

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 29 MAY 2002

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its fourteenth meeting on 29 May 2002 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for the meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) technical assistance and capacity building; (iii) observer status of international intergovernmental organizations; and (iv) date of the next meeting. In response to a suggestion by the representative of India, the Chairman said that those delegations who wished to make general comments could do so at the beginning of the meeting. The Working Group agreed to adopt the agenda as proposed.

A. GENERAL COMMENTS

3. Recalling the mandate in paragraph 26 of the Doha Ministerial Declaration, the representative of Honduras said that negotiations on transparency in government procurement after the Fifth Ministerial Conference shall be held on the basis of a decision to be adopted by explicit consensus concerning the modalities of those negotiations, take into account developmental priorities, and be limited to transparency aspects of government procurement. Honduras considered that the Group had made significant progress in identifying and developing elements for inclusion in an agreement on transparency in government procurement, and therefore its delegation reiterated its commitment to participating in the negotiations after the Fifth Ministerial Conference.

4. The representative of India said that the mandate in the Doha Ministerial Declaration had to be read in conjunction with the statement by the Chairman of the Ministerial Conference prior to the adoption of the Declaration expressing his understanding in relation to Singapore issues. Since the Chairman's Understanding had been arrived at on the basis of consultations with Members and had not been opposed by any delegation, his delegation believed that it was binding on all Members even though it had not been included in the text of the Ministerial Declaration. His delegation therefore believed that there should be no attempt at consensus building on the various issues before the Working Group. Any Member would have the right to take a position that would prevent a decision on launching negotiations in this area at the Fifth Ministerial Conference. The study phase was solely aimed at furthering the understanding of Members on various issues. The representative of Malaysia said the Group was still at the study phase. The Ministers would have to agree on the modalities for negotiations by explicit consensus at the next Ministerial meeting before moving on to the negotiating phase.

5. The representative of India said that the mandate of the Working Group did not extend to market access issues, such as the grant of preferences to domestic suppliers and supplies. Therefore the main issue before the Group was to gain a greater understanding of the meaning of transparency in the context of government procurement. All the elements identified in the informal note by the Chair "List of Issues Raised and Points Made", were in fact elements common to procurement systems in place in any of the Members, but there had been differences among Members in identifying the transparency-related aspects of these elements. Elements such as procurement methods, time-periods, decisions relating to evaluation of offers and awarding of contracts, domestic

review mechanism, and application of the WTO Dispute Settlement Understanding were not directly related to the issue of transparency, and hence should not form part of the work of the Group. In the context of the WTO, transparency involved the obligation to make information on related laws and regulations available and the obligation to provide notifications to WTO Members of these laws and regulations, including any changes thereto, without questioning the fairness and reasonableness of the laws themselves. The issue of the administration of laws and regulations related to government procurement did not fall within the purview of transparency. The representative of Malaysia said that there were elements in the Note by the Chairman "List of Issues Raised and Points Made" that were not related to transparency *per se*, and delved into the area of market access. In addition to the elements relating to domestic review procedures and making a transparency agreement subject to the WTO Dispute Settlement Understanding, his delegation was prepared to consider other elements that may need to be deleted from the "List of Issues Raised and Points Made" for the purposes of the transparency agreement.

6. The representative of the United States said that his delegation recognized that that discussion on transparency aspects could to an extent creep into market access questions and consideration could be given to how this could be limited. It had to be recognized also that even issues that may delve into market access also had transparency components. In the course of its examination of individual elements, the Group should try to identify the specific characteristics which related to transparency. The delegation of Switzerland recognized that, although transparency and market access questions were not sometimes easy to separate, given the quantity of work accomplished on the basis of the "List of Issues Raised and Points Made", Switzerland believed that the Group should continue discussion on the basis of the issues listed in that document.

7. Joined by the representative of Malaysia, the representative said that government procurement played an important role in nation building. It was an important policy tool in relation to social and economic development in developing countries in particular for promoting the development of small and medium enterprises and disadvantaged regions. Given this aspect of government procurement, caution was required in moving forward in this area, albeit the work was limited to transparency. A transparency agreement should impose no obligation on Members to change their domestic laws and regulations given the near unanimous view in the Working Group that the primacy of the domestic rules and regulations should be fully preserved. In this regard, the representative of Malaysia added that the mandates on transparency in the Singapore and Doha Declarations recognized that any eventual agreement shall be based on national practices. The representative of India said that, in spite of the generally shared view that transparency was important in all fields including in government procurement, differences remained among Members with regard to consideration of future obligations in this area. The issue was complex for India since numerous government departments were involved in government procurement. The complexity would remain even if future obligations were to be limited to central or federal government departments. The representative of the United States said that his delegation agreed with the delegation of India that government procurement was an important policy tool for realizing socio-economic and other benefits associated with nation building; however it remained unclear whether a lack of transparency in pursuing such a policy tool provided any benefits. He recognized that, although transparency was critical to nation building, the issue was more a question of the orientation of government procurement as a policy tool. In responding to the representative of the United States, the representative of India considered that the available policy options should be preserved in the context of government procurement. The domestic procurement process in India was as transparent as similar systems in other countries, including those existing in the United States.

8. Regarding the Group's ongoing work, the representative of India said that some developing country Members would be interested in continuing the study process in all Singapore issues with a view to achieving a better understanding of the complex issues involved. In his view, developing countries did not have capacity to take on additional obligations and the provision of technical assistance would not be sufficient to implement future obligations. Moreover it was difficult to

estimate the technical assistance needs of developing countries in this area during the study phase. Developing countries faced problems regarding the implementation of the existing WTO agreements and the ongoing work programme under the Doha Development Agenda increased the burden on smaller Members. Many of the existing special and differential treatment provisions in WTO agreements were not mandatory and developing countries therefore did not reap the benefits anticipated at the conclusion of the Uruguay Round. In response, the representative of the United States, joined by the representatives of the European Community and Canada, said that the issues before the Working Group had been covered in considerable detail in the Group. Discussions had been ongoing for five years, numerous documents had been produced both by developed and developing countries, and the "List of Issues Raised and Points Made" had been revised six times. There had been active engagement by many delegations from both developing and developed countries, and there had been extensive repetition in recent meetings of positions associated with the elements in the "List of Issues Raised and Points Made". His delegation therefore considered that most countries had gained a sufficient understanding of the issues. Divergences could only be resolved through negotiation. The representative of the European Community considered that the work programme in the informal note by the Chairman had been agreed by all Members so as to ensure further discussion of the key issues, and that the extra time available to discuss the issues before the Group should lead to a better understanding of the fundamental principles on which an agreement could be based, and should provide the Group with a springboard to move on to the next stage. Technical assistance had an important role in view of the differing levels of development of Members. The delegation of Canada considered that at present the Group should work towards achieving a clearer understanding of what a future transparency agreement would look like. The delegation of Switzerland said that decisions should be made and negotiations initiated shortly, and encouraged Members believing that the study process was continuing to make contributions on the issues in question in order to undertake further discussions. His delegation encouraged the setting out of explicit problems that would be faced by developing country Members concluding a multilateral agreement so that no time was lost in tackling these issues.

9. The representative of India expressed concern that the main agenda for the European Community was to use an eventual agreement on transparency to address market access issues. He noted that the representative of the European Community had referred to a 'springboard to move on to the next stage' and stated that the threat contained therein, to move further on market access issues on completion of the work of the Group on Transparency, diminished the support from developing countries for the development of rules on transparency. He said that India, as well as other delegations sharing similar concerns, were opposed to any such movement. In that connection, he reiterated that the Doha Ministerial mandate had excluded any discussion which went beyond transparency. In response, the representative of the European Community said that the statement made by his delegation had been misunderstood, since the reference to using the discussions which would take place in the Working Group during the first and second meetings of 2002 as a 'springboard for the next stage' referred to the work which would be ongoing in 2003 and onwards towards the fifth Ministerial Conference. He reiterated that the European Community supported the mandate as it stood, including the reference to any agreement being limited to transparency issues.

10. The representative of Chile said that there appeared to be a certain agreement within the Group that the mandate did not extend to market access issues. Chile accepted the mandate as it stood. The representative of Venezuela stated that the Group should concentrate strictly on what was said in the mandate, that is to say merely transparency. Joined by Switzerland, the representative of the European Community recalled the importance of the commitment made at Doha on the need to provide technical assistance and capacity building. The representative of Canada said that her delegation supported, had supported and continued to support both the Singapore and Doha mandates, and was supportive of the work programme developed at the March informal meeting. Transparency could be pursued in government procurement in a way which did not restrict, using the words from the mandate, "the scope for countries to give preference to domestic supplies and suppliers".

11. Joined by the representative of Malaysia, the representative of India suggested that, at the next meeting of the Working Group, a separate agenda item be listed for a discussion aimed at reaching a consensus on those elements that could be categorized as directly related to transparency and were appropriate to include in a transparency agreement. In response, the United States joined by the representative of Switzerland, said that further reflection was warranted on the necessity of such an agenda item.

12. The Chairman noted that the discussion on the 12 issues should give all delegations an opportunity to voice their opinions about the inclusion of these elements within a possible outcome of the work of the Group.

13. In response to the suggestion by the representative of India that the Doha Ministerial mandate in relation to the work of the Working Group be discussed, the representative of the European Community, supported by the representative of Switzerland, said that neither the mandate itself nor the part related to modalities for negotiations formed part of the work programme agreed to by the Group at the March informal meeting. The European Community remained committed to achieving a transparency agreement in government procurement. The ground had already been covered in considerable detail. A work programme covering all the issues in the informal note by the Chairman of November 1999 had been agreed by the Group. His delegation considered, given the differences among Members' systems, that a non-prescriptive, principles-oriented approach allowing for some flexibility would best take into account the special needs of developing countries and help to create a rules-based environment characterized by transparency and access to all relevant information. He added that in the long run an agreement on transparency would strengthen domestic industry by encouraging competition, an effect that had already been witnessed in the European Community. Public expenditure would be reduced, purchasers would obtain better value for money, and undesirable practices would be discouraged.

14. The representative of Morocco said that since the recently introduced Moroccan legislation on government procurement was largely in conformity with international standards and rules, Morocco's support of a multilateral agreement would not appear to pose any problem. Morocco had notified its national legislation in the area of government procurement in document WT/WGTGP/W/19 dated 20 July 1998. He said that an agreement should be limited to stipulating transparency and there should be no attempt at developing prescriptive rules in regard to different situations. It would be important to recognize the utility and productivity of rules on transparency agreed to between countries. Given the different stages of development of transparency and competition systems among countries, an agreement should not impinge on national specificities in that the mechanism of national preferences should be confirmed, and a time-frame should be put into place for the application of the different measures. Taking into account 'Special and Differential' provisions was an integral part of the full exercise of the Group. Such an approach would be in line with the concept of flexibility and progressivity. Morocco believed that the application of paragraph 26 of the Doha Declaration was essential in order to implement technical assistance and to enhance capacity building so as to permit Members to achieve explicit consensus on a multilateral agreement.

15. Reporting on developments in relation to national procurement systems, the representative of Venezuela emphasized the importance of government procurement and transparency to Venezuela, stating that in 2000, expenditure on government procurement had amounted to U.S. \$9.0 billion. National legislation of Venezuela had been enacted at the end of 2001.

B. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

16. For the discussion of this agenda item, the Working Group had before it a discussion paper from Australia on Procurement Methods (WT/WGTGP/W/31) and the note by the Secretariat "Work

of the Working Group on Matters Related to Items I-V of the List of Issues Raised and Points Made" (WT/WGTGP/W/32). The note by the Secretariat had been prepared in response to the request made by the Group at its informal meeting held in March. It aimed to facilitate discussion in the Working Group by providing a more concise note than the Informal Note by the Chairman "List of Issues Raised and Points Made", as well as taking into account subsequent discussions in the Group and submissions made by Members. Being a summary, the note did not contain all the details of the points made and explanations given. For more detailed information, delegations should consult additional documents such as the informal note by the Chairman and other documentation such as the minutes of meetings. The note also contained an Annex listing the documents, categorized under a number of headings, that had been presented to the Working Group so far.

17. The representative of the European Community, joined by the representatives of the United States, Switzerland, Canada, Venezuela, Indonesia, Chile and Australia, thanked the Secretariat for its summary note. The representatives of the United States, the European Community, and Chile said that the note would help to provide a more concise focus for future discussions, as well as clearly identifying the issues discussed in the past. The representative of India commented that the note was useful to the extent of assisting delegations that had not been able to actively participate in the discussions so far. Joined by the representatives of the United States and Chile, he said that the basic working document should remain the "List of Issues Raised and Points Made" (JOB(99)6782) of November 1999, supplemented by the minutes of the meetings. The representative of Indonesia said that the note did not contain all the points made by his delegation previously.

18. The representative of the United States commented that with respect to the items covered by the summary there appeared to be few areas where there were significant variations in practice, and that the information on international instruments and practices suggested the existence of a common minimum level of procedures and practices associated with transparency. Additionally, many details of each element had been identified which had been discussed at length in the Group. The United States believed that there would be greater convergence on these elements through negotiation, as exemplified by the item relating to Definition and Scope.

19. The delegation of Venezuela said that, in the study phase, Members could review national legislation relating to government procurement. Venezuela was willing to submit information on its legislation to other Members. The Chairman pointed out that only ten delegations had so far shared information on their national procurement systems and practice and encouraged delegations to continue providing information to the Group on their national practice. The representative of the United States commented that the exchange of information in national legislation should be a continuous process in the Working Group. Surveys had been carried out regarding national legislation, and the relevant documents had been identified in the summary note by the Secretariat. The representatives of Malaysia and India encouraged greater participation of Members in the discussions of the Working Group, given the Group's engagement in the study phase.

20. The Working Group took up the items I-IV in the informal note by the Chairman "List of Issues Raised and Points Made" (JOB(99)6782) of November 1999, commenting on each item in turn and using the summary in the note by the Secretariat "Work of the Working Group on Matters Related to Items I-V of the List of Issues Raised and Points Made" (WT/WGTGP/W/32).

Definition and Scope of Government Procurement

21. The representative of the European Community, joined by the representative of the United States, said that, in the absence of lists of covered entities which provided certainty about the scope and coverage of rules, a definition of government procurement was especially important in a transparency agreement. His delegation considered that, although the contours of a definition remained a matter for further discussion, any definition which was eventually arrived at should be as broad as most Members could agree to. The representative of India, joined by the representative of

Malaysia, said that a wide divergence remained in the Group on the question of definition. The study phase should be used for a better understanding of the various issues related to definition. This issue should be resolved through discussions in the Working Group rather than through negotiations.

22. The representative of India, joined by the representative of Indonesia, disagreed with the statement in paragraph 10 of the summary note, that there appeared to have been a general acceptance that a broad conception could be employed for the purposes of the study phase. No distinction should be made in the Group between definition and scope of government procurement for the study phase and for the purpose of rules that may be negotiated. By way of clarification, the Chairman said that the reference in paragraph 10 of the summary note to a broad conception was concerned with and related to the study phase of the Working Group. The representative of the European Community added that the wording used in the 'List of Issues Raised and Points Made' was very similar to that used in the summary note.

23. The representative of Indonesia said that, in regard to the definition and scope of government procurement, many delegations, especially those from developing countries, had yet to fully understand the implications of an eventual transparency agreement. Further, the Group must be convinced that the implementation of an agreement would not be unbalanced as between developing and developed countries.

24. The representative of the United States commented that guidance was lacking in relation to a definition in the context of an agreement which did not contain lists of covered entities, but noted that GATT Article III:8 and GATS Article XIII could potentially provide such guidance.

25. Commenting on the coverage of a transparency agreement, the representative of India said that coverage should reflect the common minimum standards of national procurement systems, and that commitments undertaken should not be onerous or self-defeating in reference to the ultimate goal of improving the transparency of Members' procurement systems. The representative of Switzerland said that, since the agreement was concerned with transparency, he considered that it was logical that coverage should be as extensive as possible, although flexibility was required in order to manage the implementation of any future agreement.

26. Observations were made on the question of whether the rules of a transparency agreement should extend to procurement by entities at all levels of government or at the central level of government only. The representative of India, joined by the representative of Indonesia, said that the scope of a transparency agreement should be limited to central/federal government entities. The representative of India said that, in India, multiple governmental departments at different levels procured according to rules and procedures tailored to suit individual operational ability, and that therefore procurement practice was not uniform nationally. Decentralized procurement was encouraged as reflective of the local conditions and enhanced efficiency, and state governments had enacted procurement-related laws according to their needs. Nationally, general financial rules provided the outline within which procurement was undertaken by federal Ministries and departments. Most public procurement contracts were checked through a post-audit system, and main procuring departments had dedicated audit teams permanently monitoring procurement activities. There was considerable difficulty in listing out all procuring entities, or providing details of the quantum of procurement taking place due to the vast numbers involved, and hence universal coverage of procuring entities at India's various levels of government was not feasible. Despite the difficulties outlined above, independent assessment of the system in India had shown the existing system to be delivering efficiently and in a cost-effective manner. The applicability of procurement rules and regulations to public utilities and public sector entities was currently in a state of flux in India, due to privatization currently under way; therefore there was little or no governmental control over the purchasing decisions of such entities. Even where the government was the majority stakeholder, almost all sectors in which such entities operated had been opened to private sector participation, which had caused public entities to lose their monopoly character and operate on commercial terms.

Under these circumstances, the application of transparency requirements solely to public entities without private-sector competitors being subject to the same requirements would result in unfairness. In India, even if obligations were limited to central government entities only, coordination between the numerous departments would involve difficulty.

27. The representative of the United States said that sub-central entities should be covered under a transparency agreement. The comments by the delegation of India on the challenges faced by state-owned enterprises were very useful, and noted that information of this kind could inform the positions eventually taken in the negotiations. The representative of Venezuela said that the coverage of legislation introduced in Venezuela in 2002 extended to both central and sub-central entities.

28. On the question of threshold levels, the representative of India, joined by the representatives of Malaysia, Indonesia and the European Community, supported the use of threshold levels for the purposes of the application of requirements in a transparency agreement. The representative of Indonesia added that the inclusion of minor procurements within the scope of a transparency agreement could impose an undue burden on entities in developing countries. The representative of India, supported by the representative of Malaysia, suggested having a higher threshold for contracts subject to any future obligations as a 'Special and Differential Treatment' provision for developing countries.

29. The representative of the European Community said that his delegation believed that there was scope in the area of thresholds for differential treatment. Agreeing with the representative of India, he said that there was merit in having higher thresholds for those developing countries with reasons, such as insufficient administrative capacity, which would prevent them from complying with the provisions that would apply to developed countries. The representative of Switzerland said that the flexibility required in order to manage the implementation of any future agreement could be achieved through the use of thresholds or exceptions. The formulation of these possibilities should be carried out in the Working Group through negotiations and should depend on the level of commitments undertaken by Members requesting flexibility.

30. With regard to exceptions from coverage, the representative of India said that the possibility of exempting procurements related to social, economic and developmental policies from the ambit of the exercise of the Working Group be recognized, and a 'Special and Differential Treatment' provision for developing countries considered in this context. He said that many Members of the Working Group recognized that the exceptions to the GATT 1994 and the GATS on grounds of security or other grounds should be similarly built into any future multilateral transparency provisions on government procurement. The Working Group could consider exceptions for regional and social development, in the light of the role of government procurement as a policy tool.

31. With regard to the question of whether the scope of an agreement should include both goods and services, the representatives of India, Malaysia and Indonesia stated that procurement of services should be excluded from the scope of the work of the Working Group. The representative of India said a combination of goods and services should also be excluded given that the relationship between elements identified as related to the transparency aspect of procurement and their application in the larger context of procurement required further examination and clarification. The representative of India added that the services sectors in developing countries were not as advanced as those in developed countries. The representative of Indonesia said that, although his delegation recognized that in practice it could be difficult to distinguish between services and goods, and that often mixed contracts involved both goods and services, procurement in the services sector in developing countries was less systematized than that in the goods sector. There should be differentiation with regard to the procurement of services, given that the scope and coverage was different to that of goods. The United States, joined by the representative of Switzerland, stated that scope should include services. The representative of Switzerland recalled the submission made by his delegation in 2000 to the Working Group (JOB(00)/5645) on this subject.

32. The representatives of India and Malaysia stated that the issue of services procurement was currently being discussed in the Working Party on GATS Rules. The representative of Switzerland said that the overlap which existed to some extent between the work of the respective forums should not exclude the possibility of the issue of services being addressed in the Working Group, due to the close link between services and goods. He added that it would be more complicated, especially for developing country Members, to separate, in many cases artificially, services from goods procurement.

33. The representative of India, joined by the representative of Malaysia, said that procurement not open to foreign suppliers should not form part of the discussions of the Working Group. In this regard, India had suggested the possibility of having different rules for procurement open to foreign suppliers and procurement reserved for domestic suppliers. In relation to the grant of preferences to domestic suppliers and supplies, and also in regard to pursuing policies of economic, social and regional development, there should be no restriction concerning procurement policy *per se*. The representative of the United States asked how a procurement that was not open to foreign suppliers would be defined. Would preferences to national suppliers qualify a procurement as open to foreign suppliers? Would a procurement restricted to domestic suppliers, goods or services, except where there was no domestic supplier, good or service, qualify that procurement as closed to foreign participation? In response, the representative of Malaysia said that, in its national practice, price preferences were clearly set out in the tender documents. If there was a price preference, the tender must necessarily be open to foreign suppliers. Transparency was in this way achieved, since foreign suppliers were not deceived into believing that they could make a successful bid without meeting these conditions. This national practice would continue to be followed as long as it remained to the developmental benefit of Malaysia. Supporting the view expressed by the representative of Malaysia, the representative of India added that procuring entities were free to determine whether individual tenders should be open to foreign suppliers. Where tenders were restricted to domestic suppliers, foreign suppliers would not submit their tenders. His delegation could not understand why any other WTO Member should be interested in these specific procurements. Entities should also be entitled to provide preferences, where procurements were open to foreign suppliers.

34. The representative of the United States said that his delegation had noted some concerns in regard to the perceived principle that under no circumstances should a transparency agreement alter domestic law or regulation. He asked whether, in an extreme situation in which there was no existing legislation on transparency, a transparency agreement would not lead to the development of national laws or regulations.

35. The representative of Chile said that the Indian delegation should define what would be included in the scope and definition of government procurement and what would be the percentage of government procurement in India that would be subjected to a transparency agreement according to the definition suggested by India. In response, the representative of India said that its position was designed to address its national concerns, and that the exercise of the Group was not simply a matter of assuming negotiations on transparency.

36. The representative of the United States questioned the suggestion by the delegation of India that there should be convergence of views in all respects through the current process, because this would suggest that all questions of scope were to be negotiated at the present stage. His delegation hoped that progress could be made in understanding positions more during the study phase before proceeding with negotiations after the next Ministerial Conference. In that regard he said that the comments by the delegation of India on the challenges faced by state-owned enterprises were useful, and noted that this was the kind of information that could inform the positions eventually taken into negotiations.

37. The representative of Malaysia said that his delegation recognized the importance of transparency. Joined by the representative of India, he emphasized the accountability of Members to

their citizens and the existence of audit systems designed to ensure transparency. The representative of India said that the divergences on the specific elements were not a question of developing countries versus developed; rather, it was a question of the implementation of any future obligations.

Procurement Methods

38. In introducing her delegation's submission on procurement methods (WT/WGTGP/W/31), the representative of Australia said her delegation supported a principles-based approach and had encouraged such an approach since pre-Seattle as the best way to achieve an agreement, given the differing systems of Members. Its submission on procurement methods focused on the benefits of a flexible, non-prescriptive approach to the selection of method of procurement. Governments should have the flexibility to choose from among a range of recognized procurement methods according to the circumstances of each individual procurement, and to this end prescribed conditions or monetary thresholds should not be attached to a specific method in a multilateral agreement. A non-prescriptive approach enabled governments to fully consider the particular requirements and market conditions relating to each procurement. A transparent and robust accountability and probity framework within which the process of selection could occur was required in order to ensure objective, fair and consistent treatment of tenderers, regardless of the procurement method selected. The provision of appropriate documentation of key decisions in the procurement process, including details of the methods selected, was an important element of such a transparent framework. Procurement as a policy tool was an important component of the overall performance of a government. Joined by the representatives of Malaysia and India, she said that a flexible non-prescriptive approach within a transparent process allowed governments to ensure the efficient and effective delivery of procurement objectives. The representatives of Malaysia and India said that any multilateral agreement should not question the right of a government to employ whatever method chosen by it, be prescriptive to the extent that the right to employ a particular method was questioned, or require that the reasons for having employed a particular method be divulged.

39. The representative of the United States, joined by the representatives of Canada, European Community and Switzerland, said that, in general terms and in the context of an agreement on transparency, their delegations shared the view of Australia with regard to the principle that governments should have flexibility to select the method best suited to their objectives and the situation of the procurement in question. The representative of the United States, joined by the representatives of Switzerland and the European Community said that procurement methods should be applied in a transparent and predictable manner. The representative of the European Community, supported by the representatives of the United States, Canada and Switzerland supported an approach covering any kind of procurement under transparency rules independently of the method used. They emphasized that the method of procurement chosen should not undermine the principles and objectives of any future agreement on transparency. The representatives of Switzerland and Canada said that open procurement should be the principal method used, as was pointed out in the international instruments referred to in the summary note. The delegation of Switzerland said that the UNCITRAL Model Law referred to exceptional and well-defined circumstances in which open procurement was not considered appropriate and alternative methods were offered. The use of the most transparent method, as well as encouraging open competition, would result in obtaining the best possible price from the supplier. The representative of India said that open tendering was the preferred method of procurement in most cases in India. However, factors which could influence the choice of method, such as the time available, the nature of the goods, and value of the procurement were also taken into consideration. In this regard, the emphasis in an agreement should be exclusively to provide information on the procurement method employed.

40. The representative of Switzerland, joined by the delegations of the European Community and Malaysia, said that their delegations supported the emphasis put by Australia in its communication on the need to embed the procurement process within a robust accountability and probity framework. The representative of Malaysia said that his delegation was opposed to any requirements in a

multilateral framework relating to accountability through judicial procedures or audit requirements giving WTO Members the right to question why a certain method had been selected. He said that such requirements were outside the ambit of a multilateral agreement, and reiterated in that regard the existence of domestic mechanisms and procedures designed to ensure accountability and transparency.

41. The representative of Malaysia, supported by the representative of India, asked whether, as per the approach suggested by Australia, there was agreement within the Group that the choice of the procurement method was a sovereign decision to be taken by the government of the procuring authority. If there were no interventions to the contrary, Malaysia would assume that agreement existed as to the appropriateness of the flexible approach advocated by Australia. The representative of India said that there seemed to be unanimity in the Group that governments should have the flexibility to choose from among a range of procurement methods according to the circumstances of each individual procurement. His delegation requested that this item be deleted from the "List of Issues Raised and Points Made", on the grounds that the item was not *per se* directly related to transparency, that a common understanding existed among Members of the Group that procurement entities should have the flexibility to choose from among a range of procurement methods according to the circumstances of each individual procurement and that there was no value in prescription, even in relation to guidelines. The representative of the United States said that his delegation disagreed with the suggestion that the item on procurement methods be removed from the "List of Issues Raised and Points Made", given that there was an interest that the choice of procurement method should be carried out on a transparent, predictable and non-arbitrary basis. The question should be discussed further within the Working Group.

Publication of Information on National Legislation and Procedures

42. The representative of India said that providing information on any aspect of the procurement process, whether information on national legislation and procedures or on procurement opportunities, was a transparency-related element, since complete disclosure of information aided efficient and fair procurement. Several countries had detailed web sites providing information on their procurement systems. Any efforts to expand the scope of information-related elements by proposing examination of the rules and laws, prescribing amendments to the laws, or listing out the content of the information would go beyond the mandate of the Working Group. The representative of Malaysia said that publication of information on national legislation and procedures was a key element in any transparency agreement. The representative of the European Community said that there appeared to be agreement in the Working Group that the availability of information on national legislation and procedures to all interested parties aided the efficiency of procurement and that common ground within the Group on this issue should be relatively easy to achieve.

43. On the question of the type of information to be made available, the representative of India said that requirements relating to the provision of complete information should take into account the administrative capacity of the procuring entity. The representative of the European Community considered that, at a minimum, all rules of general application should be published so as to increase procurement efficiency. The representative of Brazil said that this approach appeared to be similar to that in the provisions of Article X of GATT. The representative of Malaysia said that while it could be feasible to provide selected information on a particular procedure, providing complete information regarding national regulations and procedures, especially in one of the WTO languages, would be too onerous. He considered that it would be sufficient to state that the relevant information was available and to list the salient or most important features of the particular regulation or law. The representative of the European Community said that, while his delegation recognized the concerns of some Members with regard to the capacity of certain entities to provide information where information requirements were burdensome, he nonetheless emphasized that an essential element of transparency was the facilitation of access to laws, regulations and rules applicable to procurement.

44. With regard to the media to be used for the provision of information, the representatives of India, the European Community and the United States said that a non-prescriptive approach should be pursued in this respect. The representative of Australia said that, in Australia, each jurisdiction had a web site from which information about procurement policy and procedures, including complaints processes, could be accessed by potential suppliers.

45. The representative of the United States said that the summary note by the Secretariat did not fully reflect the national practices with respect to the way in which information on which laws, regulations and guidelines was published. The relevant information which was available in submissions and in the replies to the questionnaire of the GATS Working Group of 1997 could be provided in the course of a meeting. The representative of the Secretariat pointed out that the summary note was designed to provide an overview of the types of legal instruments that had been indicated in the information available to the Secretariat as relevant to the national procurement regimes. The question of publication had not been specifically dealt with in the note.

46. The representative of the European Community said that many Members had already put electronic procurement systems into practice. The European Community considered that each country should adopt the approach according best with its capacities. The representative of the United States joined by the representative of Brazil, said that the use of electronic media could ease administrative burdens and lower costs. The representative of Brazil said that there should be obligation to publish in some form of media, accompanied by a degree of flexibility as to how each Member shall implement such a provision. In Brazil legislation was published both in the official gazette and on the Internet.. The representative of Korea suggested that the requirement to publish could be met through publication in printed or electronic media, and considered that it was desirable to encourage the use of electronic means of publication to the greatest extent possible. The delegation of India stated that Members should be entitled to decide whether or not to publish the information electronically, and that the emphasis should be on making information available.

47. With regard to the use of electronic media, the representative of the European Community said that, in the light of the difficulties that could be encountered by developing countries with regard to capacity in this area, it was possible that developed countries could be required to apply a higher standard of information dissemination than would be required from developing countries, in particular with regard to use of electronic means of communication. In response to a question by the representative of Korea, the representative of the European Community said that a detailed proposal had not yet been prepared regarding the possible distinction referred to between developed and developing countries on the general application of electronic procurement, but that there were a number of ways of achieving the objective of allowing developing countries less stringent obligations in this area.

48. On the question of cost of accessing information, the representative of the United States said that prohibitive costs associated with obtaining information may reduce opportunities for interested suppliers to obtain information, which would in turn affect transparency. The representative of Malaysia, joined by the representative of India, stated that the issue of costs was more a matter of observance of the principles of non-discrimination and national treatment rather than of whether fees were charged and their level if they were. Governments should not be denied the possibility of charging appropriate fees provided these were charged in a non-discriminatory manner.

49. On the question of translation of information on national legislation and procedures, the representative of Venezuela said that, while his delegation was opposed to a general requirement of translation into a WTO language, translation could be considered in the case of an international tendering opportunity for the provision of goods not available domestically, although the onus for translation should remain on the private sector. The representative of Australia said that, in the first instance, information should be made available in the national language and that it should be at the discretion of Members whether to publish information in other languages. By way of clarification, the

representative of the European Community said that its proposal on the use of a WTO language had been intended only as one of the possibilities that could be examined. He recognized that a requirement of publication in all WTO languages would be unreasonable for many developing countries because of specific difficulties in terms of capacity that could be faced by them in this respect.

50. On the question of whether there should be a requirement for the establishment of an enquiry point from which information on national legislation or procedures could be obtained by interested parties, the representative of Australia, joined by the delegation of India, said that the establishment of enquiry points would be impractical, in the light of the decentralized nature of the national procurement systems. The representative of India added that an obligation to set up an enquiry point would be burdensome for developing countries. The representative of Korea said that an enquiry point was necessary to obtain information on national legislation or procedures. He highlighted the need for an enquiry point in decentralized procurement systems, where information was more difficult to obtain, and considered that an enquiry point could be a simple matter of having a designated agency set up a web site.

Information on Procurement Opportunities, Tendering and Qualification Requirements

51. The representative of the European Community, joined by the representatives of Thailand and Brazil, considered that any requirement for a list of essential procurement information should attempt to meet a minimum set of information requirements without being overly prescriptive. The representative of the United States emphasized that the principle contained in paragraph 41 of the summary note, that information should be sufficient to enable suppliers to assess their interest in the procurement and to submit responsive bids, was a basic principle associated with the provision of information on specific procurement opportunities. The representative of Brazil considered that the overriding principle in this area should be that the level of information required for a particular procurement be compatible with the procurement method chosen.

52. The representative of the United States said that further examination was required of issues such as how information should be provided, the type of information to be provided, whether there should be a distinction between open and selective procurement procedures, information associated with preferences to national supplies and suppliers, what could be considered as a criterion in the award of a contract, and information to be provided on small-value procurements.

53. The representative of India stated that the information content of tender opportunities should be left to that prescribed in the applicable national laws or in the procedures of the entities themselves. He said that any prescription regarding information on individual procurement opportunities had to be examined carefully, and that the requirement for providing information should take into account that limitations on providing information may exist due to low value of the procurement, the technology available to the procuring agency to disseminate the information, the cost of making such information available, and the tender being addressed to a small group of locally based contractors. He considered that several countries had detailed web sites providing information, including on individual procurement opportunities. The representative of the European Community said his delegation appreciated the difficulties that could be encountered by developing countries with regard to capacity in this area. His delegation recognized the possibility that developed countries could be required to apply a higher standard of information disclosure than that required from developing countries.

54. The representative of Thailand said that since government agencies in Thailand issued notices of invitation to tender throughout the year, translation requirements should be limited to big projects; otherwise, the requirement could become burdensome. The representative of Brazil, joined by the representative of Thailand, said that translation of all requests for tenders into an official WTO

language would be problematic. In this regard, the representative of Brazil noted the existence of 2,500 entities at the federal level authorized to conduct government procurement in Brazil.

55. With regard to how information on procurement opportunities should be made available, the representative of Brazil said that there should be publication in some form of media, accompanied by a degree of flexibility as to how each Member should implement such a provision. He said that in Brazil every notice of invitation was published in the official gazette and on the internet. Electronic publication of tenders resulted in cost savings, because entities could access past records of procurements of similar items, in order to find the lowest cost. The representative of Venezuela said that Venezuela had also introduced an electronic procurement system aimed at achieving greater transparency.

Time-periods

56. The representatives of India and Jamaica said that prescription of time-periods was not a matter of transparency. The representative of India said that time-periods should be set in a non-discriminatory manner and that entities should be able to decide time-periods on a case-by-case basis. The representative of Jamaica, joined by the representative of the United States, said that making known the specific time-periods applicable to a particular procurement was a transparency matter. The representative of India, joined by the European Community, said that information on time-periods, including any changes thereto, should be made available to suppliers. The representative of the United States said that time-periods should be sufficient to allow for responsive bidding, but that the period itself should be determined by national authorities or procurement entities as appropriate. The representative of Malaysia said that his delegation shared the view of the United States that the issue of time-limits was related to transparency to the extent that, if sufficient time was not provided or if sufficient time was provided to one party and not to others, transparency would be affected. Joined by the representative of Malaysia, the representative of India said that harmonization on this issue would not be advisable, on the basis of the wide divergence existing among national practices in this regard, as reflected in the "List of Issues Raised and Points Made". The representatives of Jamaica and Malaysia said that a transparency agreement should not have provisions setting out specific time-periods for each procurement method. The representative of the United States said that the United States was not seeking a specific regulatory framework on this issue, and had not advocated positions that suggested a harmonization or standardization of procurement practices.

57. The representative of India said that, since time-periods *per se* were not an element of transparency for the purposes of the work of the Group, they should be deleted from the "List of Issues Raised and Points Made". The representative of the United States, joined by the representative of Malaysia, said that the issue of time-periods required further debate. The representative of the European Community said that the question of time-periods had to be discussed in light of the use of electronic means of communication which allowed quicker responses to tenders than in the past.

Other Items in the List of Issues Raised and Points Made

58. The representative of India made comments relating to two other items in the "List of Issues Raised and Points Made", namely domestic review procedures and application of WTO dispute settlement procedures. On the question of whether there should be a requirement that a domestic review procedure be maintained, the representative of India reiterated that all WTO Members had adequate domestic administrative, audit and judicial mechanisms aimed at ensuring that all participants in the procurement process acted in conformity with the relevant rules and procedures. The primacy of domestic laws and procedures regarding this matter should be preserved and there should be no requirement to change them. India believed that developing countries within the Group were unanimously opposed to the prescription of minimum standards relating to domestic review mechanisms, and on that basis requested that the element be deleted from the Chairman's Checklist.

59. Regarding application of WTO dispute settlement procedures, the representative of India said that his delegation remained unconvinced of the need for any linkage between an agreement and the WTO Dispute Settlement Understanding, given the focus of the Group on transparency. The proponents of such a linkage were themselves not clear about how it would work, and there was no assurance that making the agreement subject to the Dispute Settlement Understanding would not lead to the overturning of procurement contracts already awarded. India's view was that the present system of redressal of complaints concerning procurement contracts through domestic mechanisms should continue. India believed that developing countries were concerned about a linkage with the WTO Dispute Settlement Understanding. In view of this, he suggested that the element be eliminated from the Chairman's Checklist.

60. The Chairman said that, as agreed at the March informal meeting, sub-items VI to XII of the Chairman's List of Issues Raised and Points made would be the principal focus of discussion at the next substantive meeting. These items were related to transparency of decisions on qualification (VI); transparency of decisions on contract awards (transparency of criteria, receipt and opening of tenders, *ex post* information on contract awards) (VII); domestic review procedures (VIII); other matters related to transparency (IX); information to be provided to other governments (information on national legislation, notification of national legislation, information on contract awards, statistical information) (X); WTO Dispute settlement procedures (XI); 'Special and Differential Treatment' and technical assistance (XII). He emphasized that the designation of the items VI to XIII as being the focus of the discussion for the next meeting did not exclude the possibility of the Group's discussing any of the other sub-items, which would remain part of the formal agenda for the next meeting. As agreed at the informal meeting, the Secretariat would prepare a short background note summarizing the work that had already taken place in the Working Group on the matters related to the sub-items VI to XII, drawing on and listing the documentation of the Group. He added that, given that the quality of discussions in the Group depended on written submissions to the Group, Members should make all possible efforts to prepare written contributions in advance of the meeting, and that these should be circulated through the Secretariat as soon as possible.

C. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

61. Reporting on the activities in relation to technical assistance and capacity building in the area of government procurement pursuant to paragraph 26 of the Doha Ministerial Declaration, the representative of the Secretariat said that an informal note had been circulated at the Working Group's informal meeting on 12 March 2002 setting out the activities and plans in the area of transparency in government procurement. The note reflected the relevant information that had been made available to Members in the Coordinated WTO Secretariat Annual Technical Assistance Plan for 2002 (WT/COMTD/W/95/Rev.3). The financial constraint mentioned at the March informal meeting relating to the availability of adequate finance in order to execute the technical cooperation plan in the area of transparency in government procurement, had since been removed pursuant to the WTO pledging conference. Furthermore, the Secretariat was currently engaged, through recruitment, in reinforcing its human resource capacity for providing technical cooperation and capacity building in this area. With regard to cooperation with other intergovernmental organizations, the WTO Secretariat had hosted a meeting with the representatives of intergovernmental agencies on the subject of inter-agency cooperation on technical cooperation and capacity-building in the area of government procurement. The meeting had been held in Washington D.C. on 27-28 March 2002, back to back with a meeting of heads of procurement of the World Bank and Regional Development Banks, and had been attended by representatives of the World Bank, the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, UNCTAD, UNCITRAL, ITC, OECD, and UNDP. The meeting had served as an opportunity to inform the procurement officials in other intergovernmental organizations of the WTO activities taking place in the area of government procurement. With a view to identifying areas of possible cooperation and coordination, information

relating to the plans and activities concerning government procurement of the organizations present had been exchanged. One of the possibilities of particular interest to the Secretariat was that of holding joint regional activities in cooperation with the regional development banks and the World Bank. The response on these proposed initiatives had been generally positive and the Secretariat was currently in the process of fleshing out the programme including the following events: joint projects planned with the IADB included a regional workshop for Central American countries in early September 2002 in Costa Rica, a regional workshop for Caribbean countries in mid-November 2002 and a regional workshop for the remaining countries in Latin America in early 2003. As regards Africa, a regional workshop had been foreseen for COMESA countries in cooperation with the African Development Bank, the World Bank and the COMESA secretariat in late 2002 or early 2003. It was hoped that there would be other joint projects with the African Development Bank and the World Bank for the countries in other sub-regions in Africa. As regards the Asian countries, joint activity with the Asian Development Bank was still under consideration. Furthermore, a Symposium was planned for October 2002 in Geneva back to back with the next meeting of the Working Group, intended for capital-based delegations as well as Geneva-based delegations. The Secretariat was also in contact with a number of the countries requesting national workshops and seminars, and it was hoped that as many as possible of these could be held before the end of 2002. The Secretariat had attended a meeting of the OECD Development Assistance Committee (OECD/DAC) on 14 March 2002. The meeting had discussed the organization of a workshop amongst OECD member countries and invited developing countries on the subject of capacity building and technical cooperation in the area of government procurement. The interest of the OECD/DAC was a follow-up to the OECD Recommendation for the Untying of Development Aid to Least-Developed Countries, which had increased interest in the reform of national procurement systems. The representative of Kenya, joined by the representatives of India, Colombia, the European Community and Thailand thanked the Secretariat for its report on planned technical assistance and capacity-building activities.

62. The Chairman said that developing countries were encouraged to clearly state their needs so that the technical assistance and capacity building process could take them into account. He invited comments from both developing and developed countries regarding initiatives and programmes.

63. The European Community said that the efforts made by the Secretariat in the area of training and technical assistance were complementary to the work carried out in the Working Group. His delegation reiterated the importance of technical assistance and capacity building, independently of the commitment undertaken pursuant to the Doha Ministerial Declaration. The representative of Canada said that Canada recognized that, in order to make progress towards a multilateral agreement and to ensure effective implementation of obligations and exercise of rights, full participation of the participants in the negotiation of the framework of such an agreement was required.

64. The representative of Venezuela said that technical assistance and capacity-building programmes should focus on issues of substantive nature including such issues as supporting domestic employment and development of small and medium enterprises as well as identifying ways in which suppliers in developing countries could participate in procurement by government entities in developed countries. While Venezuela supported the importance of curbing corruption and had to this end presented a submission to the Working Group. His delegation was concerned that the focus of the intergovernmental organizations participating in and funding regional workshops would be limited to concentrating on the avoidance of corruption in tendering procedures. Technical assistance and capacity-building programmes related to regional workshops should go beyond addressing concerns related to corruption. The sub-regional seminars in Latin America could serve as a means of divulging information and informing civil servants as to how government procurement could influence employment and development in general. He added that including considerations such as these would not constitute a diversion from the goals of the work of the Working Group.

65. The representative of Kenya supported by the representatives of the United States and India, said that the planned workshops and seminars aimed at providing technical assistance and capacity

building would enable his authorities to better understand the subject of government procurement and to assess its relevance in the WTO context. The delegation of India said his delegation was unsure as to what were the technical assistance needs, given that the Group was in the study phase, and that there were divergent views among Members on issues. The representative of Malaysia said that the provision of technical assistance should enable developing countries to achieve a better understanding of the implications of a transparency agreement on their developmental aspirations, which would allow them to assess whether to proceed towards a multilateral agreement. In the area of government procurement, as well as in the areas of trade and investment and trade and competition policy, technical assistance should not be related to the need for explicit consensus at the next Ministerial meeting on negotiations. In response to the reference by the representative of Malaysia to other Singapore issues, the representative of the United States said that each of the Singapore issues should be considered in terms of their individual merits, and in this regard added that technical assistance and capacity building could provide an opportunity for individual delegations to consider the issue of government procurement on its particular merits. The representative of Kenya, joined by the delegation of India, said that technical assistance should not lead the recipients to adopt a certain line of thought; rather, it should place them in a position to make an independent decision about whether the subject-matter merits further consideration. The representative of Malaysia shared the concerns expressed by the delegation of Kenya, particularly with regard to any notion that, once technical assistance was provided, as mandated in the Doha Ministerial Declaration, there would be a degree of automaticity with regard to entering negotiations. In response, the European Community stated that technical assistance should help the recipients arrive at independent judgements, and that constructive debate in full knowledge of the facts was the crux of the technical assistance programme.

66. The delegation of Kenya, joined by the representatives of Malaysia, the United States, Japan, Colombia, Canada, Jamaica and Turkey, said that consideration should be given to facilitating the participation of capital-based officials in the discussions ongoing in Geneva. Making progress and enhancing understanding in the area of transparency in government procurement depended to a large extent on substantial capital-based participation. The representative of Kenya added that this was the only way to build capacity. For instance, capital-based as well as Geneva-based participants should participate in the Symposium in October. The Chairman said there had been interest in gaining the participation of both Geneva- and capital-based representatives, which however depended on financial limitations. In response to a question on the participation of capital-based experts in the Symposium in October, the representative of the Secretariat said that any delegates from capitals intending to participate in the next meeting were entitled to attend the Symposium provided they covered their own expenses. On the question of whether the Secretariat could assist in financing the participation of a number of capital-based delegates at both the Symposium and the meeting of the Working Group, he said that some officials from least-developed countries might be included in this way, but he was not in a position to make a commitment as to such a possibility. He added that remarks on the importance of the presence of capital-based officials had been noted, and should be of some assistance in securing funding.

67. As regards the content of the technical assistance programmes, the Secretariat said that the WTO contribution in this phase should be linked to helping developing countries make informed decisions about their interest in and the implications of a possible multilateral framework in the area of government procurement. In this regard, the comparative advantage of the WTO Secretariat lay in assisting capital-based officials to fully understand the discussions going on in the Working Group, to assess the implications thereof, and to advise decision-makers in their countries. He recognized that governments might, when considering their interests in future work in the WTO, need also to examine a wider set of issues regarding institution building and possible reform in the area of government procurement. Therefore, the Secretariat emphasized the importance of cooperation with other intergovernmental organizations in order to organize events providing a broader perspective than that offered solely by the WTO, a point also raised at the recent inter-agency meeting hosted by the Secretariat. On the need to tailor the content of the planned events to the specific needs of recipient countries, suggestions had been received that it would be useful, for countries in Latin America and

the Caribbean, to have events addressing also activities at the regional and bilateral levels as well as WTO-related activity on transparency in government procurement. A broad perspective for the discussion of issues was important, given that policy-makers often considered the same questions at various levels, and the usefulness of bringing together trade officials and government procurement experts so that interaction and reciprocal learning could take place. On the basis of another point raised at the inter-agency meeting, regarding the diversity of the positions of developing countries according to their different stages of development and different needs, the IADB had advised the Secretariat that it would be preferable to hold, instead of one regional event for Latin America and the Caribbean, three separate events which could be focused directly on the specific needs of the different groups of these countries.

68. The representative of Japan said that the Ministry of Foreign Affairs had initiated contacts with the national development agency, as a result of which Japan was able to contribute to funding one Geneva-based seminar for each Singapore issue. Japan shared the view expressed by the representatives of Kenya and the United States that it was important to have capital-based experts from developing countries at the October meeting as well as the Symposium. Her delegation requested that its offer for funding the travel cost of approximately 20 experts from capitals in developing countries as contribution to the work of the Working Group be considered. The delegation of India, joined by the representative of Colombia, thanked the delegation of Japan for the generous offer of its government to fund the participation of officials from developing countries. The representative of Colombia added that the Symposium in October would be an excellent opportunity for officials from developing countries to get to know the advances made in the Working Group and become involved in the discussions. Regarding Japan's offer of funding, he said that this would to an extent help to respond to the views expressed on the importance of having capital-based participation at the October Symposium. The representative of the Secretariat welcomed Japan's generous offer which would help to cover the cost of participation of capital-based delegations in the Symposium.

69. The representative of Canada said that developing and least-developed countries were best placed to identify their capacity-building and technical assistance needs. Canada's approach to technical assistance and capacity building in the Working Group would continue to be guided by the needs expressed by these countries. Over the past decade, based on expressed needs, Canada had committed to working with developing countries to remove obstacles to trade and development through participating in over 200 trade-related technical assistance and capacity-building projects. The Secretariat was encouraged to continue to work together with other groups and organizations such as the World Bank, Regional Development Banks, UNCTAD and others, so as to ensure that the human and financial resources dedicated to capacity building and technical assistance were fully and effectively utilized. While recognizing that capacity-building and technical assistance needs were linked to broader issues of development, Canada was confident that a focused discussion on capacity-building and technical assistance needs related to transparency in government procurement had the potential to contribute to attainable achievements in the area of government procurement prior to and beyond the next Ministerial Conference.

70. The representative of Jamaica said that her authorities were interested in understanding the extent and scope of assistance that could be provided in relation to provision of information on national legislation and procedures and asked whether there was the possibility of assistance to address the need for hardware, software and the expertise necessary to develop the electronic publication of procurement information.

71. The representative of Turkey said that, as well as technical advice and financial contributions, other experience-sharing types of experiences such as 'twinning' practiced by the European Community or study tours and assistance with application of information technology could be useful.

72. With reference to the issue of technical cooperation relating to the application of information technology raised by the representatives of Jamaica and Turkey, the representative of the Secretariat

said that the Secretariat had in the past organized two events in Geneva on the use of information technology in government procurement and noted that, although the events had been open to other interested delegations, interest at the time had primarily been from Parties to the plurilateral Agreement on Government Procurement. Participants had learnt about the different techniques in use and become aware of the varying degrees of advancement among countries in the introduction and use of electronic procurement systems. Should there be sufficient interest, the possibility of organizing another such event could be considered. More detailed assistance in designing and introducing information technology systems was out of the reach of the WTO Secretariat, and would be a matter of approaching regional development banks, the World Bank, or seeking bilateral assistance.

73. The representative of the European Community said that his authorities were preparing a seminar for negotiators from developing countries. It would last three or four weeks and would include a module on transparency in government procurement. The seminar was designed for officials from Ministries in developing countries, and was scheduled to take place towards the end of the year. The transparency in government procurement component of the seminar was aimed at improving understanding of the impact of transparency in the public administration tendering process; identifying administrative costs and potential obstacles to future implementation of multilateral rules on transparency; helping officials from developing countries to identify the strengths and weaknesses of their legal frameworks; and assessing the extent to which common ground existed between them. On conclusion of the module on transparency, participants should have reached an understanding of all elements related to transparency in government procurement, should be in a position to assess the impact of the relevant proposals on their national legal regimes, and should be able to prepare their own contributions on the debates ongoing in Geneva and elsewhere. Training in negotiation techniques and skills would also be included in the seminar. The European Community considered that this was a substantial contribution towards the commitment undertaken pursuant to the Doha Ministerial Declaration, and hoped for a significant participation from developing countries. In response to a question put by the delegation of Malaysia, the delegation of the said that the event would include other issues apart from government procurement, possibly other Singapore issues, or a mix between Singapore issues and other issues under discussion post-Doha. At the present time, their exact nature could not be confirmed. However, relevant information would be released as soon as funding had been secured.

74. The representative of Thailand welcomed the initiative by the European Community to hold seminars for negotiators. With regard to the planned workshops or seminars on technical assistance and capacity building to be held on a regional basis, Thailand requested that these be open not only to government officials but also to the private sector, given the latter's important role in regard to government procurement. The Chairman noted that this issue seemed to depend on the policy of the countries themselves regarding the involvement of the private sector. The representative of Malaysia said that his delegation was opposed to Thailand's suggestion of inclusion of private-sector participation. On the question of inviting private-sector participants, the representative of the Secretariat said that events of this kind were designed primarily for government officials. Should the government of a country in which a regional event was taking place wish to include such additional participants, these would be accommodated to the extent that the interactivity of the event was not upset. In regard to national seminars and workshops, he considered that often governments sought to include participation from the private sector, non-governmental community, and academic community, and that some sessions were more public in nature than others, which were limited to government officials

D. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

75. The Chairman said that, at its past meetings, the Working Group had considered requests for observer status from three international intergovernmental organizations (OECD, SELA and the Organization of the Islamic Conference) and agreed to revert to these requests in the light of the ongoing consultations in the framework of the General Council. Given the overall status in the WTO

regarding this matter, he suggested that the Working Group revert to this matter at its next meeting in the light of developments in those consultations.

E. DATE OF THE NEXT MEETING

76. The Chairman said that, as agreed at the informal meeting held in March, the second substantive meeting of the Working Group would be held on 10 October (in the afternoon) and 11 October 2002. The meeting would be preceded by a Symposium to be held in Geneva on 9 October and the morning of 10 October. Also, as agreed at the March informal meeting, there would be a third meeting in November which would be primarily for the purpose of approving the Annual Report to the General Council.
