INFORMATION NOTE

Government Procurement Agreement
of the World Trade Organization

1. Introduction

1.1 The purpose of this information note is to provide Members of the Panel on Financial Affairs with information on the Government Procurement Agreement (GPA) of the World Trade Organization (WTO), to which Hong Kong has acceded as a developing member in 1997.

1.2 The information note will first present an overview of GPA, in terms of its development, membership, coverage, amendment, obligations and the permissible derogations or exemptions, as well as enforcement provisions. It will then discuss the costs/benefits as a GPA signatory and the development of expanding the GPA membership, followed by a discussion of the application of GPA to Hong Kong.

2. Development of the Government Procurement Agreement

2.1 As defined in GPA, government procurement refers to the purchase, lease or rental of products and services by a government entity. It is common for a government to favour the procurement of its own country’s goods and services for policy objectives, ranging from national security to promotion of domestic industries and technology. These procurement preferences are often conducted through discrimination against foreign suppliers, constituting a barrier to international trade.

2.2 The procurement preferences can be conducted in a variety of ways, such as giving preferential treatment to a supplier which sources its inputs from local firms, prohibiting foreign companies from tendering, and offering price preferences to domestic suppliers. Price preferences refer to the preferential treatment of awarding a contract to a domestic supplier as long as its price does not exceed that of a foreign supplier by a certain percentage.
2.3 Procurement preferences, coupled with the potential for international trade presented by government procurement worldwide\(^1\), have set the stage for the ongoing international negotiations aiming at the liberalisation of the government procurement market.

2.4 The first international agreement on government procurement was concluded in 1979 under the auspices of the General Agreement on Tariffs and Trade (GATT), the predecessor to WTO. The agreement, known as the GATT Code on Government Procurement, represented the culmination of the efforts of its signatories, mostly developed economies, to bring the procurement of goods by central government entities under internationally agreed trade rules. Above all, the signatories were required to conduct their government procurement policies and procedures in an open, transparent and non-discriminatory manner.

2.5 The GATT Code on Government Procurement was amended in 1988 to extend the coverage to some services and reduce the monetary threshold above which a procurement contract would fall within its ambit. The amended GATT Code on Government Procurement was later extensively revised during the Uruguay Round of trade negotiations held between 1988 and 1994. As a consequence of the negotiations, a new agreement was signed in Marrakesh on 15 April 1994 and became effective on 1 January 1996. This agreement, entitled the WTO Government Procurement Agreement, provides for wider coverage and strengthened enforcement provisions as compared with the previous agreements.

3. Membership of the Government Procurement Agreement

3.1 GPA is a plurilateral agreement in that its membership is voluntary and the obligations bind only those WTO members who have signed it\(^2\). In this way, the nature of GPA is different from most WTO agreements, which are multilateral with all WTO members acceding to the agreements and abiding by the provisions contained therein.

3.2 Twenty-eight WTO parties are currently signatories to GPA. They are the United States of America (US), the European Union (as an entity) and its 15 member states (the United Kingdom, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, Luxembourg, the Netherlands, Portugal, Spain, and Sweden), Hong Kong, Singapore, South Korea, Japan, Canada, Iceland, Israel, Liechtenstein, Aruba, Norway and Switzerland.

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1 The trade potential can be gauged from the share of government procurement in the domestic economy. According to the Department of Trade and Industry of the United Kingdom, government procurement typically accounts for between 3% and 12% of a country's Gross Domestic Product (GDP). In Hong Kong, purchases of goods and services by the Government accounted for 3.8% of its GDP in 2001.

2 At present, there are only two WTO plurilateral agreements, namely GPA and the Agreement on Trade in Civil Aircraft.
3.3 The current membership of GPA is largely confined to those WTO members who consider themselves as "developed" signatories. WTO does not have any definitions of “developed” and “developing” members. Under the so-called self-elected system, members decide on their own whether to be addressed as “developed” or “developing” members. However, other WTO members can challenge the decision of a member to make use of provisions available to "developing" members.

3.4 Any WTO member can accede to GPA on terms agreed by that member and the current signatories. A few countries, including the Mainland China, are negotiating accession to GPA as they have undertaken obligations to do so during their accession negotiations to WTO.

Withdrawal from the Government Procurement Agreement

3.5 Any signatory may withdraw from GPA. The withdrawal takes effect upon the expiration of 60 days from the date on which a written notice of withdrawal is received by the Director-General of WTO.

3.6 If a country/area ceases to be a member of WTO, it automatically ceases to be a party to GPA from the same date.


4.1 While previous agreements were largely confined to the procurement of goods by central government entities, GPA extends the coverage to the procurement of services (including construction services), as well as purchases by sub-central government entities and other government-related enterprises/entities.

4.2 Nevertheless, the provisions of GPA do not apply to all purchases made by its signatories. They apply to a particular procurement if:

(a) the entity conducting the procurement is covered by GPA;

(b) the procurement is covered by GPA; and

(c) the contract is above a certain threshold value.
Entities covered by the Government Procurement Agreement

4.3 GPA does not cover all the entities conducting government procurement. Instead, each signatory specifies the entities to be covered in the Annexes to GPA:

(a) Annex 1 lists central government entities, consisting mainly of government departments and ministries;

(b) Annex 2 lists sub-central government entities, consisting mainly of departments and ministries at state (regional or provincial) level; and

(c) Annex 3 lists other government-related enterprises/entities, consisting mainly of the authorities responsible for the management of public transports, water, electricity and other public utilities.

4.4 In general, the GPA signatories subject virtually all of their central government entities to the GPA application. However, such comprehensive coverage does not apply to the procurement by sub-central government entities and other government-related enterprises/entities, the coverage of which is based on reciprocity. In other words, a signatory may accord the access to the procurement by entities listed in its Annexes only to other signatories that have offered reciprocal access.

Types of procurement covered by the Government Procurement Agreement

Goods

4.5 As far as goods are concerned, the GPA signatories broadly indicate that the agreement applies to all procurement by the listed entities unless specified otherwise. The only exception is regarding purchases by defence department of defence requirements. However, purchases made by such departments of non-defence requirements are covered.

Services

4.6 The precise scope of coverage for services is described in Annexes 4 and 5 of GPA. Annex 4 details the coverage of non-construction services contracts, and Annex 5 sets out the coverage of construction services contracts. Most signatories use a positive list for the procurement covered in Annexes 4 and 5, which means that only the services listed in the Annexes are subject to the GPA procurement obligations. On the other hand, the US uses a negative list, listing only those services that it does not cover.
4.7 The actual opening up of the procurement market for services is relatively limited. Not only is the application of GPA provisions generally conducted under a positive list approach (which is more restrictive than a negative list approach), the signatories can also provide their service offers under a "strict reciprocity" clause. Under this clause, market access to a signatory is only given to service providers of other signatories who include the specific service category in question in their own coverage.

**Threshold above which the Government Procurement Agreement applies**

4.8 The coverage of GPA provisions also depends on whether the value of a particular procurement contract exceeds a specific threshold value. Contracts which do not meet the thresholds are not subject to the requirements under GPA.

4.9 Each signatory can specify its own minimum level of thresholds above which GPA applies to the procurement by the entities listed in Annexes 1, 2 and 3. The monetary threshold specified for a particular procurement reflects, among other things, the degree of willingness of a signatory to open that procurement to international competition. The higher a signatory sets the threshold, the less willing it opens its procurement market to other signatories.

4.10 For central government entities listed in Annex 1, the threshold is normally set at 130 000 Special Drawing Rights (SDR)\(^3\). For Annexes 2 and 3 entities, the thresholds are different for different entities, but are generally higher than those for Annex 1 entities.

4.11 The level at which construction services subject to the GPA application varies quite significantly among signatories. For example, the threshold is set at 5 million SDR for all entities in Norway, Switzerland, Canada and the US, but it reaches a high of 15 million SDR for Annexes 2 and 3 entities in Japan and Korea.

5. **Amendment of the Government Procurement Agreement**

5.1 Under Article XXIV of GPA\(^4\), any signatory can modify its coverage by initiating consultations with other signatories, and can resort to the Committee on Government Procurement for compensation for any reduction in the benefits accrued to them. (The functions and composition of the Committee on Government Procurement are discussed in paragraphs 9.13-9.15 below.) In the event of an agreement not being reached, the matter may be pursued in accordance with the consultations and dispute settlement provisions in GPA.

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3 SDR is an international currency unit set up by International Monetary Fund. The US dollar equivalent to 1 SDR was US$1.37 as of 12 February 2003.

4 The Appendix contains the full text of GPA.
6. Obligations under the Government Procurement Agreement

6.1 To facilitate the opening up of the procurement covered by GPA, the agreement contains two main types of provisions. Firstly, GPA lays down several general principles safeguarding non-discrimination in government procurement. Secondly, it sets out the minimum procedural requirements for the awarding of contracts, which are designed to secure the compliance with the principles of GPA and to safeguard transparency in the procurement process.

Principles of the Government Procurement Agreement

6.2 Article III of GPA sets out two general principles - national treatment and the most-favoured-nation (MFN) obligation - required to be followed by a signatory when conducting government procurement. In addition, Article XVI of GPA prohibits the use of offsets in government procurement. (See paragraphs 6.5-6.7 below for details of offsets.)

National treatment

6.3 Under the principle of national treatment, a GPA signatory must treat goods, services and services suppliers of other signatories no less favourable than its own goods, services and services suppliers.

Most-favoured-nation obligation

6.4 A MFN obligation is that a signatory must accord the suppliers of another signatory treatment no less favourable than it accords to suppliers of any other signatories. In other words, GPA requires a signatory to treat suppliers of all other signatories on an equal footing.

Prohibition against offsets

6.5 GPA prohibits government entities from considering, seeking or imposing "offsets" as a condition for awarding contracts. Offsets are defined as measures used to encourage local development or improve the balance of payments accounts by means of domestic content, licensing of technology, counter-trade or similar requirements.
6.6 Domestic content rules require a minimum proportion of a product (by value or volume) to be domestically or locally produced. Technology licensing measures require foreign companies awarded with government projects to transfer technologies to local companies which participate in those projects. Counter-trade is a form of barter trade requiring an exporter to offset the value of his exports, in whole or in part, by imports from his trading partner.

6.7 The only exception to the prohibition against offsets relates to developing members. (See paragraph 7.14 below.)

Obligations regarding procurement procedures

6.8 To ensure compliance with the principles of GPA, the agreement sets out detailed operational rules aiming to improve transparency in the procurement process and enforcement mechanism. These rules cover the nature of technical specifications to be applied, tendering procedures, qualification of suppliers, time limits for tendering, the provisions of tender documentation, procedures and criteria for awarding contracts, publication of awards, and provision of information on why tenders have not been successful.

Tendering procedures

6.9 Three types of procedures are available for tending of procurement contracts:

Open tendering

6.10 Under the open tendering procedure, all interested suppliers can submit a tender.

Selective tendering

6.11 Under the selective tendering procedure, only those suppliers invited by the procuring entity can submit a tender. Entities desiring to make use of this procedure should keep lists of qualified suppliers interested in bidding. The lists have to be published once a year and contain the criteria which interested suppliers must met to be included therein.
Limited tendering

6.12 Under the limited tendering procedure, the procuring entity can contact the potential suppliers individually. This method is only permitted in special situations, including:

(a) absence of tenders in response to an open or selective tendering;

(b) in case of extreme urgency;

(c) additional deliveries by the original suppliers; and

(d) additional construction services not intended to be included in the original contract.

6.13 Limited tendering procedure cannot be used as a means of reducing competition, or in a manner that would constitute a means of discrimination among suppliers of other parties or protection to domestic producers or suppliers.

Awarding of contracts

6.14 Contracts must be awarded to a supplier who offers the lowest price or the most advantageous tender based on various criteria, such as quality, technical merit, delivery costs and prices. Notwithstanding this requirement, a procuring entity can decide not to award the contract on grounds of "public interest" which is not explicitly defined in GPA.

6.15 As to the transparency of awarding contracts, GPA provides for interested parties to verify whether the rules have been followed and to enforce them. GPA contains many provisions to assist interested parties in determining whether the agreement has been applied, such as:

(a) requiring procuring entities to inform participating suppliers "promptly" of decision on contract awards (Article XVIII);

(b) "pertinent information" concerning the reasons why the supplier is not selected (Article XVIII); and

(c) "pertinent information" released to an unsuccessful tenderer concerning the characteristics and relative advantages of the tender selected, and the name of the winning tenderer (Article XVIII). The supplier may also obtain specific information on the contract price by seeking that information through its own government (Article XIX).
7. Derogations from the Government Procurement Agreement Obligations

7.1 GPA allows a signatory to negotiate derogations or exclusions to exempt it from applying parts of the agreement to other signatories. In this connection, the precise scope of procurement covered for each signatory hinges, to a great extent, on bilateral negotiations between signatories, notwithstanding the GPA provisions for national treatment and the MFN obligation.

Derogations based on reciprocity

7.2 There are cases for a signatory to conceal access to a particular area of its procurement market only to those signatories which offer reciprocal access to the same area. In other words, if signatory A is unwilling to open up its market in a particular sector, signatory B will generally decline to open up its market to signatory A in that sector, even though B may have opened such market to other signatories. In so doing, signatory B does not fulfil the MFN obligation stipulated in GPA.

7.3 The derogations from the MFN rule can be made on a sectoral or entity basis. Indeed, the nature of GPA has exacerbated such departure from the MFN obligation by allowing signatories to base the coverage of the agreement on reciprocity, particularly for procurement by sub-central government entities and other government-related enterprises/entities, or for the services contracts listed in Annexes 4 and 5 of GPA.

7.4 In general, the reciprocity-based derogations are often accompanied with the declaration that they are applicable only as long as the signatories concerned fail to provide reciprocal access to their own markets. Once reciprocal access has been negotiated, the derogations will be removed.

7.5 The allowance for departure from the MFN rule has to do with the objective of expanding the membership of GPA. Some existing signatories would not be attracted to join GPA if they have been required beforehand to open their markets to those signatories which are not prepared to offer reciprocal coverage.

Other derogations

General exceptions

7.6 The exclusion of GPA obligations is also allowed for the protection of:

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

Derogations relating to bid challenge mechanism

7.7 A signatory can make derogations in terms of country-specific non-application of bid challenge mechanism to specific types of suppliers or services providers. For example, the European Union has denied the application of its bid challenge mechanism to suppliers and service providers of Israel, Japan, South Korea and Switzerland.

Derogations relating to national security

7.8 The exclusion of GPA obligations can be made in terms of procurement of arms and weaponry or materials indispensable for national security or defence.

Other considerations

7.9 Many signatories have made use of specific derogations for pursuing their specific industrial, social, and/or environmental programmes, which may be incompatible with the GPA provisions. For example, the Annexes of Canada, the US and South Korea have derogations for programmes to set aside a share of their government procurement for small and minority businesses.

Specific provisions for developing members

7.10 To encourage the accession of developing members to GPA, Article V of GPA includes certain special concessions and provisions so as to provide these members with a more beneficial balance of costs and benefits.

7.11 Article V(1) of GPA asserts the basic principle that signatories to GPA should take into consideration of the development, financial and trade needs of developing members, such as the development of domestic industries, support of industrial units dependent on government procurement and safeguarding the balance of payments.
7.12 Article V(3) specifically provides that the considerations set out in Article V(1) should be taken into account in accession negotiations, and that developed members should endeavour to include entities which purchase products or services of export interest to developing members.

7.13 In addition, GPA allows developing members to negotiate mutually acceptable exclusions from the rules on national treatment with respect to the entities, products or services that they schedule. Such negotiations may also be initiated after the accession to GPA.

7.14 Developing members are allowed further derogations from prohibition against offsets. Article XVI of GPA provides for developing members, having regard to general policy considerations, including those relating to development, to negotiate conditions only at the time of accession to GPA for the use of offsets and domestic content requirement.


8.1 Article XX of GPA mandates all signatories to establish a bid-protest or challenge mechanism by which aggrieved bidders can challenge decisions of a procuring entity and obtain redress in the event such decisions are inconsistent with rules of GPA. The challenges or complaints are heard by a court or an impartial and independent review body capable of making swift decisions, such as suspension and re-opening of the procurement process, and compensation for the loss or damages suffered.

9. Costs and Benefits as a Signatory to the Government Procurement Agreement

9.1 In considering whether to accede to GPA or not, a country/area has to weigh the possible benefits against the costs resulting from opening up its procurement market to international competition.

Costs as a Government Procurement Agreement signatory

9.2 In general, a signatory will incur the following costs upon its accession to GPA:
Loss of policy flexibility

9.3 The provisions of GPA stipulate the principle of national treatment and prohibitions against offsets. Accordingly, accession to GPA may result in a signatory losing its policy flexibility to use procurement for promoting some specific socio-economic objectives, such as the development of particular regions or industries, the promotion of industry development and the protection of employment. This is especially important when many other methods of pursuing the same objectives - for example, through quotas, duties, or subsidies - are prohibited or limited by the WTO rules.

9.4 The loss of policy flexibility is a particular concern for some developing economies when considering the accession to GPA. For a start, offset policies are very prevalent among these developing economies. Furthermore, they believe that the procurement by their central and local authorities can make significant contributions to the development of national industries and employment, through awarding contracts to domestic suppliers or giving preference to the procurement of domestically produced goods, services or works.

9.5 It is discussed in paragraphs 7.13-7.14 that GPA provides for developing members to negotiate exemptions from national treatment and prohibitions against offsets. However, the scope for exemptions is limited to certain entities, products or services, and is subject to the relative bargaining power of the parties concerned.

Administrative and procedural costs

9.6 Manpower and financial resources are required for the implementation of GPA, particularly on modifying existing purchasing policies/procedures and complying with the provisions of the agreement. For instance, costs are involved in establishing a bid challenge mechanism to handle complaints lodged by aggrieved bidders. The administrative and procedural costs should be higher for some developing members as their procurement rules and procedures are very different from those of GPA.

Benefits as a Government Procurement Agreement signatory

9.7 There are four potential benefits for being a GPA signatory, namely:
More efficient procurement regime

9.8 The main benefit of acceding to GPA is the economic efficiency of the procurement system. By accepting GPA's principles of transparency and non-discrimination, a signatory can establish a more open and competitive procurement regime. This helps ensure the best value for money spent by a government on its procurement, thereby contributing to savings on budgetary expenditure.

9.9 In addition, GPA makes it more difficult for corruption and fraud to be engendered during the procurement process, with the government purchases being conducted under fair, non-discriminatory and transparent procedures.

Increased market access

9.10 Accession to GPA can provide a signatory with the legal certainty for non-discriminatory access to the government procurement markets of other signatories, which should boost its export prospects. This is particularly so since the current GPA membership consists of developed members with large domestic government procurement markets.

9.11 However, export opportunities may be limited for some developing members as they usually do not have the expertise to bid for overseas contracts.

Readily accessible challenge mechanism

9.12 Suppliers of a signatory can have recourse to the bid challenge mechanisms set up in other signatories. A signatory is provided with an effective and speedy redress to trade disputes with other signatories within a defined framework, thereby adding certainty to its trading environment.

Ability to influence development of the Government Procurement Agreement

9.13 A GPA signatory is entitled to the membership of the Committee on Government Procurement. The committee, which meets at least once a year, is responsible for the oversight of the administration of GPA. The committee also provides the GPA signatories with a forum for discussing matters relating to the operation of GPA.
9.14 Each year the Committee on Government Procurement selects its chairman among the representatives of each of the GPA signatories. Countries/areas that have obtained “observer” status to GPA can participate in the work of the committee. However, they are not members of GPA and thus play no part in the decision making of the committee.

9.15 The GPA membership ensures a signatory the participation in the Committee on Government Procurement and hence in the future development of the procurement markets of other signatories, notably those of developed members which are increasingly important in terms of both volume and value.

10. Expanding Participation in the Government Procurement Agreement

10.1 The overwhelming majority of WTO members are developing members, accounting for about two-thirds of the WTO membership. There is a lack of representation of developing members in GPA, which explains the limited membership of GPA.

10.2 Expanding the participation in GPA has been a policy agenda of WTO. There are improving prospects for broadening the participation in GPA, as evidenced by increased application for both membership and observer status. Such a trend is partly attributable to the fact that some existing GPA signatories have demanded the commitment to GPA accession by applicants for WTO membership, particularly those with a large state sector (such as the countries formed from the disintegration of the former Soviet Union).

10.3 Meanwhile, some GPA signatories, notably developed members, have been working on formulating multilateral agreements that impose transparency obligations on all WTO members. They aim at integrating the procurement procedures of developing members with those laid down in GPA, thereby serving as a first step towards preparing for the accession of these members to GPA.

10.4 An important initiative on improving the transparency of procurement policy was the establishment of a Working Group on Transparency in Government Procurement (Transparency Working Group) in December 1996. Its mandate is to study transparency in WTO members’ government procurement practices, and to develop elements which could be included in a future agreement on transparency.

10.5 The Transparency Working Group initiated its work in 1997 by hearing presentations from other intergovernmental organizations which have drawn up agreements on transparency in government procurement, notably the World Bank and the United Nations Commission for International Trade Law.

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5 Currently, Mr Jan-Peter Mout of the Netherlands holds the chairmanship of the Committee.
10.6 Further, the Transparency Working Group has conducted a systematic study of 12 issues that are identified as important in relation to transparency in government procurement. These are:

(a) definition and scope of government procurement;
(b) procurement methods;
(c) publication of information on national legislation and procedures;
(d) information on procurement opportunities, tendering and qualification procedures;
(e) time-periods;
(f) transparency of decisions on qualification;
(g) transparency of decisions on contract awards;
(h) domestic review procedures;
(i) information to be provided to other governments (notification);
(j) WTO dispute settlement procedures;
(k) technical co-operation and special and differential treatment for developing countries; and
(l) other matters related to transparency, which comprises maintenance of records of proceedings, information technology, language and fight against bribery and corruption.

10.7 Nevertheless, the Transparency Working Group has not made any progress on moving on from the "study" phase to the phase of reaching a binding multilateral agreement on transparency in the government procurement regime. This has to do with the opposition of some developing countries with the same concerns that have deterred them from joining GPA. For instance, they have concerns over an unfavourable balance of costs and benefits resulting from the reform of their procurement regime. In any event, as agreed by WTO members, WTO will start negotiations on an agreement of transparency in government procurement after the Ministerial Conference scheduled for September 2003.
11. Integration of Hong Kong Government's Procurement Policy with the Government Procurement Agreement

Hong Kong's accession to the Government Procurement Agreement

11.1 Although Hong Kong had been a signatory to the GATT Code on Government Procurement, it initially decided not to join GPA immediately after the conclusion of such agreements in 1994. This was due to the introduction of discriminatory provisions, some of which were directed at Hong Kong, in the closing days of the negotiations.

11.2 After further negotiations between 1996 and 1997, the GPA signatories finally withdrew all discriminatory provisions against Hong Kong and committed to commencing an early review of GPA, with a view to eliminating all discriminatory provisions against other signatories. On such a basis, Hong Kong joined GPA in June 1997.

11.3 Under the self-elected system of WTO, Hong Kong has all along considered itself as a developing member. Accordingly, Hong Kong has acceded to GPA in the capacity of a developing member.

Approval of accession to the Government Procurement Agreement in Hong Kong

11.4 The accession to GPA was approved by the then Governor-in-Council in 1997. No legislation was introduced for implementing GPA in Hong Kong and as such, the then Government only informed the Legislative Council of its decision to join GPA.

Legislation on government procurement

11.5 While there is no specific legislation on GPA, the Government's procurement process is governed by the Stores and Procurement Regulations (SPRs) issued by the Financial Secretary under the Public Finance Ordinance. These SPRs are supplemented by Financial Circulars issued also by the Financial Secretary. The tendering policies and principles of government procurement in Hong Kong are generally in conformity with the objectives of GPA, and so are the procedures laid down in the relevant regulations and circulars.

11.6 According to the Trade and Industry Department (TID) of the Hong Kong Special Administrative Region Government, the Government's procurement regime has yet to see any changes brought about by the Transparency Working Group, which has not reached any agreements, decisions or recommendations so far.
Coverage of Hong Kong's procurement market

11.7 GPA applies to the following procuring entities in Hong Kong for contracts above the value specified:

All government bureaus and departments

11.8 GPA applies to contracts above the value of (a) 130,000 SDR for procurement of products and services other than construction services, or (b) 5 million SDR for construction services.

Government-related entities

11.9 Government-related enterprises/entities include the Housing Authority, the Hospital Authority, the Airport Authority, the Mass Transit Railway Corporation Limited and the Kowloon-Canton Railway Corporation. For these enterprises/entities, GPA applies to contracts above the value of (a) 400,000 SDR for procurement of products and services other than construction services, or (b) 5 million SDR for construction services.

Amendment of the Government Procurement Agreement

11.10 For introducing any changes to the current coverage of GPA, Hong Kong has to follow the procedure discussed in paragraph 5.1 subject to the approval of the Executive Council. It has to seek approvals of the Legislative Council as well if legislation is required for introducing such changes.

Obligations under the Government Procurement Agreement

11.11 As a signatory to GPA, Hong Kong is obliged to uphold the principle of national treatment and the MFN obligation when conducting its procurement policy.

11.12 Furthermore, Hong Kong is required to meet the obligations regarding procurement procedures set out by GPA. As such, tenders are invited by open tendering, selective tendering or restricted/single tendering (similar to limited tendering specified under GPA).

11.13 In 2001, 52.5% and 30.8% of government contracts were awarded through open tendering and selective tendering respectively. The corresponding figure for restricted/single tendering was 16.7%.
11.14 Normally, the lowest-priced offer that conforms to the tender specifications is selected. Nevertheless, in order to secure the best value for money, the tender evaluation process also takes into consideration of other factors, such as the quality of the goods or services provided, the present value of the tendered sum and the recurrent cost consequences.

**Enforcement provisions**

11.15 Hong Kong established the Review Body on Bid Challenges in December 1998 to deal with alleged breaches of GPA and follow-up remedial actions, as required under Article XX of the agreement.

11.16 The Secretary for Commerce, Industry and Technology appoints people from a wide spectrum of society to the Review Body. At present, there are 12 members, including one Chairman and two Deputy Chairmen. The Chairman and Deputy Chairmen are required to have legal qualification. The current chairmanship is held by the Chairman of the Hong Kong International Arbitration Centre, who is also a former High Court Judge.

**Derogations from the Government Procurement Agreement**

11.17 According to TID, Hong Kong has not negotiated any derogations based on considerations discussed in paragraphs 7.2-7.14, owing to its open and non-discriminatory procurement regime already in place before the accession to GPA. In particular, it did not negotiate for any special treatments available to developing countries, such as the use of offsets, at the time of accession to GPA. However, Hong Kong has excluded the application of GPA to a narrow range of procurement, mainly relating to the telecommunications and financial services.

11.18 As described in paragraph 7.14, a developing member can only negotiate for the use of offsets at the time of accession to GPA. In other words, Hong Kong, being a GPA member, is prohibited from considering, seeking or imposing "offsets" as a condition for awarding contracts after acceding to GPA.

**Costs and benefits for Hong Kong as a Government Procurement Agreement signatory**

11.19 According to TID, the Government has not conducted any study to quantify the costs and benefits for Hong Kong as a GPA signatory.
11.20 Nevertheless, TID states that, with Hong Kong's long and well-established government procurement regime, there has been no loss of policy flexibility regarding the accession to GPA. Indeed, the Government's procurement policy and principles had generally been in conformity with the objectives of GPA even before Hong Kong became a signatory to the agreement.

11.21 Concerning the benefits as a GPA signatory, accession to the agreement allows the Government to obtain the most competitive tender that should best serve the public interest. Joining GPA also ensures that suppliers of Hong Kong compete on an equal footing with suppliers of other signatories in overseas procurement markets. This should provide local companies with more business opportunities which, in turn, encourage investments and create jobs.

11.22 The GPA membership provides Hong Kong with recourse to the bid challenge mechanisms set up in other signatories. It also entitles Hong Kong to be a member of the Committee on the Government Procurement and hence the participation in the future development of GPA.
Appendix

Government Procurement Agreement

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

*Recognising* 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 liberalisation and expansion of world trade and improving the international framework for the conduct of world trade;

*Recognising* 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;

*Recognising* that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

*Recognising* 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;

*Recognising* the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;

*Desiring*, 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;

*Desiring* to encourage acceptance of and accession to this Agreement by governments not party to it;

*Having undertaken* further negotiations in pursuance of these objectives;

Hereby agree as follows:
Article I

Scope and Coverage

1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.¹

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.

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 mutatis mutandis to such requirements.

4. This Agreement applies to any procurement contract of a value of not less than the relevant threshold specified in Appendix I.

Article II

Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts² for purposes of implementing this Agreement.

2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.

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.

¹ For each Party, Appendix I is divided into five Annexes:
- 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.
Relevant thresholds are specified in each Party’s Annexes.

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.
4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

   (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or

   (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

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:

   (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;

   (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.

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.

   Article III

   National Treatment and Non-discrimination

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:

   (a) that accorded to domestic products, services and suppliers; and

   (b) that accorded to products, services and suppliers of any other Party.
2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:

(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.

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.

Article IV

Rules of Origin

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.

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 (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.
Article V

Special and Differential Treatment for Developing Countries

Objectives

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:

   (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;

   (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;

   (c) support industrial units so long as they are wholly or substantially dependent on government procurement; and

   (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.

Coverage

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.

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.
Agreed Exclusions

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, inter alia, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.

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.

6. Paragraphs 4 and 5 shall apply mutatis mutandis to developing countries acceding to this Agreement after its entry into force.

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.

Technical Assistance for Developing Country Parties

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.
9. This assistance, which shall be provided on the basis of non-discrimination among developing country Parties, shall relate, *inter alia*, to:

- the solution of particular technical problems relating to the award of a specific contract; and

- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

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 given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.

**Information Centres**

11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, *inter alia*, 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.

**Special Treatment for Least-Developed Countries**

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.

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.
Review

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.

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 consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.

Article VI

Technical Specifications

1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procuring entities shall, where appropriate:

   (a) be in terms of performance rather than design or descriptive characteristics; and

   (b) be based on international standards, where such exist; otherwise, on national technical regulations\(^3\), recognized national standards\(^4\), or building codes.

\(^3\) 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.

\(^4\) 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.
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.

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.

Article VII

Tendering Procedures

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. 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.

3. For the purposes of this Agreement:

   (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.

   (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.

   (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.
Article VIII

Qualification of Suppliers

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:

(a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;

(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. 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;

(c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognise as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. 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;

(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;

(e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
(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;

(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 minimise differences in qualification procedures between entities.

(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.

Article IX

Invitation to Participate Regarding Intended Procurement

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.

2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.

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 system, as provided for in paragraph 9, as an invitation to participate.

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.
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.

6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:

   (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; 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;

   (b) whether the procedure is open or selective or will involve negotiation;

   (c) any date for starting delivery or completion of delivery of goods or services;

   (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;

   (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;

   (f) any economic and technical requirements, financial guarantees and information required from suppliers;

   (g) the amount and terms of payment of any sum payable for the tender documentation; and

   (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

   (a) a statement that interested suppliers should express their interest in the procurement to the entity;

   (b) a contact point with the entity from which further information may be obtained.
8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

(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.

9. 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:

(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 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 period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

(d) the nature of the products or services concerned;

(e) a statement that the notice constitutes an invitation to participate.

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.

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.
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.

Article X
Selection Procedures

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.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.

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.

4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

Article XI

Time-limits for Tendering and Delivery

General

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.

(b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.
Deadlines

2. Except in so far as provided in paragraph 3,

(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;

(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;

(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.

3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:

(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:

(i) as much of the information referred to in paragraph 6 of Article IX as is available;

(ii) the information referred to in paragraph 8 of Article IX;

(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and

(iv) a contact point with the entity from which further information may be obtained,

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;

(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;
(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 publication referred to in paragraph 1 of Article IX; or

(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.

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 and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

Article XII

Tender Documentation

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.

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 address of the entity to which tenders should be sent;

(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;

(e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;

(f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
(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;

(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;

(i) the terms of payment;

(j) any other terms or conditions;

(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.

Forwarding of Tender Documentation by the Entities

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.

(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.

(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.
Article XIII

Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

   (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

   (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.

Receipt of Tenders

2. A supplier shall not be penalised 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.

Opening of Tenders

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.
Award of Contracts

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. 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.

(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.

(c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

Option Clauses

5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

Article XIV

Negotiation

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

(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

(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.

2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
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.

4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:

   (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;

   (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;

   (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and

   (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

Article XV

Limited Tendering

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, 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:

   (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;

   (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;
(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;

(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 services;

(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 XIV;

(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;

(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;

(h) for products purchased on a commodity market;

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5 It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

6 Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.
(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;

(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.

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.

Article XVI

Offsets

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

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.

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.
Article XVII

Transparency

1. Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:

   (a) specify their contracts in accordance with Article VI (technical specifications);

   (b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement;

   (c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves unavoidable, to ensure the availability of a satisfactory means of redress.

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 XVIII

Information and Review as Regards Obligations of Entities

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:

   (a) the nature and quantity of products or services in the contract award;

   (b) the name and address of the entity awarding the contract;

   (c) the date of award;

   (d) the name and address of winning tenderer;
(e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;

(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

(g) the type of procedure used.

2. Each entity shall, on request from a supplier of a Party, promptly provide:

(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.

3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.

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.

Article XIX

Information and Review as Regards Obligations of Parties

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.
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.

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.

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 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 basis and broken down by categories of entities;

   (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;

   (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
(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.

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.

**Article XX**

**Challenge Procedures**

**Consultations**

1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

**Challenge**

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 Party shall provide its challenge procedures in writing and make them generally available.

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.

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

(a) participants can be heard before an opinion is given or a decision is reached;

(b) participants can be represented and accompanied;

(c) participants shall have access to all proceedings;

(d) proceedings can take place in public;

(e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;

(f) witnesses can be presented;

(g) documents are disclosed to the review body.

7. Challenge procedures shall provide for:

(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;

(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.

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 XXI

Institutions

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.

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.

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 except as otherwise specifically provided below.

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.

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.
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:

"To examine, in the light of the relevant provisions of this Agreement and of (name of 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."

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.

5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.

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.

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.
Article XXIII

Exceptions to the Agreement

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information 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 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.

Article XXIV

Final Provisions

1. Acceptance and Entry into Force

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.

2. Accession

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 30th day following the date of its accession to the Agreement.

* For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.
3. **Transitional Arrangements**

(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.

(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.

(d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.

(e) Prior to the date of entry into force of the WTO Agreement, references to WTO bodies shall be construed as referring to the corresponding GATT body and references to the Director-General of the WTO and to the WTO Secretariat shall be construed as references to, respectively, the Director-General to the CONTRACTING PARTIES to GATT 1947 and to the GATT Secretariat.

4. **Reservations**

Reservations may not be entered in respect of any of the provisions of this Agreement.

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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.
5. National Legislation

(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.

(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.

6. Rectifications or Modifications

(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.

(b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.
7. **Reviews, Negotiations and Future Work**

   (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.

   (b) 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 on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.

   (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.

8. **Information Technology**

   With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.

9. **Amendments**

   Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.

10. **Withdrawal**

    (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.
(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.

11. **Non-application of this Agreement between Particular Parties**

   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.

12. **Notes, Appendices and Annexes**

   The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.

13. **Secretariat**

   This Agreement shall be serviced by the WTO Secretariat.

14. **Deposit**

   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.

15. **Registration**

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

   *Done* 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.
NOTES

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.

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.

Article 1, paragraph 1

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the 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.
References


Websites


