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Page: 1/18

**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

Addendum

At the informal meeting of 4 October 1999, it was agreed that the note by the Secretariat, reflecting the discussion on the article-by-article examination of the Agreement at the informal meetings held from February to September 1999 (Job No. 5713), would be updated. Accordingly, the present note reflects the comments made at the October meeting. Since the additional points made at that meeting touch on only a small proportion of the pages of the fourth revision of the note, this addendum only updates those pages and should be read in conjunction with the fourth revision and with the relevant sections of the tenth revision of the Checklist of Issues (Job No. 5189), dated 7 September 1999. For any delegation which might wish to update the copy of the fourth revision, the following table indicates how the relevant pages of the document circulated as Job No. 5713 should be replaced by the pages reproduced in the attachment to this note:

Articles of the Agreement	replace Job No. 5713, pages	with the attached pages
Article I:1, 2	2	2
Article II:4	6	3
Article II, new paragraph	7	4
Article VI:1, 2	21-22	5-6
Article VI:3, 4	24	7
Article VII:3	26	8
Article IX:1	32-34	9-11
Article IX:7, 8	38	12-13
Article XX:1	70	14
Article XXIV:6	83-85	15-17

* English only.

** Pursuant to the relevant Decision of the Committee on Government Procurement ([GPA/CD/5](#) (16/11/2023)), this document (informal document symbol: negs18) was derestricted on 8 November 2023.

ATTACHMENT*Article I:1, 2**Scope and Coverage*

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<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>¹ For each Party, Appendix I is divided into five Annexes:</p> <ul style="list-style-type: none"> - 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. <p>Relevant thresholds are specified in each Party's Annexes.</p>	<p>1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement falling within the scope of Article III, paragraph 8 of the GATT and Article XIII, paragraph 1 of GATS by entities covered by this Agreement, as specified in Appendix I. [EC – GPA/W/87]</p>

Comments

- This Article should contain a definition of the term "government procurement" which focuses on the status of the end-users rather than the purchasing agent. *[Hong Kong, China]* Some specific suggestions with respect to this comment should be provided. *[US]*
- Consideration should be given to whether the current definitions in the GATT and the GATS are adequate or whether a further definition of "government procurement" should be developed. *[US]*
- A reference to the current definitions in GATT and GATS is necessary to ensure that the inclusion of a definition of "government procurement" in the GPA does not lead to a situation in which government procurement is not covered by any WTO rules. *[EC]*
- The proposed modification is intended to avoid misunderstandings with regard to the meaning of public procurement without actually defining the term. This modification is not intended to have the effect of precluding existing derogations, for instance, reciprocity-based derogations, under the current Agreement. *[EC in response to clarification sought from Japan and Hong Kong, China]*

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
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.	

Comments

- The paragraph 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). [*Job No. 5074*]

*Article II:4**Valuation of Contracts*

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
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:	
(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	
(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.	

Comments:

- What is meant by the reference to a 12 months period? If the final value of a contract which runs for more than one year, for example, a road maintenance contract, is unknown until the works have been completed, should the basis of coverage be the estimated value for one year or the value for the full period of the contract? Should the contract be broken down into one-year periods because of the reference to 12 months in subparagraphs (a) and (b)? [*Hong Kong, China*]

Article II

Valuation of Contracts

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
	<p><u>new paragraph</u></p> <p>For contracts of an indefinite value, or for contracts involving the award of a contract to multiple suppliers or service providers, the basis for valuation shall be either:</p> <p style="padding-left: 40px;">a) the maximum total estimated value of the procurement that could be awarded under the contract; or</p> <p style="padding-left: 40px;">b) [where the total estimated value is not stated, [Singapore – Job No. 5271]] the estimated value of the contract shall automatically be considered to be above the threshold values provided for in the national annexes to the GPA for the purposes of coverage under the Agreement.</p> <p>[US – Job No. 2795]</p>

Comments

- How would the proposed provision apply to low value contracts, for example those entered into by small local authorities? Under such contracts, even over a period of several years, the threshold values stipulated in the Agreement may not be exceeded. *[Norway, Canada]*
- In order to provide certainty on the application of the Agreement in cases of low-value contracts, the concept of maximum total estimated value in subparagraph (a) could be elaborated. It might be possible to make a determination that the maximum total estimated value of small-value contracts would not exceed the GPA thresholds. *[US]*
- The total estimated value of a contract is not necessarily published. *[Canada]*
- How would the existing paragraphs 4, 5 and 6 and the proposal for a new paragraph fit together and would there be a need for further amendments in light of the discussion on framework agreements. *[Canada; Hong Kong, China]*

Article VI:1, 2

Technical Specifications

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<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>2. Technical specifications prescribed by procuring entities shall, where appropriate:</p> <ul style="list-style-type: none"> (a) be in terms of performance rather than design or descriptive characteristics; and (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.</p> <p>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.</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 comply with the principles laid down in Article III, paragraph 0 and in particular ensure the principle of open and effective competition and shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. [EC – GPA/W/87; Hong Kong, China]</p> <p>This means that at least the following will apply:</p> <ul style="list-style-type: none"> (a) technical specifications shall be formulated, where possible in terms of performance requirements rather than design or descriptive characteristics; [EC – GPA/W/87; Singapore – Job No. 5271] (b) in all cases procuring entities shall not be able to exclude bids which include products, services or works which comply with appropriate international standards for reasons relating to the non-compliance with technical requirements covered by those standards; [EC – GPA/W/87; Singapore – Job No. 5271] (c) procuring entities shall not reject bids which [do not comply with the standard, regulation or code to which the technical specifications refer, but do[EC – GPA/W/87]] meet the essential requirements thereof and are fit for the purpose intended. [EC – GPA/W/87; Singapore – Job No. 5271]

Comments

- The second sentence with subparagraphs ("This means ...") should be deleted. [*Hong Kong, China; Korea*].
- The meaning of the term "unnecessary obstacles to international trade" should be clarified. [*Job No. 5074*]
- Subparagraphs (b) and (c) of the EC proposal are directly contradictory. The combined effect of subparagraphs (b) and (c) nullifies the requirement to use international standards because bids whether they meet international standards or not, cannot be rejected. Subparagraph (c) should focus on essential requirements. It appears to make more sense to refer to "essential requirements" in subparagraph (c). [*Singapore - Job No. 5271*]
- The implications of the use of the term "where possible" with regard to the use of performance requirements instead of the term "where appropriate" in the current text should be clarified. [*US*]
- It is important that technical specifications are developed in a way that ensures, to the extent possible, that they focus on the end-needs of the procuring entity rather than use designed-based specifications which would limit competition. [*US*]
- Reference to international standards may place excessive restrictions on procuring entities' exercise of discretion in formulating specifications to suit their needs. [*US*] There is still considerable ambiguity associated with what constitutes an "international standard" and the procedures according to which those standards are set. [*Korea, US*] The objections that have been raised regarding the definition of "international standards" also apply in relation to the current provisions. [*EC*]
- Subparagraph 2(b) of the current text should be deleted because the majority of international standards are based on design or description rather than on performance. International standards should be taken into account to the extent that they allow the achievement of the objective and performance sought. The EC approach provides that technical specifications must be prescribed with their end-use in mind. Accordingly, the use of international standards would become much less important. [*EC*]
- Subparagraph (b) should make reference to voluntary compliance with market-based standards instead of international standards. [*US*]
- The proposal should be clarified whether an implication of a requirement on procuring entities to accept specifications that comply with international standards would be the delegation of the certification process to an independent expert. [*Japan*]

Article VI:3, 4

Technical Specifications

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
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.	

Comments

- Paragraphs 1 and 2, which relate more to non-discrimination, should be separated from paragraph 3 describing the types of procurement procedures and be placed in Article III. *[Job No. 5074]*

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
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.	

- 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. *[Job No. 5074]*
- Paragraphs 3 and 4 of the current text could be maintained subject to certain conditions. *[EC]*

Article VII:3

Tendering Procedures

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<p>3. For the purposes of this Agreement:</p> <p>(a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.</p> <p>(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.</p> <p>(c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.</p>	<p>3. For the purposes of this Agreement:</p> <p>(a) Open tenders are those which are posted in a medium which is [in the public domain] [readily available to both local and foreign suppliers], and which all interested suppliers may submit a tender.</p> <p>(b) Selective tenders are those which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, selected suppliers are invited to do so by the entity, and the information on the tender is not posted in a medium which is [in the public domain] [readily available to both local and foreign suppliers].</p> <p>(c) Limited tenders are those where the entity contacts suppliers individually, only under the conditions specified in Article XV.</p> <p>[Singapore – Job No. 3772]</p>

Comments

- With regard to the proposed subparagraph (b), it may not be appropriate to define the procedure in terms of the medium through which information on selective tendering opportunities is provided as in most cases of selective tendering notifications are published in the same way as for open tendering procedures. The Agreement should not imply that selective tendering procedures do not involve publication of tender notices. [US]

Article IX:1

Invitation to Participate Regarding Intended Procurement

Comments

- 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.
- 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.

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<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>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 through means which offer the widest possible and non-discriminatory access to interested suppliers and service providers from all Parties to this Agreement; these means shall be accessible [free of charge [delete Singapore – Job No. 5271]] through a single point of access. Each Party shall notify to the other Parties this single point of access. [Entities shall not charge for access to invitations to participate [Singapore – Job No. 5271]] [EC – GPA/W/87; Singapore – Job No. 5271]</p>

Comments

With regard to the proposed requirement that procurement notices should be provided "free of charge":

- This proposal raises concerns. *[Hong Kong, China]* Would there be a benefit by shifting the costs of publication from suppliers to taxpayers? *[Canada]*
- The intent of the Additional wording by Singapore is to explicitly state what is provided free of charge, as opposed to a blanket free of charge formulation. The telephone line, the computer, the Internet Service Provider fees are not free of charge. The current subparagraph 6(g) of Article IX also refers to "the amount and terms of payment of any sum payable for the tender documentation". Hence, it would be better to explicitly state what is provided free of charge. *[Singapore – Job No. 5271]*

With regard to other points:

- The establishment of "a single point of access" is technically feasible. However, it is questionable whether the benefits would be worth the significant cost and undue burden associated with introducing this system for Parties with decentralised systems and for developing countries. *[US]*
- The term "widest possible access" has been used to avoid referring to the Internet in recognition of the fact that other technological advance may emerge which also promote transparency. *[EC]*
- The reference to the term "widest possible access" suggests that the publication of procurement notices must be published through the use of information technology. The use of information technology should be optional. *[Japan, Korea]*
- The intention underlying the proposed text is not to make the use of information technology mandatory. Traditional means of publication can also be used provided that they are easily accessible. *[EC]*

Article IX

Invitation to Participate Regarding Intended Procurement

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
	<p>1. Except as provided for in Article XV (provisions for the use of limited tendering procedures) and paragraph 3 of this Article (provisions for the use of selective tendering procedures by Annexes 2 and 3 entities), entities shall publish a notice of intended procurement for each contract to be awarded. The notice shall be published in the appropriate publication listed in Appendix II.</p> <p>[United States – GPA/W/85]</p>

Comments

- The aim of the amendment is to provide more flexibility for Annex 2 and 3 entities. The proposed amendment would allow those entities to either provide the "normal" notification as provided for in paragraph 2 of the proposal or, in lieu of that, Annex 2 and 3 entities would be able to publish an annual notification informing the public and suppliers of their procurement plans during that year. *[US]*
- The proposal aims at eliminating several undefined terms that are used in the current Agreement to refer to tender notices issued by different types of entities and in different types of circumstances. In effect, the proposal combines the requirements for Annex 1, 2 and 3 entities into one set of requirements for tender notices relating to open tendering opportunities. Consequently, the type of information that must be provided by Annex 1 entities for open tendering notifications would be simplified. The proposal also attempts to ensure that the amount of information provided in notifications is at least equivalent to what is required under the current text for selective tendering procedures. *[US]*
- How would the proposed provisions deal with notices of invitation to tender under selective tendering procedures engaged in by Annex 1 entities? More specifically, clarification regarding the point at which Annex 1 entities must publish a notice is necessary. *[Canada]*
- The wording in paragraph 1 raises the question whether selective tendering procedures by Annex 2 and 3 entities would still be covered. If selective tendering procedures were to be no longer covered by Article IX, there is a question whether paragraph 3 of the US proposal (see below opposite the text of paragraph 9 of Article IX) is consistent. *[EC]*
- The proposal is intended to cover entities at all levels of government. *[US]*
- Clarification is required as to whether the notice referred to in the proposal is intended to be a notice of application for qualification or a notice to be issued at a second stage. *[Canada]*

Article IX:7, 8

Invitation to Participate Regarding Intended Procurement

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
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:	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:
(a) the subject matter of the contract;	(a) the subject-matter of the contract, including the relevant CPV code;
(b) the time-limits set for the submission of tenders or an application to be invited to tender; and	(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.	(c) the addresses from which documents relating to the contracts may be requested.
	[EC – GPA/W/87]

Comments

- The provisions of Article IX:8 should follow the provisions of Article XI:1 on publication of an invitation to participate. *[Job No.5074]*
- With regard to the reference to the relevant CPV code:
- Reference to a national classification code should suffice as long as it is transparent. *[US]*
- The reference to CPV code should be deleted. *[Singapore, US]* Many projects contain a mixture of CPV codes. In some projects, CPV code may not be available or applicable. Alignment to CPV codes would impose an unnecessary administrative burden and may not make much difference to the suppliers/tenderers. *[US, Singapore]*
- Alternatively, the words "if applicable" should be added at the end of subparagraph 8(a). *[Singapore – Job No. 5271]*
- A variety of classification systems are used by Parties for various purposes. The practicality of establishing a common classification system applicable among the GPA Parties for all purposes is questionable. *[Canada]*

- While the establishment of a common classification system might be necessary, further consideration of the impact on existing systems is required. *[Singapore]*
- The aim underlying the proposal is to come up with a system that is as transparent and efficient as possible. This cannot be achieved unless there is a common classification system. A common classification system will help suppliers to understand what a procuring entity wishes to purchase and will also facilitate the collection of accurate statistical data. *[EC]*
- The CPV code is more comprehensive than the Harmonized System of classification of goods. It covers the whole gamut of government purchases of goods and services. *[EC in reply to a clarification sought by Switzerland]*

Article XX:1

Challenge Procedures

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<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>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 solution 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. Such encouragement may take place in particular through the designation of one or more bodies which can offer their good advice in trying to solve the situation. [EC – GPA/W/87]</p>

Comments

- The last sentence in this paragraph should be clarified. The division of labour between the new challenge bodies created under paragraphs 1 and 2 of the EC's proposed amendment and the challenge bodies referred to in paragraph 6 of the existing agreement should be clarified. *[Japan; Hong Kong, China]*
- It was not intended that the proposed amendment would have the result of imposing a new authority on procuring entities. Rather, the intent was to have a central point to address any problems in an unbureaucratic fashion, informally and rapidly. It would be left to Parties to decide how to organize these bodies. *[EC]*
- The need for such prescriptive provisions is doubtful. *[Hong Kong, China]*
- Rather than create a completely new body, the relevant aspects of the approach proposed by the EC could be incorporated into the existing procedures. *[Singapore]*
- The proposal is not intended to make it compulsory for Members to create new bodies. Rather, the intention is to designate bodies that may already be in place. This proposal was made in recognition of the fact that resort to a court is not an ideal solution for government procurement disputes. *[EC]* Settling of government procurement disputes outside legal judicial systems will afford increased flexibility in dispute settlement procedures.

Article XXIV

Final Provisions

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
<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>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, it shall be deemed that government control or influence over the entity in question has been effectively eliminated if all of the following conditions are met:</p>

Comments

- In order to avoid any legal ambiguity regarding requests for compensation, subparagraph 6(b) would need to be modified as suggested above. *[Japan]*
- The present provisions are a carefully balanced outcome of the negotiations between Parties and reflects the uncertainties in market access opportunities which might be associated with the withdrawal of an entity from Appendix I, notwithstanding a claimed removal of government control or influence. Its purpose was to ensure that any future changes to an agreed annex does not affect the negotiated balance. *[Job No. 5189]*

Article XXIV

Final Provisions

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)	PROPOSED MODIFICATIONS
	<p>(a) the government does not provide the entity with any special and exclusive right to operate;</p> <p>(b) the government does not appoint more than half of the members of the entity's managing board which has the power to decide on its operations; and</p> <p>(c) the operation of the entity is financed by its business revenue, not by government subsidies or equity infusion.</p> <p>Unless these conditions are met, a compensatory adjustment may be sought for any remaining government control or influence. [Japan – Job No. 860]</p>

Comments

- The proposed criteria may not be the only ones for establishing that an entity was no longer under government control or influence. There might be other criteria that might be used as evidence of market opening effects. [Job No. 5189]
- The proposal attempts to define the conditions under which Parties would relinquish their right to seek consultation with other Parties about a proposed modification for the removal of an entity from the Agreement's coverage. Parties should not be denied that right. [US]
- The application of the criteria listed in Japan's proposal would facilitate consultations between Parties. [Japan]
- Regarding the requirement in subparagraph (a) that the government not provide the entity with any special or exclusive rights, a wide variety of private companies are granted such rights by the government. For instance a corner store might be authorized to sell fishing licences or postage stamps. [Job No. 5189]
- It is unclear whether a company that is granted a special right to operate, for instance a bus company that is no more within the government sphere given a franchise to operate by the government on certain routes in competition with other forms of transport, would fall within the scope of proposed subparagraph (a). [Hong Kong, China]
- An effect of proposed paragraph (b) would be that it would not allow consideration of compensatory adjustment if, for example, an entity that was unilaterally withdrawn from Appendix I still had 48% government membership on its board. [US]
- The requirement that the government in subparagraph (b) might not be sufficient to ensure that the government control or influence is effectively removed. What would be an appropriate percentage in this respect? [Job No. 5189]

- With regard to the criteria in subparagraph (c), in some circumstances, government subsidies to privatized entities may still be necessary if the subsidies are linked to lowering the cost of provision of basic services and where the beneficiaries are the members of the general public. *[Korea]*
 - The criterion in subparagraph (c) might not be appropriate in all cases. For instance, a number of entities in both Annexes 1 and 3 of the United States, while operating on the basis of their own business revenues, continue to be considered as government agencies conducting government procurement. If the entity was mainly financed by its business revenue, some non-voting equity infusions by the government would not affect the degree of government control or influence. *[Job No. 5189]*
-