



11 December 2003

(24-2760)

Page: 1/35

**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**

**REVISION OF THE AGREEMENT ON GOVERNMENT PROCUREMENT
AS AT 28 NOVEMBER 2003*,****

Revision

The purpose of this note is to reflect the state of the negotiations on the revision of the text of the Agreement on Government Procurement under Article XXIV:7 as at the end of the meeting of the Informal Group of the Committee on Government Procurement of 26-28 November 2003.

* In English only.

** Pursuant to the relevant Decision of the Committee on Government Procurement ([GPA/CD/5](#) (16/11/2023)), this document (informal document symbol: negs119) was derestricted on 8 November 2023.

TABLE OF CONTENTS

Article I	Definitions	3
Article II	Scope and Coverage	5
Article III	General Principles	8
Article IV	Publication of Procurement Information.....	9
Article V	Publication of Notice of Intended Procurement	9
Article VI	Time-Periods for Tendering	10
Article VII	Information on Intended Procurements.....	12
Article VIII	Conditions for Participation	14
Article IX	Negotiation	17
Article X	Limited Tendering	18
Article XI	Treatment of Tenders and Contract Awards	19
Article XI <i>bis</i>	Use of Electronic Means	20
Article XII	Transparency of Contract Award Information	21
Article XIII	Non-Disclosure of Information	23
Article XIV	Developing Countries	23
Article XV	Exceptions to the Agreement.....	26
Article XVI	Modifications and Rectifications to Coverage	27
Article XVII	Challenge Procedures	30
Article XVIII	Consultations and Dispute Settlement.....	31
Article XIX	Institutions	33
Article XX	Final Provisions	33

Preamble

Parties to this Agreement (hereinafter referred to as "Parties"),

Recognizing the need for an effective multilateral framework for government procurement, with a view to achieving greater liberalization and expansion of, and improving the framework for, the conduct of international trade;

Recognizing that measures regarding government procurement should not be prepared, adopted or applied so as to afford protection to domestic suppliers, goods or services or discriminate among foreign suppliers, goods or services;

Recognizing that the integrity and predictability of government procurement systems are integral to the efficient and effective management of public resources, the performance of the Parties' economies, and the functioning of the multilateral trading system;

Recognizing that the procedural commitments under this Agreement should be sufficiently flexible to accommodate the specific circumstances of each Party;

[*Recognizing* the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;]¹ **[NB: To be revised in light of revision of relevant provisions related to developing countries.]**

Recognizing the desirability of transparent measures regarding government procurement and the importance of carrying out procurements in a transparent and impartial manner, avoiding conflict of interest and corrupt practices, in accordance with relevant international instruments. **[NB: The status of this paragraph is related to the status of Article III:3bis]**

[*Recognizing* the importance of encouraging the use of electronic means for procurement covered by this Agreement;]^{US,SWI}

Desiring to encourage acceptance of and accession to this Agreement by WTO Members not party to it;

Having undertaken further negotiations in pursuance of these objectives;

Hereby agree as follows:

Article I Definitions

For purposes of this Agreement:

[build-operate-transfer contract and public works concession contract] mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of such works for the duration of the contract;^{US} **[Market Access Issue]**

commercial goods and services mean goods and services [of a type]^{US,CDA,JPN} [with the same technical specifications as those]^{EC,SWI} of goods and services that are sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes; [it includes goods and services with modifications customary in the commercial marketplace,]^{JPN,US,CDA} [as well as minor modifications not customarily available in the commercial marketplace that do not

¹ Unattributed brackets [] indicates language that Parties are still considering.

significantly alter the nongovernmental function or essential physical characteristics or change the purpose]^{US};

construction services contract means a contract that has as its objective the realization by whatever means of civil or building works[, in the sense of Division 51 of the Provisional U.N. Central Product Classification (CPC)]; **[Bracketed Language - Market Access Issue]**

country or countries include any separate customs territory that is a Party to this Agreement. In the case of a separate customs territory that is a Party to this Agreement, where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified;

days means calendar days;

[electronic auction means an iterative process involving [a computer networking environment]^{US} [an electronic device]^{EC} for the presentation of new prices [or]^{US,EC} revised [downwards,]^{EC} or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods;]^{EC,US} ***[NB: Canada questions the need for the phrase "which occurs after an initial full evaluation of the tenders" and whether it is necessary to prejudge the sequence of the evaluation and auction.]***

[electronic means means using [a computer networking environment]^{US} [electronic equipment]^{EC} for the processing (including digital compression) and storage of data [that]^{US,EC} is transmitted, conveyed and received by Internet, by wire, by radio, by optical means or by other electromagnetic mean;]^{EC,US} ***[NB: Canada, Japan and Israel reserve their position on this definition because of its links to other provisions.]***

in writing or written means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

limited tendering means a procurement method where the procuring entity contacts a supplier or suppliers of its choice, [only under the conditions specified in [paragraph ... of Article X] and may choose not to apply Articles []]^{EC}; ***[NB: Japan proposes to delete this definition.]***

measure means any law, regulation, procedure, [or any act of a procuring entity relating to a covered procurement]^{EC} [procurement-specific requirement,]^{US,NOR,JPN} ***[NB: The EC; Hong Kong, China; and Singapore support the concept but consider the need for further drafting.]*** administrative guidance or practice [administrative ruling of general application]^{CT}; ***[NB: The United States proposes two alternatives to address concerns with the bracketed text: (1) "...administrative guidance, practice or requirement applied in a particular procurement"; or (ii) "...administrative guidance, practice or other requirement."]***

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity in accordance with Article V inviting interested suppliers to submit tenders;

offsets in government procurement means any [measures,]^{CT} conditions or undertakings that encourage local development or improve a Party's balance-of-payments accounts, such as the use of domestic content, domestic suppliers, the licensing of technology, technology transfer, investment, counter-trade and similar actions [unless such conditions or undertakings are necessary to enable the contracts to be performed]^{HKC}; ***[NB: Hong Kong, China is concerned that the addition of "domestic suppliers" and, along with Korea and Israel, that "technology transfer" expands the scope of offsets.]***

open tendering means a procurement method where all interested suppliers may submit a tender [in response to [a notice of intended procurement]^{US} [an invitation to tender]^{SGP}; ***[NB: Japan proposes to delete this definition. Canada reserves its position on this issue. The EC considers it unnecessary to add any of the bracketed texts, but if any bracketed language is kept it would support the US bracket.]***

;

person means a natural person or a juridical person;

[procurement means the process by which a [government]^{US} [procuring entity]^{JPN,CT} obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;]^{JPN,US} **[Market Access Issue]**

procuring entity means an entity covered under Annexes 1, 2 and 3 of Appendix I of each Party;

qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation in a procurement;

[recurring contracts mean contracts, not based on an initial contract or agreement, which are regular in nature or which are intended to be renewed within a given period;]^{EC,CT}

selective tendering means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender; ***[NB: Japan proposes to delete this definition. Canada reserves its position on this issue.]***

services includes construction services, unless otherwise specified;

[standard means 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 labelling requirements as they apply to a product, service, process or production method;]^{JPN,EC,US}

supplier means a person or group of persons that provides or could provide goods or services;

[technical regulation means 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 labelling requirements as they apply to a product, service, process or production method;]^{JPN,EC}

technical specification means a tendering requirement that:

- (a) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
- (b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article II Scope and Coverage

Application of Agreement

1. This Agreement applies to any measure regarding a procuring entity's procurement of goods, services or any combination thereof that is covered by this Agreement.

2. This Agreement applies to procurement:

- (a) by any contractual means, including purchase; lease; rental or hire purchase, with or without an option to buy [and build-operate-transfer contracts and concessions for public works contracts;]^{US} [with or without utilization of the funds and the managerial or technical ability of the private sector]^{JPN}; and [**Bracketed Language - Market Access Issue**]
- (b) for which the value as estimated, in accordance with paragraph 6, equals or exceeds the relevant threshold specified in Appendix I, at the time of publication of a notice in accordance with Article V.

[2bis. Without prejudice to Article [Exceptions], this Agreement applies to any procurement:

- (a) of central government entities where the value is estimated to equal or exceed:
 - [] SDR for contracts for supply of goods and services;
 - [] SDR for contracts for construction services;
- (b) of sub-central government entities where the value is estimated to equal or exceed:
 - [] SDR for contracts for supply of goods and services;
 - [] SDR for contracts for construction services;
- (c) of entities according to Appendix I, Annex 3 where the value is estimated to equal or exceed:
 - [] SDR for contracts for supply of goods and services;
 - [] SDR for contracts for construction services.]^{EC}

[Market Access Issue] [NB: Korea does not support the text (2bis) proposed by the EC.]

3. For each Party, Appendix I shall be divided into five Annexes:

- (a) Annex 1 specifies the central government entities whose procurement is covered by this Agreement;
- (b) Annex 2 specifies the sub-central government entities whose procurement is covered by this Agreement;
- (c) Annex 3 specifies all other entities whose procurement is covered by this Agreement;
- (d) Annex 4 specifies the services covered by this Agreement; and
- (e) Annex 5 specifies the construction services covered by this Agreement.

Compliance

4. Each Party shall [take such reasonable measures as may be available to it to]^{CDA,HKC} ensure that the procuring entities listed in its Appendix I comply with the provisions of [Articles VII to X of]^{CDA} this Agreement in conducting procurement covered by this Agreement. **[NB: The EC, the US, Switzerland, Singapore, Japan and Korea have reservation on the bracketed language.]**

5. Where a procuring entity, in the context of procurement covered by this Agreement, requires persons not listed in Appendix I to procure in accordance with particular requirements, Article III shall apply *mutatis mutandis* to such requirements.

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether that procurement is covered by this Agreement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement;
- (b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, [other revenue streams that may be provided for under the contract]^{US,CDA} **[Market Access Issue]** and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and
- (c) without prejudice to the terms of paragraphs 7 and 8, [where the procurement is conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers,]^{CDA,US} base the calculation on:
 - (i) the total maximum value of the procurement over its entire duration where the procurement is conducted in multiple parts, with contracts to be awarded to one or more suppliers, at the same time or over a given time; or
 - (ii) [[the total maximum value of]^{EC} the contracts, [in case of framework purchasing]^{EC}, that are to be awarded over a given period to one or more suppliers.]^{EC,US}; or
 - (iii) [on the total estimated maximum value of the procurement over its entire duration when the total price of the procurement is not specified.]^{SWI,CDA}

[NB: . Japan questions the need for subparagraph (c).]

[7. In the case of a recurring procurement [other than framework purchasing]^{EC}, the calculation of the estimated value shall be based on the total of:

- (a) the actual aggregate value of recurring contracts with similar characteristics awarded during the preceding 12 months or fiscal year, adjusted where possible to take account of anticipated changes in quantity or value over the subsequent 12 months; or **[NB: Hong Kong, China considers that the scope of "recurring contracts with similar characteristics" should be clarified.]**
- (b) the estimated aggregate value of recurring contracts to be awarded during the 12 months subsequent to the initial contract or during the procuring entity's fiscal year, whichever is greater.]^{EC}

[NB: Korea, Switzerland and Canada question the meaning and application of this paragraph.]

8. In the case of procurement by lease, rental or hire purchase of goods or services, [or procurement for which a total price is not specified,] the basis for valuation shall be, with respect to: **[NB: Switzerland and Canada propose to delete from the first sentence the words "or procurement for which a total price is not specified".]**

- (a) fixed-term contracts, where the term is 12 months or less, the total contract value for their duration, or, where the term exceeds 12 months, the total value including any estimated residual value; or
- (b) contracts for an indefinite period, the monthly instalment multiplied by [48].^{EC,JPN,NOR,US,KOR,HKC} Where there is doubt as to whether the contract is to be a fixed-term contract, this basis for valuation shall be used.

Article III General Principles

National Treatment and Non-Discrimination

1. With respect to any measure and any procurement covered by this Agreement, each Party [and each procuring entity, respectively,]^{US,EC,NOR,SWI,JPN} ; shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any other Party, treatment no less favourable than the treatment the Party [or the procuring entity]^{US,EC,NOR,JPN} accords to:

- (a) domestic goods, services and suppliers; and
- (b) goods, services and suppliers of any other Party.

2. With respect to any measure and any procurement covered by this Agreement, neither a Party nor a procuring entity shall:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

Procurement Methods

3. A procuring entity shall conduct procurement covered by this Agreement in a manner that is consistent with this Agreement, and, except where specifically provided otherwise in this Agreement, in a transparent [and impartial]^{EC,US} manner, using methods such as open tendering, selective tendering and limited tendering.

[3bis. A procuring entity[, [in Annexes 1]^{JPN} and 3,]^{US} shall ensure that [a procurement official] does not prepare or [make]^{US} [take] decisions in a [procurement covered by this Agreement]^{NOR,US} where the official's impartiality may] [the impartiality of its procurement process may not]^{JPN} be affected by family ties, business links, cross representation or other reasons that may cause a conflict of interest[, in accordance with the measures of the Party of the procuring entity].^{JPN}^{NOR,US,CDA,HKC,SWI,JPN} [Procuring entities shall ensure that procurement is conducted in a transparent and impartial manner.]^{EC} **[NB: The Parties have agreed to add provisions to the preamble that may serve as alternatives to this paragraph, but have agreed to defer further discussion of this paragraph to the next session.]**

Rules of Origin

4. For purposes of procurement covered by this Agreement, no Party may apply rules of origin to goods or services imported from or supplied by another Party that are different from the rules of origin the Party applies [at the same time]^{EC,CDA} in the normal course of trade [at the time of the transaction in question]^{JPN} to imports or supplies of the same goods or services from the same Party..

Offsets

5. With regard to procurement covered by this Agreement, a procuring entity shall not seek, take account of, impose or enforce offsets in the qualification and selection of suppliers, goods or services, in the evaluation of tenders or in the award of contracts, prior to or in the course of a procurement process. **[NB: Hong Kong, China is concerned that the use of "enforce" expands the scope of the provision.]**

Measures Not Specific to Procurement

6. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures regarding procurement covered by this Agreement.

Article IV Publication of Procurement Information

Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clauses that are mandated by law or regulation and are incorporated by reference in notices and tender documentation and procedure regarding procurement covered by this Agreement, and any modifications thereof, in officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public and that are in the appropriate publications listed in Appendix IV; and
- (b) provide an explanation thereof to any Party, on request.

Article V Publication of Notice of Intended Procurement

1. For each procurement covered by this Agreement, except in the circumstances described in Article X, a procuring entity shall publish a notice of intended procurement. The notice shall be published in the appropriate publication listed in Appendix II. Such publications shall be in [electronic or] paper media that are widely disseminated and remain readily accessible to the public[.]^{SGP} [For procuring entities in Annex 1 s]^{US,HKC} [S]uch publications where electronic shall be accessible free of charge[through a single point of access]^{SGP}.^{EC,NOR,US,KOR,SWI,HKC} [Procuring entities in Annexes 2 and 3 shall be encouraged to make such publications available free of charge through a single point of access.]^{US}

2. [Each notice of intended procurement shall include]^{EC} [A procuring entity shall include the following information in each notice of intended procurement]^{CDA}:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
- (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
 - [whether the procuring entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods;]^{EC}
 - [any options]^{EC,CDA,NOR,US} [for further procurement and, if possible, an estimate of when such options may be exercised;]^{EC}
 - [for recurring contracts, if possible, an estimate of the timing of subsequent notices of intended procurement;]^{EC} **[NB: The US, Japan, CT, Singapore and Canada continue to believe that it is not necessary to require the inclusion of these three items of the notice.]**
- (c) the time-frame for delivery of goods or services or the duration of the contract;
- (d) the procurement method that will be used and whether it will involve negotiation, [electronic means]^{EC} [or electronic auction]^{CDA,US};

- (e) the address and the time-limits for the submission of tenders and, where applicable, any time-limits for the submission of applications to qualify for participation in the procurement, as well as the language or languages in which they must be submitted, if other than an official language of the Party of the procuring entity;
- (f) a list and brief description of any conditions for participation of suppliers [including any specific documents or certifications required from suppliers in connection therewith]^{EC,CDA,ISR,US}; **[NB: Hong Kong, China maintained that it was not necessary to include information in (f) in the notice of intended procurement because such information would be included in the tender documentation.]**
- (g) where, pursuant to Article VIII, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (h) an indication that the procurement is covered by this Agreement.

Notice of Planned Procurement

3. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding each procuring entity's future procurement plans. The notice should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement. When the published information is in accordance with Article VI.3 (a), a procuring entity may apply Article VI.3 for the purpose of establishing shorter time-periods for tendering of procurements covered by this Agreement.

[4. A procuring entity in [Annex [1,]^{CT} 2 and] Annex 3 may use a notice of planned procurement, as provided for in paragraph 3, as a notice of intended procurement provided that it [contains in addition the statement that]^{EC} [no further notices will be published]^{EC} [includes as much of the information in paragraph 2 as is available].^{CDA,JPN,EC} **[NB: The relationship of this paragraph with paragraph 3 needs to be revisited.]**

Summary Notice

5. For each case of intended procurement, a procuring entity shall publish [in a paper media listed in Appendix 2]^{ISR} a summary notice in one of the official languages of the WTO. [In addition, t]^{ISR} [The notice [may be published also in electronic media and contain the following information:]]^{ISR} [shall contain at least the following information]:

- (a) the subject-matter of the procurement;
- (b) the time-limits set for the submission of tenders or, where applicable, of applications to be invited to tender or for inclusion on multi-use lists; and
- (c) the addresses from which documents relating to the procurement may be requested.

[NB: Canada, Chinese Taipei and Hong Kong, China have reservations on this paragraph.]

Article VI Time-Periods for Tendering

General

1. A procuring entity shall ensure that any prescribed time-limit, including any extension of this time-limit, is common for all interested or participating suppliers and is adequate to allow suppliers of other Parties as well as domestic suppliers: **[NB: Drafting with respect to "interested or participating" may need review.]**

- (a) to prepare and submit tenders; and
- (b) where a procuring entity requires suppliers to meet conditions of participation to participate in tendering, to submit applications requesting participation.

In determining any such time-limit, a procuring entity shall, consistent with its own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated, and the normal time for transmitting tenders from foreign as well as domestic points.

Deadlines

2. Except as provided for in paragraphs 3 and 4 [and 5]^{CDA}, a procuring entity shall provide no less than 40 days:

- (a) from the date on which the notice of intended procurement is published to the final date for the submission of tenders; or
- (b) where the entity has used procedures provided for in Article VIII: [5]^{US} [[8] or 9] [, whether or not it uses a multi-use list,] from the date on which the entity notifies [initially]^{JPN} suppliers that they will be permitted to submit tenders to the final date for the submission of tenders.

3. Under the following circumstances, a procuring entity may establish a time-period for tendering [or for submitting applications as specified in Article VIII:8]^{CDA} that is less than 40 days [or 25 days, respectively,]^{CDA} from publication of a notice of intended procurement or an invitation to submit tenders [or applications]^{CDA}, provided that such time-period is sufficient to enable suppliers to prepare and submit responsive tenders [or applications]^{CDA} and is in no case less than 10 days prior to the final date for submission[s]^{CDA}: [The same shall apply to the 25-day requirement for submitting applications specified in Article VIII:[8].]^{CT,EC,JPN} **[NB: The EC has reservations on the new proposed language, in particular the EC is wondering if the reduction of the time period for submitting the application should occur for all the following circumstances foreseen by the Article.]**

- (a) where [a separate notice, including]^{US,CDA,JPN} a notice of planned procurement under Article V:3 has been published at least 40 days and not more than 12 months in advance, [and such notice contains: a description of the procurement; the approximate time-limits for the submission of tenders or, when appropriate, applications for qualification; a statement that interested suppliers should express their interest in the procurement to the procuring entity; and the address from which documents relating to the procurement may be obtained]^{US,CDA,JPN} [together with as much information under Article V.2 as is available]^{EC,CDA};
- [(b) in the case of the second or subsequent publication of notices dealing with contracts based on an initial agreement or contract ;]^{EC,US} [where a procuring entity chooses to publish a second or subsequent notice based on an initial agreement or contract]^{CDA,HKC} **[NB: Canada has proposed and is still considering this bracketed language.]**
- (c) [where the procuring entity procures commercial goods or services;]^{JPN,CDA,US}
- (d) where a state of urgency duly substantiated by the procuring entity renders impracticable the periods specified in paragraphs 2.
- [(e) [where a procuring entity in [Annex [2 or] 3] selects suppliers that will be invited in accordance with Article VIII,]^{CDA} [when]^{EC} the period for the submission of tenders referred to in paragraph 2, [for procurements by a procuring entity in [Annex [2 and] 3]]^{EC}, [may be]^{CDA} [has been]^{EC} fixed by mutual agreement between the procuring entity

and the selected suppliers. In the absence of agreement, the procuring entity may fix periods which shall be sufficient to enable responsive tendering].^{EC,CDA}

4. When a procuring entity publishes a notice of intended procurement in accordance with Article V in an electronic media listed in Appendix II, the procuring entity may reduce the time-periods provided for in this Agreement by up to five days. In addition, when the complete tender documentation is made available electronically from the beginning of the publication of the notice, the procuring entity may reduce the time-periods provided for in this Agreement by up to an additional five days. [In addition, when the tenders may be received electronically, the procuring entity may reduce the time-periods provided for in this Agreement by up to an additional five days.]^{CT,KOR,JPN,SWI} The use of this provision, however, shall in no case result in the reduction of those time-periods to less than 10 days from the date on which the notice of intended procurement is published. **[NB: In any case, Israel opposes shortening time-periods by any more than five days.]**

[5. Notwithstanding any other time-periods in this Article, when a procuring entity is purchasing commercial goods or services and the notice of intended procurement and the tender documents are published electronically, and the tenders may be received electronically, the entity may reduce the time-period to no less than [10]^{SWI,EC} [5]^{CDA,US} days, provided such time is adequate to allow suppliers to submit responsive electronic tenders.]^{CDA,EC,US,SWI}

. ;

Article VII Information on Intended Procurements

Tender Documentation

1. A procuring entity shall provide to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials;
- (b) any conditions for participation of suppliers including a list of information and documents that suppliers are required to submit in connection therewith;
- (c) all criteria, including any cost factors [, such as transport, insurance and inspection costs]^{EC,SWI}, to be considered in the awarding of the contract, and the relative importance of such criteria;
- (d) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present; and
- (e) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g. paper or electronic means.

2. In establishing any delivery date for the goods or services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

3. A procuring entity shall promptly:

- (a) provide, on request, the tender documentation to any supplier participating in the procurement; and

- (b) reply to any reasonable request for relevant information by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.

Technical Specifications

4. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

5. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) specify the technical specification, in terms of performance and functional requirements, rather than design or descriptive characteristics; and ***[NB: The EC would prefer using "or" instead of "and" at the end of this sentence.]***
- (b) base the technical specification on international standards, where such exist otherwise, on [national technical regulations,]^{CDA} recognized national standards or building codes[, provided that the notice of intended procurement or the tender documents shall state that equivalent solutions shall be considered].^{EC,SWI}

6. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.

7. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

[8. For greater certainty, this Article is not intended to preclude a Party from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or protect the environment [provided that such technical specifications are consistent with paragraphs 4 through 7].^{JPN,EC}^{JP,EC,US,SWI,NOR} ***[NB: Chinese Taipei reserves its position on the last bracket.]***
[NB: Canada disagrees with the entire paragraph.]

[8bis. Requirements and evaluation criteria which require subjective assessment or professional judgment should be kept to a minimum and should only be used where justified.]^{HKC}

Modifications

[9. If, [during the course of a procurement]^{US} [prior to the award of a contract]^{HKC} [before the time set for the receipt and/or opening of tenders]^{CDA}, a procuring entity modifies the criteria or technical requirements set out in previous notices and tender documentation provided to participating suppliers, [or]^{US} amends or reissues the notice, it shall transmit all such modifications or amended or re-issued notice in writing:

- (a) to all the suppliers that are participating at the time the information is [modified or]^{US} amended, if [the identities of the suppliers are]^{US} known, and in all other cases, in the same manner as the original information [was transmitted]^{US}; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.]^{CDA,US}

[If, after publication of a notice of intended procurement, but before the time set for the opening or receipt of tenders as specified in the notices or the tender documentation, [a procuring entity]^{US} [it becomes necessary to]^{EC} amend[s] or re-issue[s] the notice, [the entity shall circulate]^{US} the amendment or the re-issued notice [shall be given the same circulation as]^{EC} [in the same manner as]^{US} the original documents upon which the amendment or re-issued notice is based. [A procuring entity shall provide]^{US} [Any significant information [given] to [all suppliers at the same time]^{US} [one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned] in adequate time to permit the suppliers to consider such information and to respond to it].^{EC,JPN,US,HKC,CDA}

Article VIII Conditions for Participation

General Requirements

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal, commercial, technical and financial abilities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

- (a) evaluate the financial, commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity, and may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party [or that the supplier has prior work experience in the territory of a given Party]^{US,EC,CDA,KOR,NOR,JPN,SWI}; and **[NB: Hong Kong, China proposes deletion of this bracket and suggests a new paragraph 2bis.]**
- (b) base its determination on the conditions that the procuring entity has specified in advance in notices or tender documentation.

[2bis. If essential for the satisfactory performance of the contracts, the procuring entities may specify that the suppliers have prior and relevant working experience in the territory provided that this is not used to discriminate against suppliers of any other Parties.]^{HKC}

3. A procuring entity shall allow [all]^{US} [each]^{EC,JPN} domestic supplier[s]^{EC,JPN} and supplier[s]^{EC,JPN} of [an]^{US} other Part[ies]^{EC,JPN} [y]^{US} that satisf[y]^{EC,JPN} [ies]^{US} the conditions for participation in a particular procurement to submit a tender, unless the procuring entity has indicated that it may limit the number of suppliers that it will invite to submit tenders and sets out [any limitation on the number of suppliers that will be permitted to tender]^{US} the criteria for such limitation in the notice of intended procurement [[or]^{JPN,US} [and]^{EC} tender documentation].^{EC,JPN,US} **[NB: There has been discussion on the link between this paragraph and paragraph 9, including whether paragraph 9 would be necessary if language relating to the public availability of tender documentation and it being free of charge were added to paragraph 3.]**

[[3]^{JPN} [5]^{EC}bis. Each Party shall ensure that:

- (a) each procuring entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
- (b) efforts be made to minimize differences in qualification procedures between procuring entities.]^{JPN,SWI,EC}

4. Nothing in this Article shall preclude the exclusion of a supplier on grounds such as bankruptcy or false declarations or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

Multi-Use Lists

5. A procuring entity that maintains a multi-use list of suppliers that have satisfied the conditions for participation shall annually publish [or otherwise make available continuously in electronic form]^{US,CDA,KOR} a notice inviting interested suppliers to apply for inclusion on the list. Such notice shall be published in the appropriate publication listed in Appendix III. The notice shall include:

- (a) a description of the goods and services, or categories thereof, for which the list may be used;
- (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
- (d) the date on which the list will terminate and the means for its renewal or termination, [or where a date is not provided, an indication of the method by which notice will be given of the termination of use of the list]^{CDA,US,JPN}; and
- (e) an indication that, for procurement covered by this Agreement, the list may be used.

[6. Where a multi-use list is valid for a period of three years or less, a procuring entity shall publish the notice referred to in paragraph 5 at least once, at the commencement of the use of the list, provided that this provision is not used to circumvent this Agreement and the notice states that further notices will not be published.]^{EC,US} **[NB: Switzerland, Canada, Singapore and Japan question the extent to which this paragraph is compatible with paragraph 5, which foresees an annual publication.]**

7. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all suppliers that satisfy the conditions for participation within a reasonably short time.

[Notice Inviting Applications]^{CDA,JPN} [Selective Tendering]^{EC,US}

8. Where a procuring entity intends to [limit the submission of tenders to all qualified suppliers or to a limited number of qualified suppliers selected by the procuring entity]^{CDA,EC,US} [set a time-limit for submitting applications to recognise suppliers as having satisfied the conditions for participation in a procurement or to select a limited number of qualified suppliers]^{JP,KOR}, [whether or not it uses a multi-use list,]^{EC} [, except where a notice of a multi-use list has been readily accessible in electronic form for a reasonable period of time,]^{US,CDA} the entity shall publish in the notice of intended procurement the time-limit for submitting applications[, which must be a minimum of 25 days from the date of publication of the notice.]^{EC,CDA}

[Such time-limit shall be:

- (a) a minimum of [15]^{SWI} days from the date of publication of the notice where it uses a multi-use list; or **[NB: Switzerland supports shortening the time-period for submitting applications when using a multi-use list to 15 days, but notes that the time-period should not be further shortened when using electronic means, owing to the complexity of the projects requiring selection of qualified suppliers.]**

- (b) a minimum of [25] days from the date of publication of the notice where it does not use a multi-use list.]^{JPN,KOR}

[If an application is submitted within the time-limit, a procuring entity shall examine it]^{CDA,EC,US} and [may not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the application]^{EC,US}[, provided that the entity is able to complete the examination of the application within the time-period allowed for tendering.]^{US}. [A procuring entity may limit submission of tenders to qualified suppliers that have submitted applications within this time-limit.]^{JPN} **[NB: Hong Kong, China preferred deleting the sentence "may not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the application" as experience showed that it might take considerable time to complete the qualification process.]**

9. Where a procuring entity selects a limited number of qualified suppliers that it will permit to submit tenders, the procuring entity shall include in the notice of intended procurement, or the tender documentation [if it is made publicly available], the following additional information:

- (a) an indication that the entity will limit the qualified suppliers permitted to submit tenders; and
- (b) the criteria on which the selection will be based, including, where applicable, any limitation on the number of suppliers that will be permitted to tender.

[NB: . See note to paragraph 3 on the link between these two provisions.]

[10. The time-period provided for in paragraph 8 may be reduced to [10] days where:

- (a) the conditions for participation for a procurement are the same as or a sub-set of the conditions for participation for a multi-use list; [and]^{EC}
- (b) the procurement is for commercial goods or services; and
- (c) the procuring entity has published a notice establishing that multi-use list for at least [25] days and that notice [has]^{CDA,US} [and all relevant documents relating to the list have]^{EC} remained readily accessible in electronic form since its initial date of publication.]^{CDA,EC,US} **[NB: The US and Canada are proposing to delete subparagraphs (a) and (c). The EC is reconsidering the whole paragraph.]**

Annex 2 and 3 Entities [NB: The EC, Canada, Norway and Switzerland are considering to reduce the scope of this paragraph, in particular Annex 2. Japan is considering both Annex 2 and Annex 3.]

11. A procuring entity listed in Annexes [2]^{US} or [3]^{SWI,US,CDA,NOR,EC} may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice sets out, in addition to the information required in paragraph 5, as much of the information required in Article V:2 as is available and contains a statement that it constitutes a notice of intended procurement [or that only the suppliers on the multi-use list will receive further notice of procurements that are covered by the multi-use list]^{US,CDA};
- (b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to have a meaningful opportunity to assess their interest in the procurement, including all remaining information required in Article V:2, to the extent such information is available; [and]

- [(c) a supplier having applied for inclusion on a multi-use list in accordance with paragraph 7 shall be entitled to tender in a given procurement, if there is sufficient time to examine whether it satisfies the conditions for participation].^{EC,SWI}
- [(d) the time-period between the publication of the notice inviting suppliers to apply for inclusion on a multi-use list and the intended procurement should not be more than 90 days.]^{SWI}

Information on Procuring Entities' Decisions

12. A procuring entity shall promptly advise a supplier of the success or failure of its application for inclusion on a multi-use list and of any decision by the entity to include the supplier on a multi-use list.

13. Where a procuring entity has required suppliers to apply for recognition that they have satisfied the conditions for participation in accordance with paragraphs 8 or [9] [11]^{EC}, the entity shall promptly notify all such suppliers of the results of their applications and [at the same time]^{US,EC,CDA} shall [allow all successful applicants to submit tenders.].^{JPN,US,CDA} [send invitations to tender to all successful applicants.]^{EC}

14. Where a procuring entity has taken action under paragraph 12 or 13, the entity shall, on request of a supplier, promptly provide the supplier with a written explanation of the reasons for the entity's action.

Article IX Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:

- (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement in paragraph 2 of Article V; or
- (b) it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. A procuring entity [shall treat tenders in confidence. In particular, it]^{EC,ISR,SWI} [shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.]^{EC,ISR,SWI,CT} **[NB: Canada, the US and Korea believe that this issue is already addressed by Articles XI:2 and XIII:3, and suggest to delete this paragraph.]**

3. A procuring entity shall ensure that any elimination of tenderers in negotiations is carried out in accordance with the criteria set out in the notices or tender documentation.

4. A procuring entity shall transmit, in writing, any modifications to the criteria made in the course of negotiations to tenderers whose tenders have not yet been eliminated according to the criteria set out in the notices or tender documentation, and when negotiations are concluded will provide a common deadline for the remaining tenderers to submit any new or revised tenders.

[5. Where negotiations are used, the procuring entity shall maintain a written record which demonstrates that the contract was awarded to the tenderer providing the most advantageous tender.]^{CDA, SWI} **[NB: EC, Korea and US believe that this provision overlaps with Article XII:4.]**

Article X Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Parties, or that protects domestic suppliers, a procuring entity may [contact a supplier or suppliers of its choice]^{CDA,JPN,US,SWI} [use a limited tendering procedure]^{EC} and may choose not to apply Articles [...] in the following circumstances: ***[NB: Switzerland finds it useful to mention that limited tendering refers to "contact a supplier or suppliers of its choice"; it should also be defined in Article I as it is explicitly mentioned under Article III, §3 (Procurement methods). Canada and the US propose matching the Articles in the current Agreement; Japan proposes to make reference to Articles V, VI, VII:1, 2, 3, and 8, VIII, IX and XI.]***

- (a) provided that the requirements of the tender documentation are not substantially modified:
 - (i) where no tenders were submitted or no suppliers applied to meet the conditions for participation;
 - (ii) where no tenders that conform to the essential requirements of the tender documentation were submitted;
 - (iii) where no suppliers satisfied the conditions for participation; or
 - (iv) where the tenders submitted have been collusive;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for the following reasons:
 - (i) the requirement is for a work of art;
 - (ii) the protection of patents, copyrights or other exclusive rights[, or proprietary information]^{US,CDA,JPN}; or
 - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries of goods or services [by the original supplier]^{EC,JPN,US} that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change [of goods or services]^{CDA} [of supplier]^{JPN,US,EC,KOR} would compel the entity to procure goods or services [not meeting requirements of interchangeability with existing equipment, software, services, or installations]^{JPN,KOR} [that would: ***[NB: Switzerland notes that the relationship between (c) and (g) needs further scrutiny.]***
 - (i) alter the operation or use of the existing goods or services; or
 - (ii) due to the change of goods or services, require existing equipment or services to be altered;]^{CDA,US}
- (d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time under tendering procedures consistent with Articles [];
- (e) for goods purchased on a commodity market; or
- (f) [when] [where]^{US} a procuring entity procures a prototype or a first [product] [good]^{US} or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. [Original development of a

first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards[; it]^{EC,JPN} [, but]^{US} does not [extend to]^{EC,JPN} [include]^{US} quantity production or supply to establish commercial viability or to recover research and development costs;]^{EC,JPN,US}

- (g) when additional [construction]^{JPN,CDA,US,KOR} services which were not included in the initial procurement but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the services described therein, and the entity needs to award contracts for the additional services to the contractor carrying out the services concerned since the separation of the additional services from the initial procurement would be difficult for technical or economic reasons and cause significant inconvenience to the procuring entity. However, the total value of contracts awarded for the additional services may not exceed 50 per cent of the amount of the main procurement; ***[NB: Switzerland, Norway and the EC question why this should be limited to construction?]***
- (h) for new [construction]^{JPN,CDA,US,KOR} services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open or selective procurement method and for which the procuring entity has indicated in the notice of intended procurement concerning the initial service, that a limited procurement method might be used in awarding contracts for such new services; ***[NB: Only Chinese Taipei would like to add the words "goods and" before "services" in the first line.]***
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals such as arising from liquidation, receivership or bankruptcy and not for routine purchases from regular suppliers; and
- (j) in the case of [a] contract awarded to the winner of a design contest provided that:
 - (i) the contest has been organized in a manner that is consistent with the principles of this Agreement, notably as regards the publication of a notice of intended procurement; and
 - (ii) the participants are judged by an independent jury with a view to design contracts being awarded to the winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. Each such report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of such procedures.

Article XI Treatment of Tenders and Contract Awards

Receipt and Opening of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. A procuring entity shall treat tenders in confidence at least until the award of the contract.
3. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. When a procuring entity provides suppliers with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunities to all participating suppliers.

Awarding of Contracts

5. To be considered for award, a tender must be in writing and must, at the time of opening, comply with the essential requirements of the notices and tender documentation and be from a supplier that satisfies any conditions for participation.

6. A procuring entity shall not use option clauses in a manner that circumvents the provisions of this Agreement.

7. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is either the lowest price or the tender that the entity has determined to be the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices or tender documentation.

8. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the tenderer that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.

[9. A procuring entity shall not cancel a procurement or modify awarded contracts in a manner that circumvents the obligations of this Agreement.]^{US,EC}

[Article XIbis Use of Electronic Means]

[NB: Switzerland supports this new article and is reviewing the text in detail. Israel is still considering this proposed Article. . Canada is questioning whether 2 (b) and 3 (d) are necessary.]

1. [The use of electronic means for procurement covered by this Agreement is encouraged.]^{SGP}
[Procurement covered by this Agreement conducted, exclusively or not, by electronic means shall be subject to the provisions of this Agreement.]^{EC,SGP,KOR}

2. Where a procuring entity intends to conduct a procurement using electronic means, either wholly or partially, it shall:

- [(a) state [in the notice of intended procurement]^{US} its intention to [require that tenders be submitted by electronic means]^{US};
- (b) ensure that any means and tools used for communicating electronically including authentication, integrity of data and encryption are [non-discriminatory], [generally available and interoperable with the information and communication technology products in general use and will not impose an unreasonable burden on other Parties' suppliers access to the tendering procedure]; ***[NB: Japan, Canada and the US have reservations on this subparagraph.]***
- (c) ensure that all information necessary to permit potential suppliers to meet the specifications for using the necessary electronic means and tools is available to interested parties and is included by the procuring entity in the tender documentation; and ***[NB: Canada and the US wonder whether this should be a paragraph 2 in Article VII.]***
- (d) use mechanisms which clearly and unambiguously guarantee that, pending the expiry of the deadlines set, the integrity of data is preserved, access to tenders and request

to participate is prohibited and the timing of receipt of tenders and request to participate is accurately established.

3. A procuring entity that intends to hold an electronic auction in a procurement covered by this Agreement shall: ***[NB: Japan and Israel are wondering whether the requirements of confidentiality allow for the use of electronic auction.]***

- [(a) state their intention to use electronic auctions in the notice of intended procurement;]
[NB: Canada wonders whether this is not already addressed by Article V:2.]
- (b) indicate in the tender documents the features on which the electronic auction will be run, provided that such features are quantifiable and can be expressed in figures or percentages, and the conditions and rules under which the auction will be carried out;
[NB: Canada and the US believe this should be located in Article VII relating to evaluation criteria.]
- (c) provide participants, before starting the electronic auction, with the evaluation factors that will be used, including [any]^{US} [the]^{EC} mathematical formula determining the automatic ranking during the electronic auction when the contract is to be awarded on the basis of the most economically advantageous tender; ***[NB: Canada believes this should be located in Article VII relating to evaluation criteria.]***
- (d) ensure that electronic auctions operate in full accordance with the general principles of this Agreement, in particular, equal treatment, non-discrimination and transparency.

[4. Procuring entities shall ensure full traceability of the award procedures conducted by electronic means.]^{EC,US,KOR} ***[NB: Japan, the US and the EC suggest to include some time-limit for traceability. Canada, the US and Singapore wonder whether this is not addressed in Article XII:4.]***

Article XII Transparency of Contract Award Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform [participating]^{EC} suppliers [that have submitted tenders]^{CDA,JPN,US} of the entity's contract award decisions [on request, in writing]^{EC,SWI}. Subject to Article XIII, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons that the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Agreement, a procuring entity shall publish a notice in an officially designated publication listed in Appendix II that may be in an electronic or paper medium. Where only an electronic medium is used, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

- (e) the date of award; and
- (f) type of procurement method used, and in cases where limited tendering was used pursuant to Article [X (*Limited Tendering*)], a description of the circumstances justifying the use of such procedure.

Provision of Award Information to Parties

3. On request of any other Party, [and subject to Article XIII:[2] [1]^{EC}EC without prejudice to the provision under Article XVIII Dispute Settlement, a Party shall provide promptly such information on the award of a contract, including information on the characteristics and relative advantages of the successful tender and on the contract price, as may be necessary to determine whether the procurement was conducted fairly, impartially and in accordance with this Agreement. [In cases where release of this information would prejudice competition in future tenders, t]^{EC,SWI} [T]he Party that receives that information shall not disclose it to any supplier, except after consultation with, and agreement of, the Party that provided the information. **[NB: The US states that the modifications are proposed to clarify the sentence. The EC and Switzerland would like to retain the current text.]**

Maintenance of Documentation and Reports

4. Each procuring entity shall maintain documentation and reports of tendering procedures and contract awards relating to procurement covered by this Agreement, including the reports provided for in Article [X (*Limited Tendering*)], and shall retain such documentation and reports for a period of at least three years from the award of the contract.

Collection and Report of Statistics

5. Each Party shall collect and report to the Committee statistics on its contracts covered by this Agreement. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

- (a) For Annex 1 procuring entities:
 - (i) the number and total value, for all such entities, of contracts covered by this Agreement;
 - (ii) the number and total value of all contracts covered by this Agreement awarded by such entities, broken down by [categories of] goods and services [according to a[n internationally recognized]^{CDA,US} uniform classification system]; and **[NB: Switzerland suggests the deletion of "by categories of goods and services according to an internationally recognized uniform classification system"; this should be left optional to Members depending on the use they may have from these statistics. The EC is considering the need for a uniform classification system to be agreed upon among the GPA Parties.]**
 - (iii) the number and total value of contracts covered by this Agreement awarded by each such entity under limited tendering.
 - [(iv) the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.]^{CDA} **[NB: All parties, except Canada, agree to delete this subparagraph.]**
- (b) For Annex 2 and 3 procuring entities:

- (i) the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex;
- [(ii) the value of contracts covered by this Agreement awarded by such entities under limited tendering, broken down by Annex].^{CDA} **[NB: All parties, except Canada, agree to delete this subparagraph.]**
- (c) Where data to be provided under subparagraph [(a) and]^{EC,US,JPN} (b) is not available, estimates shall be provided.

6. Where a Party publishes its statistics on an official website, the Party may substitute a notification of the website address for the submission of the data, with any instructions necessary to access and use such statistics.

7. Where a Party requires notices concerning awarded contracts, pursuant to Article XII.2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting [automatic] analysis of the covered contracts, the Party may substitute a notification of the website address for the submission of the data, with any instructions necessary to access and use such data.

Article XIII Non-Disclosure of Information

[NB: The United States suggests that the order of the following paragraphs 1 and 2 should be reversed and subparagraph 1 (b) should be deleted as unnecessary.]

1. Nothing in this Agreement shall be construed to require a Party or procuring entity [or an authority or review body under Article XVII [or XVIII]^{EC}]^{EC,US} to release [confidential]^{CDA,JPN} information under this Agreement where release:

- (a) would impede law enforcement;
- (b) [might prejudice fair competition between suppliers;]
- (c) would prejudice the legitimate commercial interests[, including the protection of intellectual property,]^{CDA,US,JPN} of particular persons; or
- (d) would otherwise be contrary to the public interest.

[except to the extent that it may be required to be disclosed in the context of proceedings under Articles XVII or XVIII.]^{EC}

2. Notwithstanding any other provision of the Agreement, a Party or a procuring entity shall not provide information to a particular supplier that might prejudice fair competition between suppliers.

Article XIV Developing Countries

[NB: All parties are reviewing this Article]

[1. In negotiations on accession to this Agreement and in the implementation and administration of this Agreement, the Parties shall take due account of developing and least-developed countries' (hereafter developing countries) development, financial and trade needs and circumstances, recognizing that these may differ significantly from country to country. In this context, [the Parties shall give due consideration to a request by a developing country to take market access commitments in Appendix I with [a limited scope of coverage and]^{SWI,JPN} transitional measures[, and, to request exceptions]^{SWI,JPN}.]^{SWI,JPN,US,CDA} : [bearing in mind the importance attached to the concept of development, in particular as it refers to small and medium enterprises from developing

countries, the Parties shall give due consideration to a request by a developing country to invoke the use of "offsets" as defined in Article I and under the conditions stated below.]^{ISR}

[1bis. Developing countries acceding to this Agreement are entitled to benefit from special and differential treatment as provided for by this Article. In the course of the accession process and when agreeing on the content of transitional measures and on the duration of transition periods, GPA Parties shall give special consideration to the specific needs and situation of developing countries. To this aim, least-developed countries shall be granted transitional measures with higher price preferences and a longer transition period.]^{EC}

[2. Where, in the course of accession negotiations, the Parties agree to [limited scope of coverage]^{SWI,JPN}, transitional measures [or exceptions]^{SWI,JPN} provided for in paragraph 1 of this Article, each Party shall give due consideration to the possibility of applying this Agreement, immediately upon accession, to the goods, services and suppliers of the acceding country with respect to all procurement covered by Appendix I of the Agreement. [However, taking due account of the scope of [coverage,]^{JPN} any transitional measures [requested]^{US,CDA} [or exceptions]^{JPN} and with a view to maintaining appropriate reciprocal trade opportunities under this Agreement, any Party may agree with the acceding country to limit the scope of coverage that the Party provides to the acceding country [during the agreed transition period]^{US,CDA}.]^{JPN,US,CDA} Any such limitations shall be clearly identified in the Committee's relevant accession decision and in each Party's relevant annexes or notes to Appendix I [and reviewed periodically during the transition period]^{US,CDA} [and reviewed [with the acceding country's regime modifications]^{SWI} [when the acceding country requests to modify its Appendix I with a view to expanding the scope of coverage or ceases to apply its transitional measures or exceptions in its Appendix I.]]^{JPN}^{SWI,JPN}^{SWI,JPN,US,CDA} **[NB: The EC does not support the possibility of limiting the scope of coverage that a Party provides to an acceding country.]**

[Offsets]

- (a) Notwithstanding Article III:5, require the incorporation of local content, offset procurement, [transfer of technology], or any other measures that are consistent with the meaning of "offsets" under Article I to this Agreement.
- (b) Requirements regarding the imposition of offsets shall be stated clearly in notices of intended procurements and in any other relevant documentation.]^{ISR} **[NB: Israel and Korea are still considering their position on "transfer of technology".]**

[2bis. Developing countries shall enjoy all the benefits of the Agreement upon accession. Each developed country Party shall immediately provide the goods, services and suppliers of the acceding developing country the most favourable treatment offered by that developed country Party under Appendix I.]^{EC}

[3. On the request of a developing country, the Committee on Government Procurement may extend transitional periods for measures under paragraph 1 where a developing country demonstrates particular difficulties in implementing the provisions of this Agreement during the agreed transition period. In considering such a request, the Committee on Government Procurement shall take into account the individual needs and circumstances of the Party in question.]^{US,CDA,SWI} **[NB: The United States and Canada can support the first sentence with the modifications noted, but question the need for the second sentence.]**

[3bis. Upon accession, developing countries shall be entitled to an implementation period as set out in paragraph 4 and a transition period as set out in paragraph 5.]^{EC}

[4. A[fter the Agreement has entered into force for a]^{US,CDA} Party that is a developing country[, the Party]^{US,CDA} may request application of a [transitional measure] [temporary waiver]^{SGP,HKC} in special circumstances unforeseen during the accession process[, after the Agreement has entered into force for that Party]^{SWI,JPN}. The [Committee may approve the]^{US,CDA} application of [a]^{US,CDA} [transitional measure][temporary waiver]^{SGP,HKC}[s]^{SWI,JPN} [for a specific period, and shall]^{US,CDA} [shall be temporary,]^{SWI,JPN} review[ed]^{SWI,JPN} [it at least]^{US,CDA} every two years and [require its removal at

the end of the agreed transition period or earlier if]^{US,CDA} [removed when the]^{SWI,JPN} special circumstances [that justified it are]^{US,CDA} [have been]^{SWI,JPN} eliminated. [Any Party facing substantial declines in contract awards subsequently to the implementation of a transitional measure may request compensations.]^{SWI,JPN}^{SWI,JPN,US,CDA} **[NB: The EC and Israel do not support the last sentence. The United States and Canada can support the first sentence with the modifications noted, but question the need for the second sentence.]**

- [4bis. (a) Developing country Parties shall have an implementation period in which to bring their legislation into conformity with the Agreement, while ensuring that Article [III] [non-discrimination] is respected.
- (b) The implementation period shall be [] years. At the end of this period, the Agreement will apply fully to covered procurement of the developing country Party.
- (c) Developing country Parties shall report regularly to the GPA Committee their progress in bringing their national legislation into conformity with the Agreement.]^{EC}

[5. A Party benefiting from a transitional measure provided for under paragraphs 1 and 4 shall take such steps as may be necessary to ensure the fulfilment of all obligations at the end of the transitional period. The Party shall notify the Committee of such steps, including of any special technical cooperation needs.]^{US,CDA} **[NB: Switzerland proposes to review this paragraph in the light of its links to paragraph 2.]**

[5bis. Notwithstanding paragraph 4, developing country Parties may, upon their accession, and after the agreement of the GPA Parties, retain or adopt the following measures, during a transition period:

- (a) Developing country Parties may retain or adopt a price preference system so as to enable them to support their economic development. The price preference may be differentiated by sector. Any such system will:
- (i) provide a preference only to the part of the tender incorporating goods or services originating in the Party applying the preference or goods or services originating in other developing countries which have preferential agreements with the Party applying the preference, provided that a substantial part of the value of the tender is made up of goods or services originating in the Party applying the preference or other developing countries with which it has such agreements;
- (ii) be quantifiable and transparent; and
- (iii) provide for the progressive removal and complete elimination of the margin of preference by the end of the transition period.
- (b) Developing country Parties may impose offsets during the transition period, provided that:
- (i) any requirement for the imposition of offsets together with the methodology describing how they will be evaluated and taken into account is clearly stated in notices of intended procurement and in any other relevant documentation; and
- (ii) offsets are used in a non-discriminatory manner and limited to specific sectors.
- (c) Price preference systems, and offsets, as agreed upon accession, shall be listed in Annex 5 of developing country Parties' Appendix I.
- (d) The transition period shall be [] years for developing countries and [] for least-developed countries. Any measures maintained pursuant to this provision shall be eliminated by the end of the transition period.]^{EC}

[6. During a developing country's accession process or after the entry into force of this Agreement for that country, the Parties shall give due consideration to any request by such a developing country for technical cooperation in relation to the implementation of this Agreement and the exercise of the rights under this Agreement, including drawing on the benefits of its participation [in this

Agreement.]^{JPN,SWI,US,CDA} **[NB: The EC supports the approach in paragraph 6 and believes it deserves further consideration.]**

[6bis. (a) During the transition period, a developing country Party may request a waiver from certain of its obligations should it face serious difficulties, or the threat of such difficulties, with regard to certain sectors due to the repeated opening of its public procurement market to foreign competition in accordance with the provisions of this Agreement. Any such waiver will be granted by decision of the GPA Committee on the basis of a two-thirds majority. The waiver may consist of establishing higher price preference levels and different modalities of their elimination, than those contained in Annex 5. These measures should be temporary, reviewed every year and removed, when the above-mentioned circumstances cease to exist.

(b) For least-developed countries, the measures mentioned above may also include extending the transition period. When considering such a request, the GPA Committee shall take into account the individual needs and circumstances of the least-developed country in question.]^{EC}

[7. Each Party shall establish an information centre to respond to reasonable requests from developing country Parties for information related to those Parties' efforts to fully benefit from their participation in this Agreement. Such information may include information relating to procurements plans, procedures or requirements with respect to procurement covered by this Agreement.]^{JPN,SWI,US,SWI}

[7bis. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, bear in mind the special problems of least-developed countries and of those countries at early stages of economic development with a view to facilitating increased participation of developing countries in covered procurement.]^{EC}

8. The Committee shall review on a three-year basis the operation and effectiveness of this Article and, after each [five]^{SWI,ISR} [six]^{JPN} years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the [five]^{SWI,ISR} [six]^{JPN}-year reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the needs of the developing countries concerned, the Committee shall examine [scope of coverage,]^{SWI,JPN} transitional measures and exceptions provided for in accordance with the provisions of this Article.]^{SWI,JPN,ISR} **[NB: Israel and the United States question the feasibility and necessity to maintain such an obligation.]**

[8bis. (a) Upon request, the GPA Committee and each developed country Party shall provide all technical cooperation and assistance which may be deemed appropriate to developing countries in relation to the implementation and the exercise of the rights under this Agreement.

(b) Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least-developed countries, and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.]^{EC}

[9. The GPA Committee shall review every five years the operation and effectiveness of this Article.]^{EC}

Article XV Exceptions to the Agreement

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security

interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour.

[3. The Parties understand that Paragraph 2(b) includes environmental measures necessary to protect human, animal or plant life or health]^{CDA,US} [or natural resources].^{CT}^{US,CDA,CT} **[NB: Hong Kong, China; Korea; the EC and Japan considered this paragraph not necessary, given paragraph 2(b).]**

[4. [Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.]^{SWI,JPN} **[NB: Location needs to be reconsidered.]** **[Market Access Issue]**

Article XVI Modifications and Rectifications to Coverage

[NB: This Article reflects only the views of Japan, Korea and the United States. The EC reserves its position on this article and the right to submit its own drafting at a later stage. Switzerland, Singapore and Canada are still reviewing this article.]

[1. For purposes of this article, where a procuring entity that is the subject of a proposed rectification, transfer, modification or withdrawal, pursuant to paragraph 2 or 3 of this Article is required to accord the treatment described in Articles VII to X to goods, services or suppliers of another party, then the latter party shall be considered an 'affected party'.]^{US} **[NB: The United States proposes the addition of this paragraph to address the concern that it raised in the following paragraph.]**

[2]^{US} [1. (a)]^{JPN,KOR} [A Party shall notify the Committee of any]^{US} Rectification[s]^{JPN,KOR}, transfer[s]^{JPN,KOR} of an entity from one Annex to another or, in exceptional cases, other modification[s]^{JPN,KOR} [(hereinafter collectively referred to as "modification")]^{US} [relating to]^{JPN,KOR} [of]^{US} Appendices I through IV [shall be notified to the Committee]^{JPN,KOR}, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. [The Committee shall circulate the notification.]^{US} If [no affected Party submits to the Committee an objection in writing to]^{US} the [proposed]^{US} [rectifications, transfers or other]^{JPN,KOR} modification[s] are of a purely formal or minor nature, they]^{JPN,KOR} [within 30 days of circulation of the notification, the proposed modification]^{US} shall become effective [provided there is no objection in writing, notified by any Party the benefits of which under this Agreement may be affected by the proposed modification (referred to in this Article as the "affected Party") within 30 days.]^{JPN,KOR}; [Where and affected Party submits an objection that the proposed modification is not of a purely formal or minor nature,]^{US} [In other cases,]^{JPN,KOR} the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments [made by any affected Party]^{JPN,KOR}, with a view to maintaining a balance

of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of an agreement not being reached, the matter may be pursued [by any affected Party]^{JPN,KOR} in accordance with the procedures [provided for]^{US} [contained]^{JPN} in Article XVIII [or arbitration].^{JPN}
[NB: The US continues to oppose the addition of "arbitration" in the absence of a clarification the operation of such a process in this context.]

[(b) If no affected Party has requested the procedures contained in Article [XXII]^{JPN,KOR} [XVIII]^{US} [or arbitration] within [120]^{KOR} [210] days from the date of circulation of the proposed modifications under subparagraph (a), the proposed modifications shall become effective. The period under this subparagraph may be extended by mutual agreement.]^{JPN,KOR}

[(c) (the same provisions as paragraph (2)(e) below.)]^{JPN}

[3]^{US} [2.]^{JPN,KOR} (a) Where a Party wishes[, in exercise of its rights,]^{JPN,KOR} to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party [(referred to in this Article as the "modifying Party")]^{JPN,KOR} shall notify the Committee. [The Committee shall circulate the notification. If no affected Party submits to the Committee an objection in writing to the proposed withdrawal within 30 days of circulation of the notification, the proposed withdrawal]^{US} [Such modification]^{JPN,KOR} 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 [circulation of the]^{US} notification and no [affected Party submits a written]^{US} objection [has been made by any Party the benefits of which under this Agreement may be affected by the proposed modification (referred to in this Article as the "affected Party")]^{JPN,KOR} [within 30 days of the circulation]^{US}. **[NB: The United States proposes the modifications noted in caps and strikeout to clarify the operation of the paragraph.]**

[(b) The notification shall contain evidence that government control or influence over it has been effectively eliminated, including information [that addresses]^{US} [on]^{JPN} the following [factors]^{US} [criteria]^{JPN,KOR}: **[NB: Hong Kong, China would like to clarify whether consideration of a request to remove an entity from Appendix I will be based on all the factors for which the information is required or whether such consideration can be based on the information provided for a single factor. HKC considers that the modifying Party does not need to provide in his notification of modifications information to address all the factors/criteria listed in this paragraph.]**

- [whether there is a legal nexus or relationship between the government and the entity;]^{US} **[NB: Hong Kong, China does not see a need for the above factor since the relationship and/or linkage between the entity and the government could be addressed in other factors.]**
- [whether]^{US} the government [does not control a majority of]^{JPN,KOR} [holds a direct or indirect controlling interest in]^{US} the entity's capital [nor]^{JPN,KOR} [and]^{US} voting rights;
- [whether]^{US} the government [does not]^{JPN,KOR} appoint[s]^{US} more than half of the members of the entity's managing board [or such other number as would have]^{US} [which has]^{JPN,KOR} the power to decide on operations;]^{JPN,KOR,US}
- [whether the government provides support to or subsidizes the entity, and, if so, whether such support represents a one-time public investment or a continuous operating subsidy;]^{US}

- [the operation of the entity is financed by its business revenue, not by government subsidies]^{JPN} [Not more than 50 percent of the entity's financing comes from the State or public bodies];
- [whether the government exercises formal or informal oversight or supervision of an entity's business decisions, beyond the normal regulatory oversight for all suppliers in a particular industry;]^{US} **[NB: Hong Kong, China would like illustration of this factor/criteria.]**
- [whether there are any personnel linkages between the entity and the government;]^{US} **[NB: Hong Kong, China does not see a need for the above factor since the relationship and/or linkage between the entity and the government could be addressed in other factors.]**
- [the government does not have control or influence over the entity's procurement decisions;]^{JPN}
- [the government does not provide the entity with any special or exclusive rights to operate;]^{JPN} [whether the government has granted special or exclusive legal or economic rights or benefits that may alter the competitiveness of an entity's goods or services in a commercial market or otherwise influence the entity's business decisions;]^{US} [and]^{CT,US} **[NB: Hong Kong, China would like illustration of the US bracket.]**
- [whether the entity is exclusively engaged in the provision of goods or services in commercial markets subject to genuine competition, or whether it has mixed governmental and commercial functions.]^{US} [there are more than one [entity] [supplier]^{CT} that engage in the provision of goods or services on the market.]^{JPN} **[NB: Hong Kong, China would like illustration of the US bracket.]**

[(b)*bis*] The market in which the entity operates is directly exposed to competition on markets to which access is not restricted, it being acknowledged that government control or influence over an entity through shareholding, participation on the management board, financing or any other means may be neutralized insofar as the entity's procurement is concerned where the entity is exposed to competition on markets to which access is not restricted.] **[NB: The US does not support this paragraph.]**

(c) In the event of an objection notified , in writing, by any affected Party]^{JPN,KOR,US} the modifying Party shall enter into consultations with such affected Party. If agreement is not reached between the modifying Party and any affected Party [within [120]^{KOR} [210] days from the date of circulation of the proposed modifications under subparagraph (a)]^{JPN,KOR} [, or within 90 days where the information provided with the notification pursuant to subparagraph (b) is comprehensive], the matter may be pursued [by such affected Party]^{JPN,KOR} in accordance with the procedures on consultations and dispute settlement contained in Article XVIII [[or arbitration] by written request, including reasons why the affected Party objects to the proposed modification].^{JPN} [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.]^{JPN,US}

[(d) If no affected Party has requested the procedures contained in Article XVIII [or arbitration] within [30 days after the expiry of]^{KOR} the [120]^{KOR} [210]-day period of consultations under subparagraph (c), the proposed modification shall become effective. The period of consultation may be extended by mutual agreement.]^{JPN,KOR}

- [(e) If the modifying Party implements its proposed withdrawal and does not comply with the findings of the arbitration, any affected Party that participated in the arbitration may modify or withdraw substantially equivalent benefits under its Appendix I in conformity with those findings. Notwithstanding Article III, such modification or withdrawal may be implemented solely with respect to the modifying Party.]^{JPN}

[3. The Committee on Government Procurement shall establish procedures for rectifications or modifications to Appendices. Any Party wishing to rectify or modify its Appendices in accordance with preceding paragraphs shall comply with such procedures.]^{JPN,KOR}

Article XVII Challenge Procedures

[Consultations between the Procuring Entity and Supplier]

1. In the event of a complaint by a supplier that there has been a breach of this Agreement arising in the context of a procurement covered by this Agreement in which the supplier has, or has had, an interest, each Party shall encourage the procuring entity and supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to [the supplier's participation in ongoing or future procurement]^{US,CDA} the supplier's rights to seek corrective measures under the challenge system.

Challenge

2. Each Party shall provide timely, effective, transparent and non-discriminatory means for a supplier to challenge an alleged breach of this Agreement arising in the context of a procurement covered by this Agreement, in which it has, or has had, an interest[, without prejudice to the supplier's participation in ongoing or future procurements].^{US,CDA} The procedural rules for all challenges shall be in writing and made generally available.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier.

4. [Supplier challenges relating to procurement covered by this Agreement shall be reviewed by an]^{EC} [Each Party shall establish or designate at least one]^{US,CDA} impartial administrative or judicial authority that is independent of its procuring entities [to receive and review complaints of suppliers arising in the context of a procurement covered by this Agreement].^{US,CDA}

[5. Where a body other than an authority referred to in paragraph 4 initially reviews a complaint, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of a challenge.]^{US,CDA,EC}

6. A review body that is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) the procuring entity shall respond in writing to the complaint and disclose all relevant documents to the review body;
- (b) the participants to the proceedings shall have the right to be heard prior to a decision of the review body being made on the complaint;
- (c) the participants to the proceedings shall have the right to be represented and accompanied;

- (d) the participants to the proceedings shall have access to all proceedings[, subject to Article XIII (Non-Disclosure of Information)]^{US};
- (e) the participants to the proceedings shall have the right to request that the proceedings take place in public[, subject to Article XIII (Non-Disclosure of Information),]^{US} and that witnesses may be presented; and
- (f) [decisions or]^{EC,US} [findings and]^{CDA} recommendations relating to supplier [challenges]^{EC} [complaints]^{US} shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. [Each Party shall adopt or maintain procedures that]^{US,CDA} [Challenge procedures shall]^{EC} provide for:

- (a) rapid interim measures[, pending the resolution of a complaint,]^{US,CDA} [to correct breaches of the Agreement and] to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process[.]^{EC} [, including contract award or the performance of a contract that has already been awarded.]^{US,CDA} However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing; **[NB: The United States proposes deletion of "to correct breaches of the Agreement and" since such actions would be taken only in the final action of the Court.]**
- [(b) an assessment and a possibility for a decision on the justification of the challenge;]^{JPN} [and] **[NB: Parties are re-examining the need for this provision in light of subparagraph 6 (f).]**
- (c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for the preparation of the tender or [complaint]^{US} [protest]^{EC}[challenge]^{EC}; and
- (d) protection of the confidentiality of information subject to Article XIII:1]^{EC}

Article XVIII Consultations and Dispute Settlement

1. [The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise provided below.]^{CDA,EC,JPN} [The provisions of Article XXII and XXIII of GATT[, except Article XXIII:1(c),]^{US} as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (Dispute Settlement Understanding) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.]^{US,SWI}

[2. Where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its [or their]^{CT} obligations under this Agreement, [or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement,]^{CDA,KOR,JPN} it may with a view to reaching a mutually satisfactory resolution of the matter, [request consultations.]^{EC,CDA} [make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.]^{KOR,CDA,JPN} [Whenever a Party to this Agreement other than the consulting Parties considers that it has a substantial trade interest in such consultations, it may notify the consulting Parties and the

Dispute Settlement Body (DSB), within 10 days after the date of the circulation of the request for consultations under this paragraph, of its desire to be joined in such consultations.]^{EC} **[NB: Japan and the EC indicated that further thinking should be devoted to avoiding that third Parties be entitled to join consultations in the context of disputes related not only to the GPA but also to other WTO Agreements. Japan indicated that the DSU renegotiations still need to address the whether the standard should be "substantial trade interest".]**

[2bis. Where the dispute concerns the award of a specific procurement, paragraphs 8 and 9 of Article 4 of the Dispute Settlement Understanding (DSU) may be invoked by the complaining Party.]^{EC}

3. Where a dispute exclusively concerns provisions of this Agreement, only Parties to this Agreement shall participate in decisions or actions taken by the DSB under this Agreement.

4. [In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, [paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement]^{KOR,JPN,CT} [only Members of the WTO that are Party to this Agreement shall participate in decisions or actions taken by the Dispute Settlement Body with respect to those parts of the dispute concerning this Agreement].^{US,CDA} ^{KOR,JPN,CT,US,SWI,CDA} [A Member of the WTO may seek to join in consultations pertaining to this Agreement, pursuant to Article 4.11 of the DSU, only if that Member is also a Party to this Agreement.]^{US}

[5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.]^{US,KOR,JPN,CT,SWI,CDA}

[5bis. Panels shall adopt appropriate procedures to protect confidentiality of information subject to Article XIII:1.]^{EC}

6. [Every effort shall be made to accelerate the proceedings to the greatest extent possible.]^{KOR,JPN,CT,US} [Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt]^{CDA,JPN,CT} [Where the dispute concerns the award of a specific procurement the panel shall aim,]^{EC,SWI} to provide its final report to the parties to the dispute not later than [three months]^{EC} [four months, and in case of delay not later than seven months,]^{CDA,JPN,CT} after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by [two]^{CDA,JPN,CT} [three]^{EC} months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the DSU, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.]^{EC,JPN,CT}

[6bis. (a) In the communication referred to in Article [21.3] of the DSU, the Party concerned shall inform the DSB whether it is possible to bring the measures found to be inconsistent with this Agreement into conformity with the Agreement. If the Party concerned indicates that it is not possible to bring the measures found to be inconsistent with this Agreement into conformity with the Agreement, that Party shall, immediately after having made that communication, enter into consultations with a view to developing mutually acceptable compensation.

(b) Any Party which has entered into such consultations, may at any time request an arbitration to determine the level of nullification or impairment that was caused by the measure found to be inconsistent with this Agreement.

(c) Unless a request for arbitration has been made, the Party concerned shall, within 30 days from the request for consultations, submit to all Parties who have entered into such consultations, a proposal for mutually acceptable compensation.

- (d) When an arbitration has been requested, the Party concerned shall submit such a proposal within 30 days of the award of the arbitrator. Any such proposal shall be consistent with the award of the arbitrator.
- (e) Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator, which term shall be interpreted as referring to an individual or a group, appointed by the Director-General and shall be completed within 60 days after the request for arbitration.
- (f) If no proposal for compensation has been submitted within the periods referred to in subparagraphs (c) or (d), or if no agreement has been reached within 60 days from the submission of the later of:
 - (i) a proposal for mutually acceptable compensation; or
 - (ii) such a proposal made subsequent to an arbitration award,

the complaining Party shall be entitled to request authorization from the DSB to suspend the application to the Party concerned of concessions and other obligations under the covered agreements that is appropriate in light of the level of nullification or impairment that was caused by the measure.]^{EC}

[7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.]^{CDA,KOR,JPN,US,CT,ISR}

Article XIX Institutions

Committee on Government Procurement

1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.
2. The Committee may establish working parties or other subsidiary bodies that shall carry out such functions as may be given to them by the Committee.

Observers

3. Any WTO Member that is not a Party to this Agreement shall be entitled to participate in the Committee as an observer upon submission of a written notice to the Secretariat. Any [government eligible to apply for WTO membership] [WTO observer]^{CT,EC,US} may submit a written request to the Secretariat to participate in the Committee as an observer, and may be accorded observer status by the Committee.

Article XX Final Provisions

Acceptance and Entry into Force

1. This Agreement shall enter force on [] for those WTO Members whose agreed coverage is set out in Annexes 1 through 5 of Appendix I, and which have, by signature, accepted this Agreement

on [], or have, by or on that date, signed the Agreement subject to ratification and have subsequently ratified the Agreement before [].

Transitional Arrangements

2. Between the Parties to this Agreement that are also Parties to the Agreement on Government Procurement dated 15 April 1994 ("1994 Agreement"), [the rights and obligations of this Agreement shall supersede those under]^{JPN} the 1994 Agreement [shall cease to apply [for each of its Members upon acceptance of this Agreement]^{SWI}^{EC,SWI,US}^{EC,US,SWI} When all Parties to the 1994 Agreement have accepted this Agreement, the 1994 Agreement shall be terminated. **[NB: May need to revisit.]**

Accession

3. Any Member of the WTO that is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that Member and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for an acceding Member on the 30th day following the date of its accession to this Agreement.

Reservations

4. No Party may enter any reservation in respect of any provisions of this Agreement.

National Legislation

5. Each Party shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by its procuring entities, with the provisions of this Agreement.

6. Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Reports and Future Work

7. The Committee shall annually inform the General Council of the WTO of developments relating to the implementation and operation of this Agreement.

[7bis. Not later than the end of the third year from the date of entry into force of this Agreement, and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement [and achieving the greatest possible extension of its coverage among all Parties]^{EC} [without prejudice to the needs of developing countries]^{ISR}.]^{EC,ISR} **[NB: Hong Kong, China suggested deleting "and achieving the greatest possible extension of its coverage among all Parties", since "with a view to improving this Agreement" is already general and fine.]**

[8. The Parties shall seek to avoid introducing or continuing discriminatory measures and practices that distort open procurement and shall, in the context of negotiations, seek to eliminate those which remain on the date of entry into force of this Agreement.]^{HKC} **[Market Access Issue]**

9. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") [and negotiations regarding trade in services,]^{CDA,EC,US,HKC} the Parties shall take the results of that work programme and those negotiations into account in amending Article [] as appropriate. **[NB. May have to revisit in light of developments in the work programme.]**

Amendments

10. The Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall [not enter into force for any Party until it has been accepted by such Party]^{US,HKC} [take effect for the Parties that have accepted them upon acceptance by two thirds of the Parties and thereafter for each other Party upon acceptance by it].^{EC,JPN}

Withdrawal

11. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date the Director-General of the WTO receives written notice of the withdrawal. Any Party may upon such notification request an immediate meeting of the Committee.

12. If a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.

Non-application of this Agreement between Particular Parties

13. This Agreement shall not apply as between any two Parties if either Party, at the time it accepts or accedes to this Agreement, does not consent to such application.

Appendices

14. The Appendices to this Agreement constitute an integral part thereof.

Secretariat

15. This Agreement shall be serviced by the WTO Secretariat.

Deposit

16. This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph [] and of each amendment thereto pursuant to paragraph 10, and a notification of each accession thereto pursuant to paragraph 3 and of each withdrawal therefrom pursuant to paragraph 11.

Registration

17. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at [] this [] day of [] in a single copy in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.
