles by subdividing them into several Articles. In connection with Article XXIV:3(a), it has been suggested that it should be retained as a historical record in order to avoid any possible misunderstandings in respect of Korea's transitional arrangements and the beginning of its implementation of the decision on notification of threshold values in national currencies.

84. A new structure for the GPA that has been suggested in the document circulated as Job No. 6437 is reproduced in Attachment 2 to the present note.

**(h) Appendices to the Agreement**

85. It has been suggested that Appendix I to the Agreement might benefit from simplification, including the possibility of presenting Annexes in the form of negative lists, starting with Annex 1. The Committee could define the general principles that would guide the Parties in determining which entities should be excluded from the coverage of the Agreement, for example for national security reasons. This would also have the effect of reducing the residual exceptions and derogations under the General Notes to Appendix I of individual Parties.

86. It has been stated that it was desirable to maintain the presentation of the Annexes in the form of positive lists for the overall consistency of Annexes. While it might be feasible to present Annexes 1 and 2 in the form of negative lists, entities in Annex 3 could only be listed in the form of a positive list. In addition, Annex 4 could be presented as a negative list only after the uniform extension of the coverage of the Agreement in the area of services. In this connection, the point has also been made that Parties had the obligation to ensure that all the entities that had been specified in Appendix I complied with the requirements under the Agreement. A negative list approach could raise certain difficulties for Parties in this respect.

**2. Elimination of discriminatory measures and practices which distort open procurement****(a) General**

87. The point has been made that this element has prime importance for the review and that priority should be given to this review item. Discriminatory measures and practices which distorted open procurement were incompatible with the objectives of the Agreement and represented a serious derogation from the WTO principles of non-discrimination which were also enshrined in Article III of the Agreement.

88. It has been suggested that, under this element of the review, consideration could be given to:

- circumscription of derogations for small business and other set-aside programmes to provide an acceptable level of security of access to suppliers from all Parties;
- elimination of current reciprocity-based exceptions and derogations in the coverage of the Agreement;



- establishment of a mutually-agreed coverage of services.

89. With respect to set-aside programmes and other preferential policies, the suggestion has been made that the review should address the establishment of national self-monitoring mechanisms whereby individual Parties would commit themselves to review domestically and periodically whether the national programmes of this nature contributed towards meeting their vowed objectives and, if so, how effective they were in doing so, with a view to examining the scope for their elimination in the long term. On the other hand, the view has been expressed that nothing should be done to legitimize set-asides and other discriminatory programmes which were presently reflected in the schedules of Parties as exceptions or reservations and to which some Parties had responded in their schedules. Providing a national review mechanism in the Agreement itself might imply that the underlying policy objectives were deemed to be justified and that the programmes could be continued as long as they met their specific objectives. The aim of the review of derogations should be to explore ways of phasing them out as prescribed under Article XXIV:7(c). The ultimate aim should be to remove all discriminatory measures and to subject all procurement under the Agreement to the MFN and national treatment principles.

90. It has been stated that the balance of coverage that Parties had sought with other Parties in the negotiation of the Agreement had led to discriminatory provisions in their respective Appendices. The General Notes of Parties contained provisions excluding certain procurement from the coverage of the Agreement for domestic legal grounds. The view has been expressed that the Agreement did not provide for the maintenance of exceptions to Article III. However, it was an in-built principle of the Agreement that opening up trade was subject to negotiations between Parties and was not granted automatically. In this respect, it was said that negotiations on the elimination of discriminatory measures should be held both bilaterally and in the context of the Committee. The view has also been expressed that the work on drawing up Appendix I in the form of negative lists would also contribute towards elimination of discriminatory measures. Whereas the list of discriminatory provisions in the Appendices with respect to the "national treatment" standard could be reduced, discriminatory provisions with respect to the MFN standard might need to continue to exist in order to maintain the balance of coverage with respect to those Parties whose offers were less than comprehensive. Moreover, Parties might have to retain the possibility of introducing discriminatory provisions with respect to the MFN standard in negotiations with an acceding country as an incentive to enhance the coverage of its offer.

91. In this connection, a suggestion has been made that, as a first step, Parties who maintained discriminatory provisions should explain the reasons for maintaining such provisions, any plans for removing these provisions and, if they had no such plans currently, the circumstances under which they were prepared to remove them. The note by the Secretariat on the types of discriminatory provisions in the Appendices which was circulated on 31 October 1997 (document with footer 'gpa38') could form the basis of such a discussion.

#### **(b) Mutually agreed coverage of services**

92. The point has been made that, while establishment of a mutually agreed coverage of services would have the effect of eliminating reciprocity conditions in various Parties, it was essential that Parties conducted negotiations in this area on the basis of the most-favoured-nation principle.

93. It has been stated that the current coverage of services in the Agreement was characterized by its diversity with respect to both the specific sectors covered by each Party as well as the overall level of services covered by each Party. It was the outcome of a perceived need for reciprocity in this area because of the divergences in the levels of coverage offered by Parties in the negotiations. Future negotiations should aim at a uniform level of coverage among all Parties, at least in terms of the quality of the coverage of services.

94. The view has been expressed that reciprocity-based services coverage should be eliminated but only on the basis of all Parties covering an approximately uniform level of services on a mutually agreed basis. On this point, another view has been that the discriminatory provisions were the result of the pre-existing reciprocal arrangements which had not been plurilateralized, or of perceived imbalances in the commitments by Parties. Rather than seeking such a linkage, which might not produce the expected outcome, Parties should keep an open mind in carrying forward the mandate of improving the coverage of services under the Agreement.



95. With regard to the modalities for negotiations in this area the following points have been made:

- the element of the review concerning the elimination of discriminatory measures and practices was independent of that on the expansion of coverage. On the other hand, the view has been expressed that the two elements would overlap and that the review should address not only the elimination of discriminatory measures and practices but also the expansion of coverage;
- the review should be initiated by simplification and elimination of derogations in Annex 4 in Appendix I of individual Parties;
- in order to assist the work on the review of derogations in the area of services, the Secretariat should prepare an analysis of services presently covered by each Party under the GPA. The identification of the services not presently covered, either by some or all Parties, could provide the basis for discussion and development of priorities for extension of coverage;
- differing views have been expressed concerning the extent to which the work on this element should take its cue from that in the Working Party on GATS Rules.

### **3. Expansion of the coverage of the Agreement**

96. It has been suggested that the coverage of the Agreement could be expanded with a view to achieving a balance of market access commitments among Parties. For this purpose, the following specific areas that might be addressed have been suggested:

- Identification of potential sectors for extended coverage. Reference was made to include the telecommunications, transportation and steel sectors. In response to this suggestion, the appropriateness of focusing work on the expansion of coverage on the telecommunications and transportation sectors has been questioned since many countries had made significant progress towards privatization in these sectors. It has been suggested that the review relating to this element should focus on the elimination of the derogations from coverage in some other sectors existing in Appendix I of Parties. On the other hand, the point has been made that the process of privatization had not been significant in all countries and that a large number of public entities operating in the telecommunications sector remained outside the coverage of the Agreement.
- In connection with privatization the point has been made that, rather than adopting a sector-based approach, work might focus on the relationship between entities and government control. The terms of Article XXIV:6(b) relating to the withdrawal of an entity from Appendix I on the grounds of removal of government control or influence did not give adequate guidance in this respect. In order to determine the scope for expanding the number of covered entities, Parties should examine the policies by which governments exerted control or influence over entities. Another view has been that the present provisions reflected the existence of a multitude of configurations with respect to the relationships between different government entities and the amount of control that could be exerted over them. By drawing up a more precise definition of how to treat privatization-type situations, Parties might fail to take into account all types of government ownership or control and any relevant developments in the future.
- Further expansion of the coverage of services in the Agreement. The suggestion has been made that the review work in this area should be initiated by identifying the sectors of common interest to Parties based on domestic supplier surveys. On the other hand, the point has been made that, while certain sectors were not included in the scope of the Agreement, the provisions of the Agreement did not exclude the expansion of its scope to any additional sectors. Rather than defining the sectors that could be included horizontally within the scope of the Agreement, the extension of coverage should be handled, for the time being, through bilateral agreements. Another view was that, while negotiations on specific sectors might have to be carried out bilaterally, Parties should identify the specific sectors to be negotiated in a plurilateral context. Parties should seek

a high level of commitment in terms of coverage and not the lowest common denominator.

- Lowering of the threshold values applicable to certain Parties. In response to this suggestion, the point has been made that, with the present threshold levels, Parties with larger procurement markets subjected a greater proportion of their overall procurement to the Agreement. The impact of thresholds on the scope of the commitments of individual Parties would need to be taken into account in considering the overall balance that had been struck under the Agreement between various Parties. On the other hand, the view has been expressed that such an approach would neither be procedurally feasible nor equitable. The suggestion was made that the Agreement should include provisions setting out uniform levels of thresholds applicable automatically to all Parties and independent of the size of their procurement markets and that Parties should no longer have the possibility of applying differential threshold levels.

97. It has been stated that expansion of the coverage of the Agreement would require significant preparatory work. It was also stated that any further expansion of the existing coverage of the Agreement at the sub-central levels of government would be dependent on progress in the simplification and improvement of the provisions of the current Agreement.

98. A view has been expressed stating that there was a trade-off between the objective of increasing the membership of the Agreement and the burden that wider commitments might incur for the acceding countries. Another view has been that an improved coverage might be an incentive to those countries that sought increased market access to join the Agreement.

99. In addition, the need to obtain adequate experience with the domestic implementation of the Agreement before expansion of its coverage has been referred to.

## **B. INSTITUTIONAL/PROCEDURAL POINTS**

### **1. Work on government procurement in other WTO fora**

100. It has been suggested that, in the process of the review of the Agreement, Parties should take account of the work on government procurement in the Working Group on Transparency in Government Procurement and in the Working Party on GATS Rules.<sup>2</sup> The point has also been made that, while the level of obligations sought under each forum may not necessarily be the same, the overall outcome of work in these fora should be coherent and consistent. However, the review of the Agreement should not be delayed by the pace of other discussions.

### **2. Institutional arrangements for the review**

101. The discussion of the review in 1997 has been carried out mainly in informal consultations. One delegation has suggested that an informal group should be established to conduct the work on the review of the Agreement and that expert groups might be set up to handle specific topics such as information technology, simplification of statistical reporting, etc.

### **3. Participation of WTO Members in the review**

102. It was noted that an objective of the review was the expansion of the membership of the Agreement. The review should serve the purpose of making the Agreement more attractive to other WTO Members as well as making accession of other WTO Members, including developing countries, easier. For this purpose, interested WTO Members should be given the opportunity to participate actively in the Committee's discussions on the review of the Agreement by becoming observers to the Committee in accordance with the Committee's Decision on Procedures for Participation of Observers ([GPA/1](#)).

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<sup>2</sup> The most recent reports of the Working Group on Transparency in Government Procurement and the Working Party on GATS Rules were circulated respectively in documents [WT/WGTGP/M/5](#) and [S/WPGR/M/18](#).

103. As agreed by the Committee at its February 1997 meeting, the Chairman sent a communication to the WTO Members, through the Chairman of the General Council, drawing the attention of WTO Members, as well as governments which are in the process of acceding to the WTO, to the review and inviting them to participate as observers in the meetings of the Committee in accordance with the Committee's Decision on the Participation of Observers ([WT/L/206](#)).

#### **4. Next steps**

104. During the informal consultations held on 25 June 1998, the Committee held informal consultations regarding a time-frame for the negotiations under Article XXIV:7 and the overall work programme that should be envisaged within that time-frame. In the light of those consultations, the Committee agreed to proceed in accordance with the following proposals by the Chair, the text of which incorporates suggestions by delegations agreed to by the Committee:

"We have two sets of points on which the Group should decide. One is the time-frame for the negotiations under Article XXIV:7 and the overall work programme that should be envisaged within this time-frame and the other is the more immediate issue of the work that should be envisaged for the Group's next meeting.

"On the first of these questions, I sense a widespread view that we should aim to complete the negotiations, at least in respect of the simplification and improvement of the Agreement, by the third WTO Ministerial to be held at the end of next year with a view to, in particular, increasing the attractiveness of the Agreement to new members.

"If this is to be done, we would need to reserve the whole of the fall of next year to an intensive negotiating process. This, in turn, would require that by the summer of next year there would be in existence a document, reflecting the outstanding proposals, that could constitute the basis for these negotiations. The preparation of such a document would require that all the proposals and suggestions for improvement of the text would have been thoroughly discussed and digested by that time. In order for this to be done, we might wish to set a target date of the end of April next year for the tabling of all such proposals and suggestions – without, of course, prejudice to the right of participants to put forward at a later date modified or additional proposals where necessary.

"To sum up therefore I would suggest the following key elements of a timetable and work programme:

- The tabling of suggestions and proposals no later than the end of April 1999.
- The preparation of a document reflecting all outstanding proposals and suggestions, as a basis for the final negotiating phase, no later than the summer of 1999. I would, of course, hope that in the course of the review and discussion of the proposals and suggestions that would already have been undertaken by that time, a considerable measure of agreement would already have been reached on many points and that the number of outstanding points left for the final negotiating phase would be kept to a manageable minimum.
- A target of the third WTO Ministerial for the completion of the negotiations, at least on the simplification and improvement of the Agreement.

"We would in parallel continue work on the other elements of the negotiations, namely on the elimination of discriminatory measures and practices which distort open procurement and the expansion of the coverage of the Agreement. We will revert at our next meeting to the timetable and work programme for these parts of the negotiations. To the extent that the objective of the elimination of discriminatory measures could be achieved through modifications to the Agreement itself, this work would also have the target date of the third Ministerial Meeting.

"If this way of proceeding were to be acceptable to you, we would need to give some thought to the sort of meeting schedule that should be envisaged for the remainder of this year and for next year. My own suggestion would be that you might consider two meetings in the fall of this year (our October meeting already scheduled and maybe one in mid-December), and three meetings in the first part of next year (for example February, May and July). In the fall period of 1999, we would need to envisage a semi-continuous process of negotiation, i.e. the Group would need to be on call for the whole period.

"WTO Members, not parties to the GPA, and other observer governments to the GPA would be invited to participate fully in the work, it being understood that the final decision on the outcome would remain with Parties to the GPA.

"As regards the second issue that I mentioned, namely the specific work programme for our next meeting in October, we have already agreed:

- to revert once more to the issues of information technology and statistical reporting;
- to revert to the issue of monitoring and enforcement, on which the Community presented a paper today;
- furthermore, we have been advised to expect a paper from the Community on the issue of procurement methods;
- we have also agreed that we will continue our examination of Articles I through VI and take up Articles VII through XV. In this regard, I encourage participants to put forward drafting proposals in advance;
- using the Secretariat note on the types of discriminatory provisions in the Appendices, we will discuss the reasons for the maintenance of such provisions, any plans for their removal and what is needed for their removal;
- coverage of services.

"Of course, delegations remain free to put forward proposals or suggestions on any of the other issues before us and I would urge them to do so.

"In order to assist this further work, the Secretariat will once more update the Checklist of Issues. In addition, we will revert at the next meeting to the paper proposed by Canada for a text of the Agreement reflecting proposed changes."

**ATTACHMENT 1****INFORMATION TECHNOLOGY***Suggested Modifications to the Agreement****Publishing methods***

## Alternative 1:

- No wording changes to Articles IX, XI, XVII and XVIII.
- Parties agree to accept modifications to Appendices II and III to delete paper publications and replace with electronic publications, where the electronic publication is:
  - on the Internet or in one location; and
  - accessible worldwide by telephone.

## Alternative 2:

- Add a footnote to the Agreement defining "publication" to include either electronic or paper publication of notices. The definition would include the requirements in Alternative 1 above, where electronic publication is:
  - on the Internet or in one location; and
  - is accessible worldwide by telephone.
- Parties would agree to accept modifications to Appendices II and III to delete paper publications and replace with electronic publications.

In commenting on these suggestions, it has been suggested that all GPA Parties should include information in their Appendices II (and III) to the GPA on relevant electronic tender databases as well as information on access to these bases. This information should be in addition to information on traditional publishing methods (until the time comes for these to be replaced). This requirement could be made clear by means of footnotes to the relevant Articles of the Agreement defining publication as including both electronic and paper-based publication of notices.

Support has been expressed for Alternative 2.

***Submission of tenders***

- Amend Article XIII:1(a):
  - to add "electronic means" to the list of possible methods of receiving bids (i.e. telex, telegram and facsimile) that are already listed;
  - to delete the phrase "or by mail" in the first sentence; and
  - to delete the sentence "The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile".
- Add a provision to Article XIII to indicate that the means for submitting tenders can be specified by the procuring entity, provided such means shall not reduce access by foreign and domestic suppliers.
- Modify Article IX:6 to obligate the procuring entity to include in the notice the means by which bids may be submitted.

Another suggestion has been that a definition of the term "writing" should be incorporated in Article XIII:1(a) which would read:

"The term "writing" as used in this Agreement is to be understood to include any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information."

In commenting on these suggestions, it has been suggested that the term "electronic means" should be added to the list of possible methods for receiving bids. Until a satisfactory solution has been reached regarding electronic signatures, the confirmation requirement by mail, etc. must be maintained, bearing in mind the general fundamental principles mentioned above.

***Communications between tenderers and the procuring entity***

- Modify Article X:4 to add "electronic means, including e-mail" to the list of ways (e.g. telex, telegram and facsimile) that suppliers may use to request to participate in selective tendering.
- Add to Article X the provision that the means of communication can be specified by the procuring entity.
- Modify Article IX:6 to obligate the procuring entity to include in the notice of proposed procurement the means by which requests to participate will be accepted.

In commenting on these suggestions, it has been suggested that Article X:4 should be modified by adding: "electronic means, including electronic mail" to the list of methods available to suppliers for requests to participate in selective tendering; and that Article IX:6 should be modified to obligate the procuring entity to include in the notice the means by which bids may be submitted in addition to paper-based tenders.

***Deadlines***

Alternative 1:

- Remove all of the "deadlines" identified in Article XI.
- Modify Article XI:1(a) to delete the words "by mail" from the last sentence.

Alternative 2:

- Modify Article XI:3 so that when electronic tendering is used, all periods referred to in Article XI:2 may be reduced to a minimum of 15 days.
- Modify Article XI:3 so that when electronic tendering and electronic bid receipt are used, second-stage periods referred to in Article XI:2(b) and (c) may be reduced to a minimum of one day.

In commenting on these suggestions, support has been expressed for Alternative 2.

## ATTACHMENT 2

### OUTLINE OF A POSSIBLE FUTURE STRUCTURE FOR THE GPA (*"À DROIT CONSTANT"*)

The restructuring should consist of four sequential elements:

1. deletion of those provisions relating to the entry into force of the WTO and transitional periods which have now expired (such as Article XXIV:3(a), (b), (d) and (e));
2. grouping related provisions together to follow general WTO practice on structure of agreements and the procurement procedure more closely, as well as to facilitate ease of use;
3. renaming Articles to more closely reflect their content; and
4. renumbering the Articles in the new structure to make them consecutive.

A possible revised structure of the main body of the GPA (not addressing the Preamble or the Appendices) based on these elements is set out below. It is not intended to be exhaustive. Neither does it take account of the fact that several Articles may need to be either clarified or reformulated - for example, the existing Articles XI and XII.

#### **A. SCOPE AND COVERAGE OF THE AGREEMENT**

Article 1	Scope and coverage (was Article I)
Article 2	Valuation of contracts (was Article II)

#### **B. BASIC PRINCIPLES**

Article 3	Publication of legislation (was Article XIX:1) <i>[This could also be moved to Part D]<sup>3</sup></i>
Article 4	National treatment and MFN (was Article XIX:1)
Article 5	Rules of origin (products and services) (was Article IV) <i>[NB: This Article contains an in-built review mechanism]</i>
Article 6	Offsets (was Article XVI)
Article 7	Access of non-Parties to the Agreement (was Article XVI:1)

#### **C. PROCUREMENT PROCEDURES**

Article 8	Methods of procurement (was Article VII)
Article 9	Use of the selective tendering procedure (was Article X)
Article 10	Use of the limited tendering procedure (was Article XV)
Article 11	Qualification requirements for suppliers (was Article VIII)
Article 12	Technical specifications (was Article VI)
Article 13	Information to bidders: notices (was Article IX)
Article 14	Information to bidders: tender documentation (was Article II)
Article 15	Time-limits for the submission of bids (was Article XI)

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<sup>3</sup> In commenting on this proposal, it has been suggested that Article XIX:1 on publication of basic legislation should be placed between sections B and C.

Article 16 Submission, receipt and opening of tenders (was Article XIII:1-3 + Article XXII:1)  
*[This Article could be further split]*

Article 17 Negotiation (was Article XIV)

Article 18 Award of contracts (was Article XIII:4-5)

Article 19 Information on contracts awarded (was Article XVIII:1, 3, 4)

#### **C.1 BID REVIEW**

Article 20 Information obligations of entities (was Article XVIII:2)

Article 21 Challenge procedures (was Article XX)

#### **D. INSTITUTIONAL PROVISIONS**

(This chapter could be divided into different chapters, for instance exceptions to the Agreement + Article on developing countries could be a different chapter called "Exceptions to the Agreement".)

Article 22 Information obligation of Parties (was Article XIX:2-4)

Article 23 Exceptions to the Agreement (was Article XXIII)

Article 24 Special treatment for developing countries (was Article V)  
*[NB: This Article has an in-built review mechanism]*

Article 25 Statistical reporting requirements (was Article XIX:5)  
*[NB: This Article has in-built review mechanism]*

Article 26 Institutions (was Article XXI)

Article 27 Consultations and dispute settlement (was Article XXII)

Article 28 Final provisions (was Article XXIV and was XVII:2 on observer status)

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