



25 May 1998

(24-2668)

Page: 1/17

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

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

*Revision*

**Table of Contents**

<b>A. AREAS TO BE CONSIDERED .....</b>	<b>3</b>
1. Simplification and improvement of the Agreement .....	3
(i) General .....	3
(ii) Information technology .....	4
(a) General.....	4
(b) Non-discrimination .....	4
(c) Publication requirements .....	5
(d) Submission of tenders and other communications between the tenderer and the procuring entity .....	6
(e) Ease of access to databases and use of information tools .....	6
(f) Deadlines.....	7
(g) New issues related to electronic commerce .....	7
(iii) Other substantive provisions of the Agreement .....	7
(iv) Administrative provisions of the Agreement .....	8
(a) <i>Statistical reporting</i> .....	8
(v) Improving the structure of the Agreement .....	9
(vi) Appendices to the Agreement.....	9
2. Elimination of discriminatory measures and practices which distort open procurement .....	10
(i) General .....	10
(ii) Mutually agreed coverage of services .....	10
3. Expansion of the coverage of the Agreement .....	11
<b>B. INSTITUTIONAL/PROCEDURAL POINTS .....</b>	<b>12</b>
1. Work on government procurement in other WTO fora.....	12
2. Institutional arrangements for the review .....	12

\* English only.

\*\* Pursuant to the relevant Decision of the Committee on Government Procurement ([GPA/CD/5](#) (16/11/2023)), this document (informal document symbol: gpa45) was derestricted on 8 November 2023.

3. Participation of WTO Members in the review .....	12
4. Next steps .....	13
<b>ATTACHMENT 1 SUGGESTED MODIFICATIONS TO THE AGREEMENT INFORMATION TECHNOLOGY .....</b>	<b>14</b>

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

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

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

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

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

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

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

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

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

5. The point has been made that an approach of providing greater flexibility and more general principles may result in the need for a re-examination of the mechanisms aimed at ensuring the effective enforcement of the Agreement. The suggestion has been made that Parties should consider to what extent Article XX on bid challenge procedures had been effective in achieving this objective. In addition to the bid challenge mechanism under Article XX and dispute settlement procedures between governments under Article XXII, independent enforcement agencies could be established in individual Parties to address allegations of violations of the principles of the Agreement by aggrieved suppliers who might often be reluctant to bring cases against procuring entities. Other views expressed on the matter have questioned the need for establishing independent enforcement agencies and the way in which they could operate in Parties with federal governments.<sup>1</sup> It has also been stated that a review of the operation of Article XX should be without prejudice to whether or not Parties should consider alternative enforcement mechanisms.

6. With regard to the Committee's stated aim that the review shall seek the expansion of membership by making the Agreement more accessible to non-Parties ([GPA/8](#)), the point has been

<sup>1</sup> The delegation of the European Community has indicated that it will provide a note on how the system in the European Community works.

made that improving and simplifying the procedural provisions of the Agreement would increase its appeal to non-Parties. Simplifying the Agreement would also help in promoting the common objective sought by the review of the GPA, of the Working Group on Transparency in Government Procurement and of the Working Party on GATS Rules which is to establish a set of rules and principles that could ultimately be adopted on a multilateral basis.

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

## **(ii) Information technology**

### **(a) General**

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

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

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

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

12. The need to continue the information-gathering process in response to the revised questionnaire on information technology was referred to.<sup>2</sup>

### **(b) Non-discrimination**

13. It has been stated that information technology should be accommodated in such a way as to enhance rather than undermine the basic objectives of transparency and non-discrimination in the Agreement and not to put at a disadvantage the suppliers of actual or potential Parties less well-equipped in information technology or without adequate links to international networks. Concern has been expressed that, unless appropriate safeguards are established, the use of information technology in government procurement may lead to *de facto* discrimination against foreign suppliers. It has also been mentioned that the use of information technology may create or widen the gap between entities and suppliers which can effectively operate in the information age, and those, in particular SMEs, which cannot, thus creating a competitive advantage in favour of the former group.

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

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

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

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

### **(c) Publication requirements**

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

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

19. In this connection, support has been expressed that the provisions on the use of electronic publications should be set out as an option rather than as a requirement in the Agreement.

20. It has been stated that increased transparency of procurement opportunities was one of the main benefits of the electronic dissemination of tender notices. The Internet permitted viewing of notices anywhere in the world, regardless of where those notices may have originated. It has been suggested that the Agreement should include provisions requiring Parties to make available tender notices via the Internet free of charge. Electronic publication would have the following benefits:

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

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

22. In this connection, it has been mentioned that governments had been increasingly devolving the activities relating to information technology to private sector organizations which might imply that access to tender information and documentation would not be free of charge.

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

**(d) Submission of tenders and other communications between the tenderer and the procuring entity**

24. Suggestions have been made concerning the provisions of the Agreement relating to submission of tenders (Article XIII:1 and Article IX:6) and to communications between tenderers and the procuring entity (Article X:4) to allow entities to require electronic submission of bids and to allow electronic means for other communications (Job Nos. 3887 and 5211). These are reproduced in Attachment 1 to this note.

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

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

27. Reference has also been made to legal and technical difficulties relating to electronic submission of bids and transmission of documents between the tenderer and the procuring entity through public networks. It has been said that such issues as the confidentiality and security of data contents of tenders and the legal effects of electronic signatures required careful consideration.

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

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

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

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

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

#### **(f) Deadlines**

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

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

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

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

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

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

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

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

37. The desirability of simplifying some of the substantive rules of the Agreement and providing greater flexibility where possible under those rules has been widely stressed. It was suggested that,

in doing this, Parties should consider to what extent the provisions of the current Agreement actually contributed towards achieving its objectives.

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

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

- providing further clarity in the provisions relating to some areas of tendering procedures;
- providing flexibility in the procedures on the use of a notice of planned procurement in Article IX:3;
- providing flexibility in open and selective tendering procedures;
- providing further flexibility in the procedures in Articles XIV and XV;
- providing other methods of procurement which would reflect the use of more up-to-date procurement technologies such as purchasing from electronic catalogues;
- adapting the contents of specific provisions to take account of new phenomena (partnerships between private and public sectors, multiplication of Build Operate Transfer (BOT) projects), which were difficult to classify under the structure of the current Agreement. On the other hand, a view has been expressed cautioning against any extension of the scope of the Agreement involving these types of phenomena;
- updating Article V on Special and Differential Treatment for Developing Countries, for example by providing further flexibility in the evaluation of offers from developing countries with respect to non-discriminatory treatment and in the application of the procedural provisions;
- aligning the provisions of Article XXIII on Exceptions to the Agreement to the relevant provisions under the GATT.

#### **(iv) Administrative provisions of the Agreement**

##### **(a) Statistical reporting**

40. It has been said that statistical reporting is an area where simplification and streamlining of requirements should be considered. Late submission and low degree of precision of statistical data reduced its usefulness. The statistical requirements under the Agreement were unduly complex, burdensome and costly, notably because of the expansion of the coverage of the new Agreement. On the other hand, the point has been made that statistical reporting was an essential tool for achieving transparency in the compliance of Parties with the obligations of the Agreement. In any amendment of the existing requirements Parties should try to strike a balance between the advantages of having less onerous requirements and the disadvantages of *de facto* providing for less transparency.

41. It has also been mentioned that it might be possible to resolve problems faced by Parties in fulfilling the requirements of the Agreement by providing access to other Parties' statistical data bases through the use of information technology. Information technology might also open up other ways of monitoring the application of the Agreement in Parties.

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

- the information content of statistical reporting requirements should be uniform among Annexes 1-3;



- Parties should be allowed to report statistics in other types of nomenclatures than that established under GPA if the reporting was done only at the two-digit level (major category groups) accompanied by a description of those groups;
- there should be no requirement to report procurement under the threshold values for Annex 1 entities and that the relevant provision in Article XIX:5(a) should be deleted. On the other hand, it has been said that this type of statistics was necessary for the assessment of Parties' compliance with the Agreement;
- there should be no requirement to report procurement under the derogations to the Agreement referred to in Article XIX:5(d). On the other hand, it was stated that the provision of this type of statistics was essential for transparency purposes. In this connection, it was also said that the discussion of uniform statistical reporting of procurement under derogations was linked to achieving a clear definition of what constituted derogations under the Agreement;
- a commonly accepted format for statistical reporting should be developed;
- the relevant provisions should specify deadlines for statistical reporting.

43. A non-paper on this topic has been circulated as Job. No. 5212.<sup>3</sup>

#### **(v) Improving the structure of the Agreement**

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

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

#### **(vi) Appendices to the Agreement**

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

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

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<sup>3</sup> The delegation of Norway has indicated that it will provide a note on statistical reporting requirements.

## **2. Elimination of discriminatory measures and practices which distort open procurement**

### **(i) General**

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

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

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

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

51. It has been stated that the balance of coverage that Parties had sought with other Parties in the negotiation of the Agreement had led to discriminatory provisions in their respective Appendices. The General Notes of Parties also contained provisions excluding certain procurement from the coverage of the Agreement for domestic legal grounds. Whereas the list of discriminatory provisions in the Appendices with respect to "national treatment" standard could be reduced, discriminatory provisions with respect to the MFN standard might need to continue to exist in order to maintain the balance of coverage with respect to those Parties whose offers were less than comprehensive. Moreover, Parties might have to retain the possibility of introducing discriminatory provisions with respect to MFN standard in negotiations with an acceding country as an incentive to enhance the coverage of its offer.

52. An informal note by the Secretariat on the type of discriminatory provisions in the Appendices to the GPA was circulated on 31 October 1997 (document with footer 'gpa38').

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

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

54. It has been stated that the current coverage of services in the Agreement was the outcome of a perceived need for reciprocity in this area because various Parties had made diverse offers in the negotiations. Future negotiations should aim at a uniform level of coverage among all Parties, at least in terms of the quality of the coverage of services.

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

- the element of the review concerning the elimination of discriminatory measures and practices was independent of that on the expansion of coverage. On the other hand, the view has been expressed that the two elements would overlap and that the review should address not only the elimination of discriminatory measures and practices but also the expansion of coverage;
- the review should be initiated by simplification and elimination of derogations in Annex 4 in Appendix I of individual Parties;
- differing views have been expressed concerning the extent to which the work on this element should take its cue from that in the Working Party on GATS Rules.

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

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

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

On the other hand, the view has been expressed that such an approach would neither be procedurally feasible nor equitable. The suggestion was made that the Agreement should include provisions setting out uniform levels of thresholds applicable automatically to all Parties and independent of the size of their procurement markets and that Parties should no longer have the possibility of applying differential threshold levels.

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

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

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

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

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

60. It has been suggested that, in the process of the review of the Agreement, Parties should take account of the work on government procurement in the Working Group on Transparency in Government Procurement and in the Working Party on GATS Rules.<sup>4</sup> The point has also been made that, while the level of obligations sought under each forum may not necessarily be the same, the overall outcome of work in these fora should be coherent and consistent. However, the review of the Agreement should not be delayed by the pace of other discussions.

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

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

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

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

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

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<sup>4</sup> The most recent reports of the Working Group on Transparency in Government Procurement and the Working Party on GATS Rules were circulated respectively in documents [WT/WGTGP/M/4](#) and [S/WPGR/M/16](#).

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

64. During the informal consultations held on 18 February 1998, it was agreed that the Committee would hold further informal meeting on 25 June 1998. At that meeting the work would be carried forward in the following way:

- (i) the work would proceed with the three elements of the review simultaneously;
  - (ii) as regards the simplification/improvement axis of the mandate for the review, delegations would have focused discussions on specific items, starting with information technology and statistical reporting. Delegations would be invited to specify, to the extent possible, the specific drafting changes that they would wish to see made to the relevant provisions of the Agreement in these areas;
  - (iii) delegations would initiate an Article-by-Article review of the Agreement with a consideration of Articles I to VI of the Agreement;
  - (iv) delegations would be invited to identify any other areas where focused discussions could be taken up and to bring forward proposals, including written proposals on any other substantive provisions, for example on procurement methods and restructuring of the Agreement including its Annexes;
  - (v) as regards the other two elements of the review, namely elimination of discriminatory measures and practices which distort open procurement and expansion of the coverage of the Agreement, delegations would begin focused discussion on the expansion of the coverage of the Agreement in the area of services and would be invited to present written suggestions on any other matters;
  - (vi) in the light of the state of discussion at the next meeting, the Chairperson would draw up, for the consideration of delegations, a suggested work programme, including a schedule, for the further work under the review and negotiations review and negotiations foreseen in Article XXIV:7(b) and (c).
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## ATTACHMENT 1

### SUGGESTED MODIFICATIONS TO THE AGREEMENT INFORMATION TECHNOLOGY

#### *Publishing methods*

##### Alternative 1:

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

##### Alternative 2:

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

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

#### *Submission of tenders*

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

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

*Communications between tenderers and the procuring entity*

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

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

*Deadlines*

## Alternative 1:

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

## Alternative 2:

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

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

The restructuring should consist of four sequential elements:

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

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

A. Scope and coverage of the Agreement

Article 1 Scope and coverage (was Article I)

Article 2 Valuation of contracts (was Article II)

B. Basic Principles

Article 3 Publication of Legislation (was Article XIX.1)

[This could also be moved to Part D]<sup>5</sup>

Article 4 National Treatment and mfn (was Article XIX.1)

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

Article 6 Offsets (was Article XVI)

Article 7 Access of non-parties to the Agreement (was Article XVI.1)

C. Procurement procedures

Article 8 Methods of procurement (was Article VII)

Article 9 Use of the selective tendering procedure (was Article X)

Article 10 Use of the limited tendering procedure (was Article XV)

Article 11 Qualifications requirements for suppliers (was Article VIII)

Article 12 Technical specifications (was Article VI)

Article 13 Information to bidders: notices (was Article IX)

Article 14 Information to bidders: tender documentation (was Article II)

Article 15 Time limits for the submission of bids... (was Article XI)

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<sup>5</sup> In commenting on this proposal it has been suggested that Article XIX:1 on publication of basic legislation should be placed between sections B and C.



Article 16 Submission, receipt and opening of tenders (was Article XIII.1-3 + Article XXII.1)

*[This article could be further split]*

Article 17 Negotiation (was Article XIV)

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

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

C.1 Bid Review

Article 20 Information obligations of Entities (was Article XVIII.2)

Article 21 Challenge procedures (was Article XX)

D. Institutional provisions

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

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

Article 23 Exceptions to the Agreement (was Article XXIII)

Article 24 Special treatment for developing countries (was Article V)

*[NB: This article has an in-built review mechanism]*

Article 25 Statistical Reporting Requirements (was Article XIX.5)

*[NB: This article has in-built review mechanism]*

Article 26 Institutions (was Article XXI)

Article 27 Consultations and dispute settlement (was Article XXII)

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

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