



19 April 1999

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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**

SUGGESTED DRAFTING CHANGES TO THE 1994 AGREEMENT^{*,}**

NOTE BY THE SECRETARIAT

Revision

At the informal meeting of 9 December 1998, it was agreed that delegations would proceed with the article-by-article examination of the Agreement on the basis of a two-column table to be prepared by the Secretariat. The present note includes an updated version of the two-column table that was circulated in response to that request on 16 February 1999 in Job No. 864. The left column contains the text of the 1994 Agreement and the right column indicates the texts of any specific drafting changes on individual Articles that have been suggested since February 1997, including the proposals that have been made at the February 1999 meeting. The purpose of this note is to list the suggestions and not the reactions to these. The record of the full discussion has been circulated in the eight revision of the Checklist of Issues Raised in Job No. 2241, dated 19 April 1999.

It might also be noted that certain suggestions have been made for amending the structure of the provisions of the Agreement. These are not reflected in the two-column presentation. However, the specific proposal that has been made on this matter is annexed to this note.

* English only.

** Pursuant to the relevant Decision of the Committee on Government Procurement ([GPA/CD/5](#) (16/11/2023)), this document (informal document symbol: negs2) was derestricted on 8 November 2023.

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<p style="text-align: center;"><i>Article I</i></p> <p style="text-align: center;"><i>Scope and Coverage</i></p>	
<p>1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.¹</p>	<p>It has been suggested that footnote 1 should be made part of the main text.</p>
<p>2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.</p>	<p>It has been suggested that this Article might contain a definition of the term "government procurement" including what is meant by "government" for this purpose.</p> <p>It has been suggested that sub-paragraph 2 should include a reference to forms of procurement under new phenomena (partnerships between private and public sectors, multiplication of "Build Operate Transfer" (BOT) operations, joint ventures).</p>
<p>3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply <i>mutatis mutandis</i> to such requirements.</p>	
<p>4. This Agreement applies to any procurement contract of a value of not less than the relevant threshold specified in Appendix I.</p>	<p>It has been suggested that the relationship between paragraph 4 and footnote 1 relating to thresholds should be examined.</p> <p>The question has been asked whether relevant thresholds should continue to be specified in each Party's Appendix I or whether the applicable threshold values should be specified in paragraph 4.</p>

¹ For each Party, Appendix I is divided into five Annexes:

- Annex 1 contains central government entities.
- Annex 2 contains sub-central government entities.
- Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement.
- Annex 4 specifies services, whether listed positively or negatively, covered by this Agreement.
- Annex 5 specifies covered construction services.

Relevant thresholds are specified in each Party's Annexes.

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<p style="text-align: center;"><i>Article II</i></p> <p style="text-align: center;"><i>Valuation of Contracts</i></p>	
<p>1. The following provisions shall apply in determining the value of contracts² for purposes of implementing this Agreement.</p>	<p>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 the supplier in the case of limited tendering."</p> <p>It has also been suggested that the language of footnote 2 should be aligned with that of Article I:4 on threshold values.</p>
<p>2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.</p>	
<p>3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.</p>	
<p>4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:</p>	<p>It has been said this provision might need to be revised in order to provide for the valuation of framework contracts.</p>
<p>(a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or</p>	<p>It has been suggested that individual contracts with values below the threshold values resulting from the practice of slicing up of contracts should also be subject to the provisions of this Agreement.</p>
<p>(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.</p>	

² 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 publication of the notice in accordance with Article IX.

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5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:	
(a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;	
(b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.	
If there is any doubt, the second basis for valuation, namely (b), is to be used.	
6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.	
<p><i>Article III</i></p> <p><i>National Treatment and Non-discrimination</i></p>	
1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:	
(a) that accorded to domestic products, services and suppliers; and	
(b) that accorded to products, services and suppliers of any other Party.	
2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:	

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(a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and	The point has been made that 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 paragraph 1 should be reviewed.
(b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.	
3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.	
<p style="text-align: center;"><i>Article IV</i></p> <p style="text-align: center;"><i>Rules of Origin</i></p>	
1. A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties.	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.
2. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") and negotiations regarding trade in services, Parties shall take the results of that work programme and those negotiations into account in amending paragraph 1 as appropriate.	

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<p style="text-align: center;"><i>Article V</i></p> <p style="text-align: center;"><i>Special and Differential Treatment for Developing Countries</i></p>	
<i>Objectives</i>	
<p>1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:</p>	
<p>(a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;</p>	
<p>(b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;</p>	
<p>(c) support industrial units so long as they are wholly or substantially dependent on government procurement; and</p>	
<p>(d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.</p>	
<p>2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least-developed countries and of those countries at low stages of economic development.</p>	

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<i>Coverage</i>	
<p>3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.</p>	<p>It has been suggested that the issue of granting developing countries non-reciprocal access to procurement markets of Parties might be explored.</p> <p>It has also been suggested that the provisions should be improved to take in to account the specific interests of developing countries and to give developing countries additional incentives to join the Agreement.</p>
<i>Agreed Exclusions</i>	
<p>4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, <i>inter alia</i>, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.</p>	<p>It has been suggested that further flexibility should be provided in the evaluation of offers from developing countries with respect to non-discriminatory treatment and in the application of the procedural provisions.</p>

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<p>5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.</p>	
<p>6. Paragraphs 4 and 5 shall apply <i>mutatis mutandis</i> to developing countries acceding to this Agreement after its entry into force.</p>	
<p>7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.</p>	
<p><i>Technical Assistance for Developing Country Parties</i></p>	
<p>8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.</p>	
<p>9. This assistance, which shall be provided on the basis of non-discrimination among developing country Parties, shall relate, <i>inter alia</i>, to:</p>	<p>It has been suggested that the provisions on technical cooperation should be extended to take account of the needs of developing countries to adjust to new developments in the application of information technology to government procurement.</p>
<ul style="list-style-type: none"> - the solution of particular technical problems relating to the award of a specific contract; and 	

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<ul style="list-style-type: none"> - any other problem which the Party making the request and another Party agree to deal with in the context of this assistance. 	
<p>10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.</p>	
<p><i>Information Centres</i></p>	
<p>11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, <i>inter alia</i>, laws, regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.</p>	
<p><i>Special Treatment for Least-Developed Countries</i></p>	
<p>12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least-developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least-developed countries which are not Parties, with respect to products or services originating in those countries.</p>	

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<p>13. Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least-developed countries, and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.</p>	
<p><i>Review</i></p>	
<p>14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.</p>	
<p>15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.</p>	

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<p style="text-align: center;"><i>Article VI</i></p> <p style="text-align: center;"><i>Technical Specifications</i></p>	
<p>1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.</p>	<p>It has been suggested that the location of Article VI should be changed in order to reflect the close association of the provisions on technical specifications with those on tender documentation.</p> <p>It has been said that the inclusion of basic principles of non-discrimination or promotion of competition in the main provisions of the Agreement would make this Article more clear.</p> <p>It has been said that the meaning of the term "unnecessary obstacles to international trade" should be clarified.</p>
<p>2. Technical specifications prescribed by procuring entities shall, where appropriate:</p>	<p>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.</p>
<p>(a) be in terms of performance rather than design or descriptive characteristics; and</p>	
<p>(b) be based on international standards, where such exist; otherwise, on national technical regulations³, recognized national standards⁴, or building codes.</p>	

³ For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

⁴ For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, service, process or production method.

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<p>3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.</p>	
<p>4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.</p>	
<p style="text-align: center;"><i>Article VII</i></p> <p style="text-align: center;"><i>Tendering Procedures</i></p>	
<p>1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.</p>	<p>It has been suggested that paragraphs 1 and 2 should be separated from paragraph 3 describing the types of procurement procedures and be placed in an article addressing the general principles of procurement.</p>
<p>2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.</p>	<p>It has been suggested that the term "precluding competition" should read "negatively affecting competition".</p>
<p>3. For the purposes of this Agreement:</p>	<p>It has been suggested that the Agreement needs to be clearer about which of its procedural provisions apply to which tendering method as defined in Article VII:3.</p> <p>It has also been suggested that the provisions on tendering procedures should be reviewed to accommodate the use of two-stage tendering and electronic catalogues.</p>
<p>(a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.</p>	

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(b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.	
(c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.	
<p style="text-align: center;"><i>Article VIII</i></p> <p style="text-align: center;"><i>Qualification of Suppliers</i></p>	
In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:	It has been said that the rules on qualification of suppliers were either of general application (for instance, paragraph (b)) or related to the establishment of permanent lists of qualified suppliers. The text should be revised in order to separate these two types of rules.
(a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;	
(b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;	It has been said that ways should be found to reduce administrative burdens on suppliers, particularly SMEs, regarding the procedures for the proof of their technical, financial and commercial capacity.

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(c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;	
(d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;	
(e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;	
(f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;	
(g) each Party shall ensure that:	
(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and	
(ii) efforts be made to minimize differences in qualification procedures between entities.	

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(h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.	
<p style="text-align: center;"><i>Article IX</i></p> <p style="text-align: center;"><i>Invitation to Participate Regarding Intended Procurement</i></p>	
<p>1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.</p>	<p>It has been suggested that the terms "invitation to participate for all cases of intended procurement", "notice of proposed procurement", "notice of planned procurement" and "notice regarding a qualification system" should be clarified.</p> <p>It has been suggested that a footnote should be added defining "publication" to include either electronic or paper publication of notices and to indicate that electronic publication is on the Internet or in one location and is accessible worldwide by telephone.</p>
<p>2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.</p>	<p>It has been said that this paragraph should specify clearly that Annex 1 entities had an obligation to publish a notice containing the types of information as provided for in paragraph 6. The present use of the word "may" might be interpreted to suggest otherwise.</p>
<p>3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.</p>	<p>It has been suggested that entities at all levels of government should be able to use all methods of invitation to tender</p> <p>It has been suggested that the use of notices regarding qualification systems as invitations to participate should be clarified.</p>
<p>4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.</p>	<p>It has been suggested that further flexibility should be provided in the procedures on the use of a notice of planned procurement.</p>

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<p>5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.</p>	
<p>6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:</p>	<p>It has been suggested that the provision should be modified to obligate procuring entities to include the means by which bids may be submitted in addition to paper-based tenders.</p>
<p>(a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;</p>	
<p>(b) whether the procedure is open or selective or will involve negotiation;</p>	
<p>(c) any date for starting delivery or completion of delivery of goods or services;</p>	
<p>(d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;</p>	
<p>(e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;</p>	
<p>(f) any economic and technical requirements, financial guarantees and information required from suppliers;</p>	

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(g) the amount and terms of payment of any sum payable for the tender documentation; and	
(h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.	
7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:	
(a) a statement that interested suppliers should express their interest in the procurement to the entity;	
(b) a contact point with the entity from which further information may be obtained.	
8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:	It has been suggested that the provisions of Article IX:8 should follow the provisions of Article XI:1 on publication of an invitation to participate
(a) the subject matter of the contract;	
(b) the time-limits set for the submission of tenders or an application to be invited to tender; and	
(c) the addresses from which documents relating to the contracts may be requested.	
9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:	
(a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;	
(b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and	

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(c) the period of validity of the lists, and the formalities for their renewal.	
When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:	
(d) the nature of the products or services concerned;	
(e) a statement that the notice constitutes an invitation to participate.	
However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.	
10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.	
11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.	

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<p style="text-align: center;"><i>Article X</i></p> <p style="text-align: center;"><i>Selection Procedures</i></p>	
<p>1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.</p>	
<p>2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.</p>	
<p>3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.</p>	
<p>4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.</p>	<p>It has been suggested to add the words "electronic means, including email" and to add a provision stating that the means of communication can be specified by the procuring entity.</p>

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<p style="text-align: center;"><i>Article XI</i></p> <p style="text-align: center;"><i>Time-limits for Tendering and Delivery</i></p>	
<i>General</i>	
<p>1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.</p>	<p>It has been suggested to remove all of the deadlines identified in this Article.</p> <p>It has been further suggested to modify Article XI:1(a) to delete the words "by mail" in the last sentence.</p>
<p>(b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.</p>	
<i>Deadlines</i>	
<p>2. Except in so far as provided in paragraph 3:</p>	
<p>(a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;</p>	
<p>(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;</p>	

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(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.	
3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:	<p>It has been suggested to 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</p> <p>It has also been suggested to 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.</p>
(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:	
(i) as much of the information referred to in paragraph 6 of Article IX as is available;	
(ii) the information referred to in paragraph 8 of Article IX;	
(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and	
(iv) a contact point with the entity from which further information may be obtained,	
the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;	
(b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;	

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(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or	
(d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.	
4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.	
<i>Article XII</i> <i>Tender Documentation</i>	
1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.	It has been suggested that this Article should contain references to the use of information technology in communication between the purchasing authority and tenderers.
2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:	
(a) the address of the entity to which tenders should be sent;	
(b) the address where requests for supplementary information should be sent;	

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(c) the language or languages in which tenders and tendering documents must be submitted;	
(d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;	
(e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;	
(f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;	
(g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;	
(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes and currency of payment;	
(i) the terms of payment;	
(j) any other terms or conditions;	
(k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.	
<i>Forwarding of Tender Documentation by the Entities</i>	
3. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.	

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(b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.	
(c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.	
<i>Article XIII</i> <i>Submission, Receipt and Opening of Tenders and Awarding of Contracts</i>	
1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:	
(a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and	<p>It has been suggested to add "electronic means" to the list of possible methods for receiving bids (i.e. telex, telegram and facsimile).</p> <p>It has been suggested to delete:</p> <ul style="list-style-type: none"> - the phrase "by mail" in the first sentence - the second sentence which reads: "The tender must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram or facsimile." <p>It has been suggested that a definition of the term "writing" should be incorporated 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".</p>
(b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.	

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<i>Receipt of Tenders</i>	
<p>2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.</p>	<p>It has been suggested to add a provision to indicate that the means for submitting tenders may be specified by the procuring entity, provided that such means shall not reduce access by foreign and domestic suppliers.</p>
<i>Opening of Tenders</i>	
<p>3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.</p>	
<i>Award of Contracts</i>	
<p>4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.</p>	
<p>(b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.</p>	<p>It has been said that the reference to "specific evaluation criteria" in this subparagraph should be clarified in the light of the relevant terms in Article VIII(b).</p>

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(c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.	
<i>Option Clauses</i>	
5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.	
<p style="text-align: center;"><i>Article XIV</i></p> <p style="text-align: center;"><i>Negotiation</i></p>	<p>It has been said Article XIV should be modified in the light of the practice of post-tender or even post-contract award negotiations between the procuring entities and tenderers.</p> <p>It has been suggested that this article could be combined with Articles VII and X on tendering procedures.</p>
1. A Party may provide for entities to conduct negotiations:	
(a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or	
(b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.	
2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.	
3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.	
4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:	
(a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;	

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(b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;	
(c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and	
(d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.	It has been said that this provision which seemed to imply that procuring entities could initiate new negotiations with the remaining participants would need to be clarified.
<p style="text-align: center;"><i>Article XV</i></p> <p style="text-align: center;"><i>Limited Tendering</i></p>	
1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:	
(a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;	
(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;	It has been suggested to add the phrase "or group of suppliers" after "a particular supplier" in order to address the circumstances where the products or services can be supplied by a limited number of suppliers.

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(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;	
(d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services ⁵ ;	
(e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV ⁶ ;	
(f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50% of the amount of the main contract;	

⁵ It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

⁶ Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

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(g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;	
(h) for products purchased on a commodity market;	It has been said that the Agreement's coverage of procurements through commercially-run websites should be examined in the light of the provisions of paragraphs (h) and (i)
(i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;	
(j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.	
	<p>It has been suggested that the following paragraph should be added to Article XV:1</p> <p>"(k) where end-users have specified strong technical or professional preferences for using particular suppliers, and are able to support their preferences on sound technical or professional reasons. These suppliers should demonstrate that they are able to meet the requisite quality standards and delivery schedule over the terms of the contract."</p>

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<p>2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.</p>	
<p style="text-align: center;"><i>Article XVI</i></p> <p style="text-align: center;"><i>Offsets</i></p>	
<p>1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.⁷</p>	
<p>2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.</p>	

⁷ Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

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<p style="text-align: center;"><i>Article XVII</i></p> <p style="text-align: center;"><i>Transparency</i></p>	
<p>1. Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:</p>	
<p>(a) specify their contracts in accordance with Article VI (technical specifications);</p>	
<p>(b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement;</p>	
<p>(c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves unavoidable, to ensure the availability of a satisfactory means of redress.</p>	
<p>2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers.</p>	
<p style="text-align: center;"><i>Article XVIII</i></p> <p style="text-align: center;"><i>Information and Review as Regards Obligations of Entities</i></p>	
<p>1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain:</p>	

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(a) the nature and quantity of products or services in the contract award;	
(b) the name and address of the entity awarding the contract;	
(c) the date of award;	
(d) the name and address of winning tenderer;	
(e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;	
(f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and	
(g) the type of procedure used.	
2. Each entity shall, on request from a supplier of a Party, promptly provide:	
(a) an explanation of its procurement practices and procedures;	
(b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and	
(c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.	
3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.	

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<p>4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.</p>	
<p style="text-align: center;"><i>Article XIX</i></p> <p style="text-align: center;"><i>Information and Review as Regards Obligations of Parties</i></p>	
<p>1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.</p>	
<p>2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.</p>	
<p>3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.</p>	

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<p>4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.</p>	
<p>5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:</p>	<p>A note by the Chair attempting to present a draft revision of the text of Article XIX:5 and comments made was circulated as Job No 2108 on 13 April 1999.</p>
<p>(a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;</p>	
<p>(b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;</p>	
<p>(c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and</p>	
<p>(d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.</p>	

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<p>To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.</p>	
<p style="text-align: center;"><i>Article XX</i></p> <p style="text-align: center;"><i>Challenge Procedures</i></p>	
<p><i>Consultations</i></p>	
<p>1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.</p>	
<p><i>Challenge</i></p>	
<p>2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.</p>	
<p>3. Each Party shall provide its challenge procedures in writing and make them generally available.</p>	
<p>4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.</p>	

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5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.	
6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:	
(a) participants can be heard before an opinion is given or a decision is reached;	
(b) participants can be represented and accompanied;	
(c) participants shall have access to all proceedings;	
(d) proceedings can take place in public;	
(e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;	
(f) witnesses can be presented;	
(g) documents are disclosed to the review body.	
7. Challenge procedures shall provide for:	
(a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;	
(b) an assessment and a possibility for a decision on the justification of the challenge;	

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(c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.	
8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.	It has been suggested to add new paragraphs 9 to 11 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."

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<p style="text-align: center;"><i>Article XXI</i></p> <p style="text-align: center;"><i>Institutions</i></p>	
<p>1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.</p>	
<p>2. The Committee may establish working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.</p>	
<p style="text-align: center;"><i>Article XXII</i></p> <p style="text-align: center;"><i>Consultations and Dispute Settlement</i></p>	
<p>1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.</p>	
<p>2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.</p>	

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<p>3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.</p>	
<p>4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:</p>	
<p>"To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement."</p>	
<p>In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.</p>	
<p>5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.</p>	

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<p>6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.</p>	
<p>7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.</p>	
<p style="text-align: center;"><i>Article XXIII</i></p> <p style="text-align: center;"><i>Exceptions to the Agreement</i></p>	
<p>1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.</p>	<p>It has been suggested that the provisions of Article XXIII should be aligned with those in the corresponding provisions of GATT 1994.</p>

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<p>2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.</p>	
	<p>Possible additional article</p> <p>It has been suggested that an article containing definitions of the various terms used in the Agreement should be considered.</p>
<p style="text-align: center;"><i>Article XXIV</i></p> <p style="text-align: center;"><i>Final Provisions</i></p>	
<p>1. <i>Acceptance and Entry into Force</i></p>	
<p>This Agreement shall enter into force on 1 January 1996 for those governments⁸ whose agreed coverage is contained in Annexes 1 through 5 of Appendix I of this Agreement and which have, by signature, accepted the Agreement on 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.</p>	

⁸ For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<p>2. <i>Accession</i></p> <p>Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a contracting party to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30th day following the date of its accession to the Agreement.</p>	
<p>3. <i>Transitional Arrangements</i></p> <p>(a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.</p>	
	<p><i>Preambular paragraphs</i></p> <p>It has been suggested that the relationship between GATT Article III:8(a), GATS Article XIII and the plurilateral Agreement on Government Procurement should be spelled out.</p>
<p>(b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive⁹ provisions of the 1988 Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.</p>	

⁹ All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
(c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.	
(d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.	
(e) Prior to the date of entry into force of the WTO Agreement, references to WTO bodies shall be construed as referring to the corresponding GATT body and references to the Director-General of the WTO and to the WTO Secretariat shall be construed as references to, respectively, the Director-General to the CONTRACTING PARTIES to GATT 1947 and to the GATT Secretariat.	
4. <i>Reservations</i>	
Reservations may not be entered in respect of any of the provisions of this Agreement.	
5. <i>National Legislation</i>	
(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.	
(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.	

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
6. <i>Rectifications or Modifications</i>	
<p>(a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.</p>	
<p>(b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.</p>	<p>It has been suggested that the provisions of this article should be clarified.</p> <p>It has also been suggested that certain criteria for the removal of entities should be developed in order to make this Article more operational.</p>
7. <i>Reviews, Negotiations and Future Work</i>	
<p>(a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.</p>	

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
(b) Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.	
(c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.	
8. <i>Information Technology</i>	
With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.	It has been said that this article should be revised in the light of the ongoing work on possible modifications to the Agreement.
9. <i>Amendments</i>	
Parties may amend this Agreement having regard, <i>inter alia</i> , to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.	

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
10. <i>Withdrawal</i>	
(a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.	
(b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.	
11. <i>Non-application of this Agreement between Particular Parties</i>	
This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.	
12. <i>Notes, Appendices and Annexes</i>	
The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.	
13. <i>Secretariat</i>	
This Agreement shall be serviced by the WTO Secretariat.	
14. <i>Deposit</i>	
This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.	

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
15. <i>Registration</i>	
This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.	
<i>Done</i> at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.	

ATTACHMENT

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)
[This could also be moved to Part D]¹⁰

Article 4 National treatment and MFN (was Article XIX:1)

Article 5 Rules of origin (products and services) (was Article IV)
[NB: This Article contains an in-built review mechanism]

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)

¹⁰ 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 13 Information to bidders: notices (was Article IX)
- Article 14 Information to bidders: tender documentation (was Article XII)
- Article 15 Time-limits for the submission of bids (was Article XI)
- 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 Article XVII:2 on observer status)
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