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**Committee on Government Procurement
Negotiations under Article XXIV:7 of the GPA 1994**

**REVISION OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA)
AS OF 20 FEBRUARY 2004: SIDE-BY-SIDE TEXT***

NOTE BY THE SECRETARIAT

As requested by the Committee, the purpose of this document is to present in a side-by-side table the revised draft text of the Agreement on Government Procurement as at 20 February 2004 and the corresponding provisions of the 1994 Agreement currently in force.

The structure of the side-by-side table follows the structure of the side-by-side table prepared after the meeting of the Committee in August 2003 (Job No. 6985, dated 15 September 2003). It might not give a complete and fully updated picture as to which individual provisions in the 1994 Agreement correspond to the provisions of the revised draft text. The Secretariat is looking into whether this could be improved and, if so, an update will be circulated prior to the April meeting.

* Pursuant to the relevant Decision of the Committee on Government Procurement ([GPA/CD/5](#) (16/11/2023)), this document (informal document symbol: negs134) was derestricted on 8 November 2023.

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Preamble	
Parties to this Agreement (hereinafter referred to as "Parties"),	<i>Parties to this Agreement</i> (hereinafter referred to as "Parties"),
<i>Recognizing</i> 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;	<i>Recognizing</i> the need for an effective multilateral framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;
<i>Recognizing</i> 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;	<i>Recognizing</i> that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers;
<i>Recognizing</i> 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;	
<i>Recognizing</i> that the procedural commitments under this Agreement should be sufficiently flexible to accommodate the specific circumstances of each Party;	

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	<i>Recognizing</i> the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;
[<i>Recognizing</i> 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.]	<i>Recognizing</i> the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;
<i>Recognizing</i> 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;	<i>Recognizing</i> that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;
[<i>Recognizing</i> the importance of encouraging the use of electronic means for procurement covered by this Agreement;] ^{US,SWI}	
	<i>Desiring</i> , in accordance with paragraph 6(b) of Article IX of the Agreement on Government Procurement done on 12 April 1979, as amended on 2 February 1987, to broaden and improve the Agreement on the basis of mutual reciprocity and to expand the coverage of the Agreement to include service contracts;
<i>Desiring</i> to encourage acceptance of and accession to this Agreement by WTO Members not party to it;	<i>Desiring</i> to encourage acceptance of and accession to this Agreement by governments not party to it;
<i>Having undertaken</i> further negotiations in pursuance of these objectives;	<i>Having undertaken</i> further negotiations in pursuance of these objectives;
Hereby <i>agree</i> as follows:	Hereby <i>agree</i> 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 with characteristics similar to those 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,EC} [as well as minor modifications not customarily available in the commercial marketplace that do not significantly alter the non-governmental function or essential physical characteristics or change the purpose] ^{US,CDA} ;	

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

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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]	<i>Annex 5</i> A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.
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;	<i>Notes</i> The terms "country" or "countries" as used in this Agreement, including the Appendices, are to be understood to include any separate customs territory Party to this Agreement. <i>Notes</i> In the case of a separate customs territory 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,KOR} [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, Canada and the US propose to delete this definition.]	<i>Article VII:3</i> (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.
measure means any law, regulation, procedure, [or any act of a procuring entity relating to a covered procurement] ^{EC} [requirement applied in a particular procurement,] ^{US,NOR,JPN} administrative guidance or practice [administrative ruling of general application] ^{CT} ;	
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;	

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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.]	<i>Footnote</i> 7. Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.
open tendering means a procurement method where all interested suppliers may submit a tender; [NB: Japan and Canada propose to delete this definition.]	<i>Article VII:3</i> (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.
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 and Canada propose to delete this definition.]	<i>Article VII:3</i> (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.
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,KOR,NOR}	<i>Footnote</i> 4. For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.
supplier means a person or group of persons that provides or could provide goods or services;	

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<p>[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}</p>	<p><i>Footnote</i> 3. For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.</p>
<p>technical specification means a tendering requirement that:</p> <ul style="list-style-type: none"> (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. 	<p><i>Article VI</i> 1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities....</p>
<p>Article II Scope and Coverage</p>	<p><i>Article I</i> <i>Scope and Coverage</i></p>
<p><i>Application of Agreement</i></p>	
<p>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.</p>	<p>1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.</p>
<p>2. This Agreement applies to procurement:</p> <ul style="list-style-type: none"> (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] 	<p>2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.</p>
<ul style="list-style-type: none"> (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. 	<p>4. This Agreement applies to any procurement contract of a value of not less than the relevant threshold specified in Appendix I.</p> <p><i>Footnote</i> 2. This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.</p>
<p>[2bis. Without prejudice to Article [Exceptions], this Agreement applies to any procurement:</p> <ul style="list-style-type: none"> (a) of central government entities where the value is estimated to equal or exceed: <ul style="list-style-type: none"> - [] SDR for contracts for supply of goods and services; - [] SDR for contracts for construction services; 	

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<p>(b) of sub-central government entities where the value is estimated to equal or exceed:</p> <ul style="list-style-type: none"> - [] SDR for contracts for supply of goods and services; - [] SDR for contracts for construction services; 	
<p>(c) of entities according to Appendix I, Annex 3 where the value is estimated to equal or exceed:</p> <ul style="list-style-type: none"> - [] SDR for contracts for supply of goods and services; - [] SDR for contracts for construction services.]^{EC} <p>[Market Access Issue] [NB: Korea does not support the text (2bis) proposed by the EC.]</p>	
<p>3. For each Party, Appendix I shall be divided into five Annexes:</p> <ul style="list-style-type: none"> (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. 	<p>1. For each Party, Appendix I is divided into five Annexes:</p> <ul style="list-style-type: none"> - Annex 1 contains central government entities. - Annex 2 contains sub-central government entities. - Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement. - Annex 4 specifies services, whether listed positively or negatively, covered by this Agreement. - Annex 5 specifies covered construction services. <p><i>Footnote</i> 1. Relevant thresholds are specified in each Party's Annexes.</p>
<i>Compliance</i>	
<p>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, Norway and Korea have reservation on the bracketed language.]</p>	<p>Article VII</p> <p>1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.</p>
<p>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 <i>mutatis mutandis</i> to such requirements.</p>	<p>3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply <i>mutatis mutandis</i> to such requirements.</p>
<i>Valuation</i>	<p>Article II <i>Valuation of Contracts</i></p>
<p>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:</p>	<p>1. The following provisions shall apply in determining the value of contracts² for purposes of implementing this Agreement.</p>

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(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;	3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.
[(b) take into account all forms of remuneration, including any premiums, fees, commissions, interest and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and]	2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable. 6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.
[(b)bis include the maximum total estimated value of the procurement over its entire duration, taking into account premiums, fees, commissions, interest and other revenue streams [Market Access Issue] that may be provided for in such contracts and, where the procurement provides for the possibility of option clauses, the total maximum value [or total maximum estimated value] of the procurement, inclusive of optional purchases, and any estimated residual value in the case of leases, rentals and hire purchases; and] ^{CDA,US,HKC,JPN}	
<p>[(c) without prejudice to the terms of paragraphs 7 and 8, base the calculation on:</p> <p>(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</p> <p>(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}; or</p> <p>(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}</p> <p>[NB: Japan questions the need for subparagraph (c).]</p>	
<p>[(c)bis deem the procurement [the estimated value of which cannot be provided]^{HKC} to be covered if the scope of the work or the period of the contract is indefinite.]^{CDA,US,HKC,JPN}</p> <p>[NB: Canada is proposing that subparagraphs 6(b)bis and (c)bis also replace paragraphs 7 and 8. The EC considers Canada's proposal to relate to market access as it would change coverage.]</p>	

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<p>[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:</p> <p>(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.]</p> <p>(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}</p> <p>[NB: Korea, Switzerland and Canada question the meaning and application of this paragraph.]</p>	<p>4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:</p> <p>(a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or</p> <p>(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.</p>
<p>[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".]</p> <p>(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</p> <p>(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.]</p>	<p>5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:</p> <p>(a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;</p> <p>(b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.</p> <p>If there is any doubt, the second basis for valuation, namely (b), is to be used.</p>
Article III	Article III
General Principles	National Treatment and Non-discrimination
<i>National Treatment and Non-Discrimination</i>	
<p>1. With respect to any measure and any procurement covered by this Agreement, each Party [and each procuring entity[, respectively,]^{EC,NOR,SWI,JPN}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:</p> <p>(a) domestic goods, services and suppliers; and</p>	<p>1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:</p> <p>(a) that accorded to domestic products, services and suppliers; and</p> <p>(b) that accorded to products, services and suppliers of any other Party.</p>
	<i>Article VII</i>

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(b) goods, services and suppliers of any other Party.	1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.
2. With respect to any measure and any procurement covered by this Agreement, neither a Party nor a procuring entity shall: <ul style="list-style-type: none"> (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. 	<p><i>Article III</i></p> <p>2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:</p> <ul style="list-style-type: none"> (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.
<i>Procurement Methods</i>	<i>Article VII Tendering Procedures</i>
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,JPN} manner, using methods such as open tendering, selective tendering and limited tendering.	<p>1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.</p> <p>2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.</p>
[3bis. A procuring entity[, [in Annexes 1] ^{JPN} and 3,] ^{US} shall ensure that [a procurement official does not prepare or make decisions in a [procurement covered by this Agreement] ^{NOR,US} where the official's impartiality may] ^{NOR,US,CDA,HKC,SWI} [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: Norway is considering the preparation of a revised text at the request of the Chair.]	
<i>Rules of Origin</i>	<i>Article IV Rules of Origin</i>
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 in the normal course of trade to imports or supplies of the same goods or services from the same Party.	1. A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties.
<i>Offsets</i>	<i>Article XVI Offsets</i>

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<p>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.]</p>	<p>1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.⁷</p> <p>2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.</p>
<p><i>Measures Not Specific to Procurement</i></p> <p>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 governing procurement covered by this Agreement.</p>	<p><i>Article III</i></p> <p>3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.</p>
<p>Article IV Publication of Procurement Information</p>	
<p>Each Party shall:</p> <p>(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</p> <p>(b) provide an explanation thereof to any Party, on request.</p>	<p><i>Article XIX</i></p> <p>1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.</p>
<p>Article V Publication of Notice of Intended Procurement</p> <p>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] [The notices] shall be in [electronic or]^{1SR} paper media that are widely disseminated and remain readily accessible to the</p>	<p><i>Article IX</i> <i>Invitation to Participate Regarding Intended Procurement</i></p> <p>1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.</p>

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public. [[For procuring entities in Annex 1 s] ^{US,HKC,JPN} [In all cases, s] ^{EC} [[S]uch publications] [the notices] [where electronic] ^{US,HKC} shall [always] ^{EC} be accessible free of charge through a single point of access]. ^{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,JPN} [Where electronic, the Party shall ensure [such publications] [the notices] are accessible from one location.] ^{CDA,SGP}	2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
2. [Each notice of intended procurement shall include] ^{EC} [A procuring entity shall include the following information in each notice of intended procurement] ^{CDA,US} :	6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:
(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;	(e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents; (g) the amount and terms of payment of any sum payable for the tender documentation; and <i>Article XIII:1</i> (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time- limit;
(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;	<i>Article IX:6</i> (a) the nature and quantity, [...]
- [whether the procuring entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods;] ^{EC}	(h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.
- [any options] ^{EC,CDA,NOR,US} [for further procurement and, if possible, an estimate of when such options may be exercised;] ^{EC}	<i>Article IX:6(a)</i> ... including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised;
- [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.]	<i>Article IX:6(a)</i> ... in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;

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(c) the time-frame for delivery of goods or services or the duration of the contract;	(c) any date for starting delivery or completion of delivery of goods or services;
(d) the procurement method that will be used and whether it will involve negotiation[, electronic means] ^{EC} [or electronic auction] ^{CDA,US} [and any intention that tenders be submitted by electronic means] ^{CDA,US} ;	(b) whether the procedure is open or selective or will involve negotiation;
(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;	(d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' list, or for receiving tenders, as well as the language or languages in which they must be submitted;
(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,SWI,NOR} ; [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.]	(f) any economic and technical requirements, financial guarantees and information required from suppliers;
(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.	11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.
[Summary Notice 3. For each case of intended procurement, a procuring entity shall publish in a summary notice at least the information in paragraph 2 (a), (b) and (e) in one of the official languages of the WTO.] ^{CDA,SWI,US} [NB: Chinese Taipei; Hong Kong, China; Korea; Japan and the EC are considering this proposal.]	8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:
Notice of Planned Procurement 4. 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.	Article IX 7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and: (a) a statement that interested suppliers should express their interest in the procurement to the entity; (b) a contact point with the entity from which further information may be obtained.
[5. 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	Article IX 3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification

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<p>notices will be published]^{EC} [interested suppliers should express their interest in the procurement to the entity]^{EC,US} [and includes as much of the information in paragraph 2 as is available].^{CDA,JPN,EC}</p> <p>[NB: The relationship of this paragraph with paragraph 3 needs to be revisited.]</p>	<p>system, as provided for in paragraph 9, as an invitation to participate.</p> <p><i>Article IX</i></p> <p>4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.</p>
<p><i>[Summary Notice]</i></p> <p>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} [T]he notice [may be published also in electronic media and contain the following information:]^{ISR} [shall contain at least the following information]:</p> <ul style="list-style-type: none"> (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.] <p>[NB: Chinese Taipei and Hong Kong, China have reservations on this paragraph.]</p>	<p>8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:</p> <ul style="list-style-type: none"> (a) the subject matter of the contract; (b) the time-limits set for the submission of tenders or an application to be invited to tender; and (c) the addresses from which documents relating to the contracts may be requested.
<p>Article VI</p> <p>Time-Periods for Tendering</p> <p><i>General</i></p> <p>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:</p> <ul style="list-style-type: none"> (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. <p>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.]^{US,EC}</p> <p>[A procuring entity shall provide sufficient time for suppliers to prepare and submit tenders, taking into account the nature and complexity of the procurement. Such time-limits shall be common for suppliers of other Parties as well as domestic suppliers.]^{CDA}</p>	<p><i>Article XI</i></p> <p><i>Time-limits for Tendering and Delivery</i></p> <p><i>General</i></p> <p>1.(a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.</p>
<p><i>Deadlines</i></p> <p>2. Except as provided for in paragraphs 3 and 4, a procuring entity shall [provide] [establish a time-period for tendering that is]^{CDA} no less than 40 days:</p> <ul style="list-style-type: none"> (a) from the date [on which] [that]^{CDA} the notice of intended procurement is published [and the tender documents 	<p><i>Deadlines</i></p> <p>2. Except in so far as provided in paragraph 3,</p> <ul style="list-style-type: none"> (a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;

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<p>are available]^{CDA} to the final date for the submission of tenders; or</p> <p>(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,]] [suppliers are required to meet conditions for participation in advance of the tendering process,]^{CDA} from the date [on which] [that]^{CDA} the entity notifies [initially]^{JPN} suppliers [that] they will be permitted to submit tenders to the final date for the submission of tenders.</p>	
	<p>(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;</p>
<p>3. Under the following circumstances, a procuring entity may establish a time-period for tendering that is less than 40 days [from publication of a notice of intended procurement or an invitation to submit tenders, provided that such time-period is sufficient to enable suppliers to prepare and submit responsive tenders] and is in no case less than 10 days [prior to the final date for submission]: [The same shall apply to the 25-day requirement for submitting applications specified in Article VIII:[8].]^{CT,EC,JPN}</p>	<p>3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:</p> <p>(a) ...the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;</p>
<p>(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,JPN} [together with as much information under Article V:2 as is available]^{EC}];</p>	<p>(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:</p> <p>(i) as much of the information referred to in paragraph 6 of Article IX as is available;</p> <p>(ii) the information referred to in paragraph 8 of Article IX;</p> <p>(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and</p> <p>(iv) a contact point with the entity from which further information may be obtained,</p>
<p>[(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]^{HKC}</p>	<p>(b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;</p>
<p>[(c)]^{JPN,US} [b]^{CDA} [where the procuring entity procures commercial goods or services;]^{JPN,CDA,US}</p>	
<p>[(d)] [(c)]^{CDA} where a state of urgency duly substantiated by the procuring entity renders impracticable the periods specified in paragraph 2; or</p>	<p>(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the</p>

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<p>[(e) when the period for the submission of tenders referred to in paragraph 2, for procurements by a procuring entity in [Annex [2 and] 3], has been 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}</p>	<p>publication referred to in paragraph 1 of Article IX; or</p> <p>(d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.</p>
<p>[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.]</p>	
<p>[4bis. A procuring entity may reduce the time-period of 40 days by an increment of five days for each one of the following circumstances:</p> <ul style="list-style-type: none"> (a) the notice of intended procurement is published electronically; (b) the tender documentation is made available electronically from the date of the publication of the notice of intended procurement; and (c) the tenders can be received electronically by the procuring entity.]^{CDA} 	
<p>[5. Notwithstanding any other time-periods in this Article, [when]^{EC,US,SWI} [where]^{CDA} a procuring entity is [purchasing]^{EC,US,SWI} [procuring]^{CDA} commercial goods [or]^{EC,US,SWI} [and]^{CDA} services [and the notice of intended procurement and the tender documents are published electronically, and the tenders may be received electronically]^{EC,US,SWI} [and all the circumstances listed in paragraph 4 are met]^{CDA}, the entity may reduce the time-period to no less than [10]^{SWI,EC} [5]^{US} [three]^{CDA} days[, provided such time is adequate to allow suppliers to submit responsive electronic tenders]^{EC,US,SWI}.]^{CDA,EC,US,SWI}</p>	
<p>[6. Where a procuring entity in [Annex [2 or] 3] has selected all or a limited number of qualified suppliers, the time-period for bidding may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.]^{CDA}</p> <p>[NB: Parties are considering the proposals by Canada, in particular as regards the linkages to Article VIII.]</p>	

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Article VII Information on Intended Procurements	Article XII
<i>Tender Documentation</i>	<i>Tender Documentation</i>
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:	2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:
(a) the 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;	(g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
(b) any conditions for participation of suppliers including a list of information and documents that suppliers are required to submit in connection therewith;	(f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
(c) all criteria, including any cost factors, to be considered in the awarding of the contract, and the relative importance of such criteria;	(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes and currency of payment;
(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) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
(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.	(a) the address of the entity to which tenders should be sent; (i) the terms of payment;
	(j) any other terms or conditions;
	(b) the address where requests for supplementary information should be sent;
	(c) the language or languages in which tenders and tendering documents must be submitted;
	(d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
	(k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.
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	Article XI 4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated

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production, de-stocking and transport of goods from the points of supply or for supply of services.	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:	<i>Forwarding of Tender Documentation by the Entities</i> 3.(a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
(a) provide, on request, the tender documentation to any supplier participating in the procurement; and	(b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.
(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.	(c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.
<i>Technical Specifications</i>	<i>Article VI</i> <i>Technical Specifications</i>
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.	1. Technical specifications ... shall not be prepared, adopted or applied with a view to, or with 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:	2. Technical specifications prescribed by procuring entities 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.]	(a) be in terms of performance rather than design or descriptive characteristics; and
(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}	(b) be based on international standards, where such exist; otherwise, on national technical regulations ³ , recognized national standards ⁴ , or building codes.
[5bis. In all cases, procuring entities shall consider tenders which do not comply with the provisions of the technical specification but do demonstrably meet the essential requirements thereof and are fit for the purposes intended. The reference to the technical specifications in the tender documents must include words such as "or equivalent".] ^{EC}	
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.	3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

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<p>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.</p>	<p><i>Article VI</i> 4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.</p>
<p>[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.]</p>	
<p>[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}</p>	
<p><i>Modifications</i></p>	
<p>[9. If, [during the course of a procurement]^{US} [prior to the award of a contract]^{HKC,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:</p> <p>(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</p> <p>(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.]^{CDA,US}</p>	<p><i>Article IX</i> 10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.</p> <p><i>Article XIV:4</i> (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;</p>
<p>[If, after publication of a notice of intended procurement, but before the time set for the opening or receipt of tenders [prior to the award of the contract]^{CDA} as specified in the notices or the tender documentation, a procuring entity amends or re-issues the notice, the entity shall circulate the amendment or the re-issued notice in the same manner as the original documents upon which the amendment or re-issued notice is based. [A procuring entity shall provide]^{US,EC} [A]^{JPN}[a]^{US,EC} any significant [additional]^{EC} information given to [all suppliers at the same time]^{US,EC} [one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned]^{JPN} in adequate time to permit the suppliers to consider such information and to respond to it].^{EC,JPN,US,HKC,CDA}</p>	

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Article VIII Conditions for Participation	<i>Article VIII</i> <i>Qualification of Suppliers</i>
<i>General Requirements</i>	
	<i>Article X</i> 1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.
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.	<i>Article VIII</i> In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following: (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question.
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.]	<i>Article VIII</i> (b) [...] Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;
(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.] [8.] ^{CDA} A procuring entity shall allow all domestic suppliers and suppliers of another Party that satisfy 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,CDA} the criteria for such limitation in the notice of intended procurement	

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[[or] ^{JPN,US,CDA} [, where publicly available, in] ^{CDA} [and] ^{EC} tender documentation]. ^{EC,JPN,US,CDA}	
[[3] ^{JPN} [5] ^{EC} <i>bis</i> . 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}	<i>Article VIII</i> (g) each Party shall ensure that: (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and (ii) efforts be made to minimize differences in qualification procedures between entities.
[4.] [3.] ^{CDA} 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.	(h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.
<i>Multi-Use Lists</i>	
[5.] [4] ^{CDA} 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:	<i>Article IX:9</i> In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following... <i>Article IX:9</i> However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.
(a) a description of the goods and services, or categories thereof, for which the list may be used;	<i>Article IX:9</i> (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
(b) the conditions 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;	<i>Article IX:9</i> (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
(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	<i>Article IX:9</i> (c) the period of validity of the lists, and the formalities for their renewal.

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given of the termination of use of the list] ^{CDA,US,JPN} ; and	<i>Article VIII(f)</i> ...Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
(e) an indication that, for procurement covered by this Agreement, the list may be used.	<i>Article IX</i> 11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.
[6. Notwithstanding paragraph 5, 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.]	<i>Article IX:9</i> However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.
[7.] [5] ^{CDA} 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.	<i>Article VIII</i> (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
<i>[Notice Inviting Applications]</i> ^{CDA,JPN}	
[6. A procuring entity that issues a separate notice inviting applications from suppliers to meet conditions for participation shall publish the notice in the appropriate publication listed in Appendix III. Such notice shall include: (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; (c) a list and brief description of the conditions for participation of suppliers including any specific documents or certifications required from suppliers in connection therewith. (d) where 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.] ^{CDA}	

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<p><i>[Selective Tendering]</i>^{EC,US}</p> <p>[7. Except where a notice of a multi-use list or a separate notice inviting applications to meet conditions for participation has been readily accessible in electronic form for a reasonable period of time, a procuring entity that intends to limit the submission of tenders to all qualified suppliers or to a limited number of qualified suppliers selected by the procuring entity in advance of the deadline for submitting tenders, shall publish the time limit for submitting applications in the notice of intended procurement.]^{CDA} <i>[NB: Canada considers that this paragraph addresses the same issue as paragraph 8.]</i></p> <p>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]^{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} 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}</p> <p>[Such time-limit shall be:</p> <p>(a) a minimum of [15]^{SWI} days from the date of publication of the notice where it uses a multi-use list; or <i>[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.]</i></p> <p>(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}</p> <p>[If an application is submitted within the time-limit, a procuring entity shall examine it]^{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} [,unless due to the complexity of the procurement the entity is not able to complete the examination of the application [within the time-period allowed for tendering]]^{US} [before commencement of tendering]^{HKC,US}. [A procuring entity may limit submission of tenders to qualified suppliers that have submitted applications within this time-limit.]^{JPN} <i>[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</i></p>	<p><i>Article X</i></p> <p>1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system.</p> <p><i>Article IX:9</i></p> <p>However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.</p>

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<i>considerable time to complete the qualification process.]</i>	
	<p><i>Article X</i></p> <p>3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.</p>
<p>[9. The time-period provided for in paragraph 8 may be reduced to [10] days where:</p> <ul style="list-style-type: none"> (a) the conditions for participation for a procurement are the same as or a subset of the conditions for participation for a multi-use list; (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 remained readily accessible in electronic form since its initial date of publication.]^{US} 	
<i>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.]</i>	
<p>[10.] [9]^{CDA} 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:</p> <ul style="list-style-type: none"> (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 	<p><i>Article IX</i></p> <p>3. Entities in Annexes 2 and 3 may use ... a notice regarding a qualification system.</p>
	<p><i>Article IX</i></p> <p>5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.</p>
<p>[(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}</p>	<p><i>Article VIII</i></p> <p>(c) Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;</p>

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<p><i>Information on Procuring Entities' Decisions</i></p> <p>[11. 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.] [NB: Canada would combine this paragraph with paragraph 13.]</p> <p>[12.] [10]^{CDA} 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] [4-7]^{CDA}, the entity shall promptly notify all such suppliers of the results of their applications[.]^{CDA} [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}]</p> <p>[13.] [11]^{CDA} 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.</p>	<p><i>Article VIII</i></p> <p>(f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;</p>
	<p>(g) each Party shall ensure that:</p> <p>(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and</p> <p>(ii) efforts be made to minimize differences in qualification procedures between entities.</p>
<p>Article IX Negotiation</p> <p>1. A Party may provide for its procuring entities to conduct negotiations:</p> <p>(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</p> <p>(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.</p>	<p><i>Article XIV</i> <i>Negotiation</i></p> <p>1. A Party may provide for entities to conduct negotiations:</p> <p>(a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or</p> <p>(b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.</p>
<p>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.]</p>	<p>3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.</p>
<p>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.</p>	<p>(a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;</p>
<p>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</p>	<p>4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:</p>

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<p>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.]</p> <p>[NB: The US and Canada suggest deleting the entire Article as its substance is covered elsewhere.]</p>	<p>(b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;</p> <p>(c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and</p> <p>(d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.</p>
<p>Article X Limited Tendering</p> <p>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.]</p>	<p>Article XV Limited Tendering</p> <p>1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions...,</p>
	<p>(a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;</p>
<p>(a) provided that the requirements of the tender documentation are not substantially modified:</p> <p>(i) where no tenders were submitted or no suppliers applied to meet the conditions for participation;</p> <p>(ii) where no tenders that conform to the essential requirements of the tender documentation were submitted;</p> <p>(iii) where no suppliers satisfied the conditions for participation; or</p> <p>(iv) where the tenders submitted have been collusive;</p>	

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<p>(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:</p> <p>(i) the requirement is for a work of art;</p> <p>(ii) the protection of patents, copyrights or other exclusive rights[, or proprietary information]^{US,CDA,JPN}; or [NB: The EC is wondering what is the extent or definition of proprietary information.]</p> <p>(iii) due to an absence of competition for technical reasons;</p>	<p>(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;</p>
<p>(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 [[either]^{EC} not meeting requirements of interchangeability with [or not operable with]^{EC} existing equipment, software, services, or installations]^{JPN,KOR,EC} [that would: [NB: Switzerland notes that the relationship between (c) and (g) needs further scrutiny.]</p> <p>(i) alter the operation or use of the existing goods or services; or</p> <p>(ii) due to the change of goods or services, require existing equipment or services to be altered;]^{CDA,US}</p>	<p>(d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services⁵;</p>
<p>(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 [];</p>	<p>(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;</p> <p><i>Article XV:1</i> provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:</p>
<p>(e) for goods purchased on a commodity market; or</p>	<p>(h) for products purchased on a commodity market;</p>

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<p>(f) where 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, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;]^{EC,JPN,US}</p>	<p>(e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV⁶;</p>
<p>(g) where 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?]</p>	<p>(f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;</p>
<p>(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.]</p>	<p>(g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;</p>
<p>(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</p>	<p>(i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;</p>

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<p>(j) in the case of a contract awarded to [a] winner of a design contest provided that:</p> <p>(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</p> <p>(ii) the participants are judged by an independent jury with a view to a design contract being awarded to [a] winner.</p>	<p>(j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.</p>
<p>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.</p>	<p>2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.</p>
<p>Article XI Treatment of Tenders and Contract Awards</p>	<p><i>Article XIII</i> <i>Submission, Receipt and Opening of Tenders and Awarding of Contracts</i></p>
<p><i>Receipt and Opening of Tenders</i></p>	<p><i>Receipt of Tenders</i> <i>Opening of Tenders</i></p>
	<p>1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:</p> <p>(a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and</p>
<p>1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.</p>	<p>3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.</p>

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2. A procuring entity shall treat tenders in confidence at least until the award of the contract.	<i>Article XIV</i> 3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
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.	2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.
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.	<i>Article XIII:1</i> (b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.
<i>Awarding of Contracts</i> 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.	<i>Award of Contracts</i> 4.(a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. ... (c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.
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.	<i>Article XIII</i> 5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement. (b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.
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.	<i>Article XIII:4</i> (a) ... If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
[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,NOR,JPN}	
[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), 2 (d) and 3 (d) are necessary.]	
1. [Procurement covered by this Agreement conducted, exclusively or not, by electronic means	

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<p>shall be subject to the provisions of this Agreement.]^{EC,SGP,KOR,JPN,SWI}</p> <p>2. Where a procuring entity intends to conduct a procurement using electronic means, either wholly or partially, it shall:</p> <ul style="list-style-type: none"> [(a) indicate [in the notice of intended procurement]^{US,EC} its intention to [require that tenders be submitted by electronic means]^{US,EC}; (b) ensure that any means and tools used for communicating electronically including authentication, integrity of data and encryption are [non-discriminatory][.]^{JPN}, [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: 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. <p>3. [A procuring entity that intends to hold an electronic auction in a] [A]^{US} procurement covered by this Agreement [may be conducted by electronic auction, provided that the procuring entity]^{US} shall: [NB: Japan and Israel are wondering whether the requirements of confidentiality allow for the use of electronic auction.]</p> <ul style="list-style-type: none"> [(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.] 	

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<p>(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.]</p> <p>(d) ensure that electronic auctions operate in full accordance with the general principles of this Agreement, in particular, equal treatment, non-discrimination and transparency.</p> <p>[4. [A p]^{US}[P]rocurring entit[ies][y]^{US} shall ensure full traceability of the [conduct of a procurement]^{SWI,US} [award procedures] conducted by electronic [auction]^{US,SWI,SGP} [means]^{EC,US,KOR} [NB: Japan, the US, Korea 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.]</p>	
Article XII	Article XVIII
Transparency of Contract Award Information	Information and Review as Regards Obligations of Entities
<i>Information Provided to Suppliers</i>	
<p>1. A procuring entity shall promptly inform [participating]^{EC,NOR} suppliers [that have submitted tenders]^{CDA,JPN,US} of the entity's contract award decisions [and, on request, in writing].^{EC,SWI,NOR} 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.</p>	<p>3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.</p> <p>2. Each entity shall, on request from a supplier of a Party, promptly provide:</p> <ul style="list-style-type: none"> (a) an explanation of its procurement practices and procedures; (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.
<i>Publication of Award Information</i>	
<p>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:</p> <ul style="list-style-type: none"> (a) a description of the goods or services procured; (b) the name and address of the procuring entity; 	<p>1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain:</p> <ul style="list-style-type: none"> (a) the nature and quantity of products or services in the contract award; (b) the name and address of the entity awarding the contract;

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(c) the name and address of the successful supplier;	(d) the name and address of winning tenderer;
(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;	(e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
(e) the date of award; and	(c) the date of award;
(f) type of procurement method used, and in cases where limited tendering was used pursuant to Article [X (<i>Limited Tendering</i>)], a description of the circumstances justifying the use of such procedure.	(g) the type of procedure used. (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and
<i>Provision of Award Information to Parties</i>	<i>Article XIX Information and Review as Regards Obligations of Parties</i>
3. On request of any other Party, [and subject to Article XIII:[2] [1] ^{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.	2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.
	3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.
<i>Maintenance of Documentation and Reports</i>	
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 (<i>Limited Tendering</i>)], and shall retain such documentation and reports for a period of at least three years from the award of the contract.	<i>Article XX</i> 4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.
	<i>Article XIX</i> 3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.
<i>Collection and Report of Statistics</i>	
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:	<i>Article XIX</i> 5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:
(a) For Annex 1 procuring entities:	(a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global
(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	

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<p>[categories of] goods and services [according to a[n internationally recognized]^{CDA,US} uniform classification system]; and <i>[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.]</i></p> <p>(iii) the number and total value of contracts covered by this Agreement awarded by each such entity under limited tendering.</p> <p>[(iv) the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.]^{CDA} <i>[NB: All parties, except Canada, agree to delete this subparagraph.]</i></p>	<p>basis and broken down by categories of entities;</p> <p>(b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;</p>
<p>(b) For Annex 2 and 3 procuring entities:</p> <p>(i) the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex;</p> <p>[(ii) the value of contracts covered by this Agreement awarded by such entities under limited tendering, broken down by Annex].^{CDA} <i>[NB: All parties, except Canada, agree to delete this subparagraph.]</i></p> <p>(c) Where data to be provided under subparagraph [(a) and]^{EC,US,JPN} (b) is not available, estimates shall be provided.</p>	<p>(c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and</p> <p>(d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.</p> <p>To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.</p>

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<p>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.</p> <p>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.</p>	
<p>Article XIII Non-Disclosure of Information <i>[NB: The United States and Japan suggest that subparagraph 2 (b) should be deleted as unnecessary.]</i></p>	
<p>1. Notwithstanding any other provision of the Agreement, a Party or a procuring entity may not provide information to a particular supplier that might prejudice fair competition between suppliers.</p>	<p><i>Article XIX</i> 4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.</p>
<p>2. 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} to release [confidential]^{CDA,JPN} information under this Agreement where release:</p> <ul style="list-style-type: none"> (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. <p>[except to the extent that it may be required to be disclosed in the context of proceedings under Articles XVII or XVIII.]^{EC}</p>	<p><i>Article XVIII</i> 4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.</p>
<p>Article XIV Developing Countries <i>[NB: All parties are reviewing this Article.]</i></p>	<p><i>Article V</i> <i>Special and Differential Treatment for Developing Countries</i></p>
<p>[1. In negotiations on accession to, and in the implementation and administration of, the Agreement, the Parties shall take special consideration 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 requests by a developing country for transitional measures with regard to its market access commitments under paragraph 3, as well as its</p>	<p><i>Objectives</i></p> <p>1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:</p> <ul style="list-style-type: none"> (a) safeguard their balance-of-payments position and ensure a level of reserves

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<p>implementation of the procedural obligations of the Agreement under paragraph 5. The Parties shall accord special and differential treatment, as provided for by this Article[.]^{EC} [:</p> <p>(a) to any least-developed country that accedes to this Agreement; and</p> <p>(b) to any other developing country that accedes to this Agreement, provided that such country demonstrates to the Parties' satisfaction a need for such treatment]^{SW1,US}.]^{EC,SW1,US}</p> <p>[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}</p> <p>2. [Subject to the coverage that a developed country Party has negotiated with an acceding developing country, the]^{SW1,US} [Each]^{EC} developed country Party shall provide immediately to the goods, services and suppliers of the acceding developing country the most favourable treatment offered by that developed country Party under Appendix I upon accession of the developing country. [However, with respect to a developing country other than a least-developed country, where the Parties have agreed to [transitional measures,] provided for in paragraph 3 for such country, in order to maintain appropriate reciprocal trade opportunities under the Agreement, any Party may agree with the acceding country to limit the scope of coverage that the Party provides to that country during the agreed transition period. Any such limitations shall be clearly identified in the Committee's accession decision and in each Party's Annexes or Notes to Appendix I.]^{SW1,US}</p> <p>3. A developing country Party may, with the agreement of the Parties, [adopt or]^{EC} retain transitional measures upon its accession to the Agreement, during an agreed-upon transition period with a phase-out schedule that may include:</p> <p>(a) price preference programmes, provided that the price preference programme:</p> <p>(i) provides a preference only for 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 that have preferential agreements with the Party applying the preference; and</p> <p>(ii) is transparent, and its application is clearly stated in notices of intended procurement and notices inviting suppliers to apply</p>	<p>adequate for the implementation of programmes of economic development;</p> <p>(b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;</p> <p>(c) support industrial units so long as they are wholly or substantially dependent on government procurement; and</p> <p>(d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.</p> <p>2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least-developed countries and of those countries at low stages of economic development.</p> <p><i>Coverage</i></p> <p>3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.</p> <p><i>Agreed Exclusions</i></p> <p>4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, <i>inter alia</i>, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be</p>

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<p>for participation in procurement covered by the Agreement; [or]^{EC}</p> <p>[(b) offsets, provided that:</p> <p>(i) any requirement for, or consideration of, the imposition of offsets is clearly stated in notices of intended procurement and notices inviting suppliers to apply for participation in procurement covered by the Agreement; and</p> <p>(ii) the offsets are applied in a non-discriminatory manner; [or]^{SWI,US}]^{SWI,US,EC}</p> <p>[Offsets</p> <p>- 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.</p> <p>- Requirements regarding the imposition of offsets shall be stated clearly in notices of intended procurements and in any other relevant documentation.]^{ISR}</p> <p>[NB: Israel and Korea are still considering their position on "transfer of technology".]</p> <p>[(c) limitations on its coverage such as the partial or total exclusion of a specific sector or entities]^{SWI,US}.</p> <p>4. The agreed-upon transition period shall not exceed [X] years for developing countries and [2X] years for least-developed countries.</p> <p>5. In order for a developing country Party to bring its measures into conformity with the Agreement, it may, with the agreement of the Parties, apply a specified implementation period, which shall be:</p> <p>(a) for a least-developed country Party, [three] years from the entry into force of the Agreement for that Party; and</p> <p>(b) for any other developing country Party, the period necessary to adopt measures relating to [specific provisions of]^{SWI,US} the Agreement,</p> <p>provided that the Party complies with Article III [<i>non-discrimination</i>].</p> <p>6. At the end of the transition period, provided for in paragraph 3, and the implementation period, provided for in paragraph 5, the developing country Party shall fully comply with the Agreement.</p>	<p>subject to common industrial development programmes.</p> <p>5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.</p> <p>6. Paragraphs 4 and 5 shall apply <i>mutatis mutandis</i> to developing countries acceding to this Agreement after its entry into force.</p> <p>7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.</p> <p><i>Technical Assistance for Developing Country Parties</i></p> <p>8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.</p> <p>9. This assistance, which shall be provided on the basis of non-discrimination among developing country Parties, shall relate, <i>inter alia</i>, to:</p> <p>- the solution of particular technical problems relating to the award of a specific contract; and</p> <p>- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.</p> <p>10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be</p>

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<p>7. Any developing country Party that has been permitted to retain a transitional measure under paragraph 3, or apply an implementation period under paragraph 5, shall list in an Annex to its Appendix I:</p> <ul style="list-style-type: none"> (a) the price preference programme or offset, including the schedule for phase-out of the measure; [(b) the schedule for the expansion of coverage;]^{SWI,US} and (c) the implementation period [, and where applicable, specific procedural obligations and any interim measures that it will take with regard to those obligations]^{SWI,US}. <p>8. After the Agreement has entered into force for a developing country Party, the Committee, on request of the developing country Party, and with a three-fourths majority vote, may:</p> <ul style="list-style-type: none"> (a) extend the transitional period for measures permitted under paragraphs 3 or 5 where a developing country Party demonstrates a need for an extension of the transitional measure; or (b) approve the application of a new transitional measure in special circumstances unforeseen during the accession process, provided that the measure is consistent with paragraph 3. <p>9. A Party benefiting from a transitional measure provided for under paragraphs 3 or 5 shall take such steps as may be necessary to ensure the fulfilment of all of its obligations at the end of the transitional period. The Party shall notify the Committee of such steps, including any special technical cooperation needs.</p> <p>10. 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 country for technical cooperation in relation to that country's implementation of this Agreement.</p> <p>11. Each Party shall establish an information centre to respond to reasonable requests from a developing country Party for information related to the Party's efforts to fully benefit from its participation in the Agreement. Such information may include information relating to procurements plans, procedures or requirements with respect to procurement covered by the Agreement.</p> <p>12. The GPA Committee shall review the operation and effectiveness of this Article every five years[, and more frequently, as necessary, with regard to developing country Parties that have measures that are subject to this Article]^{SWI,US}.</p>	<p>given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.</p> <p><i>Information Centres</i></p> <p>11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, <i>inter alia</i>, laws, regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.</p> <p><i>Special Treatment for Least-Developed Countries</i></p> <p>12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least-developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least-developed countries which are not Parties, with respect to products or services originating in those countries.</p> <p>13. Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least-developed countries, and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.</p> <p><i>Review</i></p> <p>14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.</p> <p>15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give</p>

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	consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.
Article XV Exceptions to the Agreement	<i>Article XXIII</i> <i>Exceptions to the Agreement</i>
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.	1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
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: <ul style="list-style-type: none"> (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. 	2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.
[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. Norway proposes to delete this paragraph.] [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}	

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<p>[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.]</p>	<p><i>Article XXIV</i></p> <p>6. Rectifications or Modifications</p> <p>(a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII</p>
<p>[(b) 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}</p>	
<p>[(c) (the same provisions as paragraph (2)(e) below.)]^{JPN}</p>	
<p>[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 [or that the entity concerned is engaged in the provision of goods or services in markets to which access is not restricted and are subject to genuine competition]^{EC}, that Party [(referred to in this Article as the "modifying Party")]^{JPN,KOR} shall</p>	<p>(b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than</p>

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<p>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 strikeouts to clarify the operation of the paragraph.]</p>	<p>30 days from the date of notification and no objection has been made....</p>
<p>[(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.]</p>	
<ul style="list-style-type: none"> - [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} 	

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<ul style="list-style-type: none"> - [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.] 	
<p>[(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.]</p>	

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[NB: The US does not support this paragraph.]	
<p>(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}</p> <p>[(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}</p> <p>[(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}</p>	<p>6. Rectifications or Modifications</p> <p>(b) ...In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence</p>
<p>[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}</p>	
<p>Article XVII Challenge Procedures</p>	<p><i>Article XX</i> <i>Challenge Procedures</i></p>
<p><i>[Consultations between the Procuring Entity and Supplier</i></p>	<p><i>Consultations</i></p>
<p>1. In the event of a complaint by a supplier that there has been a breach of this Agreement arising in the context of a procurement covered by this</p>	<p>1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in</p>

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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,JPN} the supplier's rights to seek corrective measures under the challenge system.	consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.
<i>Challenge</i>	<i>Challenge</i>
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.	2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.
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. [NB: Hong Kong, China believes that the time-period allowed for submitting a bid challenge should be specified.]	3. Each Party shall provide its challenge procedures in writing and make them generally available. 5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.
	4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.
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}	6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment.
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.	
6. A review body that is not a court shall either be subject to judicial review or shall have procedures which provide that:	A review body which 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;	(g) documents are disclosed 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;	(e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
(c) the participants to the proceedings shall have the right to be represented and accompanied;	(a) participants can be heard before an opinion is given or a decision is reached;
	(b) participants can be represented and accompanied;

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(d) the participants to the proceedings shall have access to all proceedings[, subject to Article XIII (Non-Disclosure of Information)] ^{US} ;	(c) participants shall have access to all proceedings;
(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	(d) proceedings can take place in public;
(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[ir] ^{CDA} basis[.] ^{CDA} [for each decision or recommendation].	(f) witnesses can be presented;
7. [Each Party shall adopt or maintain procedures that] ^{US,CDA} [Challenge procedures shall] ^{EC} provide for:	7. Challenge procedures shall 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.]	(a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
	(b) an assessment and a possibility for a decision on the justification of the challenge;
(b) 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} [challenge] ^{EC} [; and	(c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.
(c) protection of the confidentiality of information subject to Article XIII:1] ^{EC}	
	8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.
Article XVIII Consultations and Dispute Settlement	Article XXII 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] [apply] ^{CDA} except as otherwise provided below.] ^{CDA,EC,JPN,NOR} [The provisions of	1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.

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<p>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}</p>	
<p>[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 [must]^{CDA} [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,JPN} [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".]</p>	<p>2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.</p>
<p>[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}</p>	
<p>3. Where a dispute exclusively concerns provisions of this Agreement, only Parties to this Agreement [shall] [may]^{CDA} participate in decisions or actions taken by the DSB under this Agreement.</p>	<p>3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.</p>
<p>4. [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] [applies]^{CDA} only to those parts of the panel report concerning the interpretation and application of this</p>	<p>4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:</p> <p>"To examine, in the light of the relevant provisions of this Agreement and of (name of</p>

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<p>Agreement]^{KOR,JPN,CT} [only Members of the WTO that are Party to this Agreement [shall] [may]^{CDA} 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}</p>	<p>any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement."</p> <p>In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.</p>
<p>[5. [Each p]^{CDA}[P]anel[s] established by the DSB to examine disputes under this Agreement [must]^{CDA} [shall] include persons qualified in the area of government procurement.]^{US,KOR,JPN,CT,SWI,CDA}</p>	<p>5. Panels established by the DSB to examine disputes under this Agreement should include persons qualified in the area of government procurement.</p>
<p>[5bis. [Each p]^{CDA}[P]anel[s] [must]^{CDA} [shall] adopt appropriate procedures to protect confidentiality of information subject to Article XIII:1.]^{EC}</p>	
<p>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}</p>	<p>6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.</p>
<p>[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.</p>	
<p>(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.</p>	

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(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.	
<p>(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:</p> <p>(i) a proposal for mutually acceptable compensation; or</p> <p>(ii) such a proposal made subsequent to an arbitration award,</p> <p>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}</p>	
<p>[7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.]^{CDA,KOR,JPN,US,CT,ISR}</p>	<p>7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.</p>
<p>Article XIX Institutions</p>	<p><i>Article XXI</i> <i>Institutions</i></p>
<p><i>Committee on Government Procurement</i></p>	
<p>1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.</p>	<p>1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.</p>

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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.	2. The Committee may establish working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.
<i>Observers</i>	
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 WTO observer 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.	<i>Article XVII</i> 2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers.
Article XX Final Provisions	<i>Article XXIV Final Provisions</i>
<i>Acceptance and Entry into Force</i> 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 [].	1. <i>Acceptance and Entry into Force</i> This Agreement shall enter into force on 1 January 1996 for those governments whose agreed coverage is contained in Annexes 1 through 5 of Appendix I of this Agreement and which have, by signature, accepted the Agreement on 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.
<i>Transitional Arrangements</i>	3. <i>Transitional Arrangements</i>
	(a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.
	(b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive provisions of the 1988 Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996. Note 9: All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.
2. Between the Parties to this Agreement that are also Parties to the Agreement on Government Procurement dated 15 April 1994 ("1994 Agreement"), the 1994 Agreement shall cease to apply When all Parties to the 1994 Agreement have accepted this Agreement, the 1994 Agreement shall be terminated.	(c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.

PROPOSED REVISION	CORRESPONDING GPA TEXT
<i>Accession</i>	<i>2. Accession</i>
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 30 th day following the date of its accession to this Agreement.	Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a contracting party to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30 th day following the date of its accession to the Agreement.
<i>Reservations</i>	<i>4. Reservations</i>
4. No Party may enter any reservation in respect of any provisions of this Agreement.	Reservations may not be entered in respect of any of the provisions of this Agreement.
<i>National Legislation</i>	<i>5. National Legislation</i>
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.	(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.
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.	(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.
<i>Reports and Future Work</i>	<i>7. Reviews, Negotiations and Future Work</i>
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.]	(a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.
[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]	(c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.
9. Following the conclusion of the work programme for the harmonization of rules of origin for goods being undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization and negotiations regarding trade in services, the Parties	<i>Article IV</i> 2. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization

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shall take the results of that work programme and those negotiations into account in amending Article [] as appropriate. [NB. Switzerland considers the reference to rules of origin to be redundant.]	(hereinafter referred to as "WTO Agreement") and negotiations regarding trade in services, Parties shall take the results of that work programme and those negotiations into account in amending paragraph 1 as appropriate.
<i>Amendments</i> 10. The Parties may amend this Agreement having regard, <i>inter alia</i> , to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall [not enter into force for any Party until it has been accepted by such Party] ^{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} [NB: Hong Kong, China is checking whether it can withdraw its proposal.]	9. <i>Amendments</i> Parties may amend this Agreement having regard, <i>inter alia</i> , to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.
<i>Withdrawal</i> 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.	10. <i>Withdrawal</i> (a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.
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.	(b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.
<i>Non-application of this Agreement between Particular Parties</i> 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.	11. <i>Non-application of this Agreement between Particular Parties</i> This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.
<i>Appendices</i> 14. The Appendices to this Agreement constitute an integral part thereof.	12. <i>Notes, Appendices and Annexes</i> The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.
<i>Secretariat</i> 15. This Agreement shall be serviced by the WTO Secretariat.	13. <i>Secretariat</i> This Agreement shall be serviced by the WTO Secretariat.
<i>Deposit</i> 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.	14. <i>Deposit</i> This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.

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<i>Registration</i> 17. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.	15. <i>Registration</i> This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.
<i>Done</i> at [] 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.	<i>Done</i> at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.
