WORLD TRADE ORGANIZATION

Agreement on Government Procurement 2012

and related WTO legal texts

Cover photo: South building of the Centre William Rappard, WTO headquarters. Dhinaut 2014©OMC. This new WTO building (inaugurated in 2013) is an example of green and sustainable building. It is MINERGIE P certified, a high level designation for buildings in Switzerland. The image reflects the fact that the GPA 2012 contains a new provision (Art. X:6) providing greater certainty over the possibility of using "technical specifications to promote the conservation of natural resources or protect the environment". The image also reflects the fact that the Committee on Government Procurement launched a specific work programme on sustainable procurement in 2014.

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AGREEMENT ON GOVERNMENT PROCUREMENT, AS AMENDED ON 30 MARCH 2012 (GPA 2012)

PROTOCOL AMENDING THE AGREEMENT ON GOVERNMENT PROCUREMENT*

Preamble

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

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

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

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

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

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

Recognizing the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption;

Recognizing the importance of using, and encouraging the use of, electronic means for procurement covered by this Agreement;

* Document GPA/113, page 7.

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

Hereby *agree* as follows:

Article I Definitions

For purposes of this Agreement:

(a) **commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) **Committee** means the Committee on Government Procurement established by Article XXI:1;

(c) **construction service** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

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

(e) **days** means calendar days;

(f) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

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

(h) **limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(i) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

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

(k) **notice of intended procurement** means a notice **published** by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(l) **offset** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

(m) **open tendering** means a procurement method whereby all interested suppliers may submit a tender;

(n) **person** means a natural person or a juridical person;

(o) **procuring entity** means an entity covered under a Party's Annex 1, 2 or 3 to Appendix I;

(p) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;

(q) **selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(r) **services** includes construction services, unless otherwise specified;

(s) **standard** means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods 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 good, service, process or production method;

(t) **supplier** means a person or group of persons that provides or could provide goods or services; and

(u) **technical specification** means a tendering requirement that:

i. lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

ii. addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article II Scope and Coverage

Application of Agreement

1. This Agreement applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Agreement, covered procurement means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i). as specified in each Party's annexes to Appendix I; and

(ii). not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to Appendix I, at the time of publication of a notice in accordance with Article VII;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to Appendix I.

3. Except where provided otherwise in a Party's annexes to Appendix I, this Agreement does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i). for the specific purpose of providing international assistance, including development aid;

(ii). under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii). under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Agreement.

4. Each Party shall specify the following information in its annexes to Appendix I:

(a) in Annex 1, the central government entities whose procurement is covered by this Agreement;

(b) in Annex 2, the sub-central government entities whose procurement is covered by this Agreement;

(c) in Annex 3, all other entities whose procurement is covered by this Agreement;

(d) in Annex 4, the goods covered by this Agreement;

(e) in Annex 5, the services, other than construction services, covered by this Agreement;

(f) in Annex 6, the construction services covered by this Agreement; and

(g) in Annex 7, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's annexes to Appendix I to procure in accordance with particular requirements, Article IV shall apply *mutatis mutandis* to such requirements.

Valuation

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

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i). premiums, fees, commissions and interest; and

(ii). where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts"), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i). where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii). where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

Article III Security and General Exceptions

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

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

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

Article IV General Principles

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to:

(a) domestic goods, services and suppliers; and

(b) goods, services and suppliers of any other Party.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

Use of Electronic Means

3. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to

authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of Origin

5. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from another Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

Measures Not Specific to Procurement

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Article V Developing Countries

1. In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries (collectively referred to hereinafter as "developing countries", unless specifically identified otherwise), recognizing that these may differ significantly from country to country. As provided for in this Article and on request, the Parties shall accord special and differential treatment to:

(a) least developed countries; and

(b) any other developing country, where and to the extent that this special and differential treatment meets its development needs.

2. Upon accession by a developing country to this Agreement, each Party shall provide immediately to the goods, services and suppliers of that country the most favourable coverage that the Party provides under its annexes to Appendix I to any other Party to this Agreement, subject to any terms negotiated between the Party and the developing country in order to maintain an appropriate balance of opportunities under this Agreement.

3. Based on its development needs, and with the agreement of the Parties, a developing country may adopt or maintain one or more of the following transitional measures, during a transition period and in accordance with a schedule, set out in its relevant annexes to Appendix I, and applied in a manner that does not discriminate among the other Parties:

(a) a price preference programme, provided that the programme:

(i). provides a preference only for the part of the tender incorporating goods or services originating in the developing country applying the preference or goods or services originating in other developing countries in respect of which the developing country applying the preference has an obligation to provide national treatment under a preferential

agreement, provided that where the other developing country is a Party to this Agreement, such treatment would be subject to any conditions set by the Committee; and

(ii). is transparent, and the preference and its application in the procurement are clearly described in the notice of intended procurement;

(b) an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement;

(c) the phased-in addition of specific entities or sectors; and

(d) a threshold that is higher than its permanent threshold.

4. In negotiations on accession to this Agreement, the Parties may agree to the delayed application of any specific obligation in this Agreement, other than Article IV:1(b), by the acceding developing country while that country implements the obligation. The implementation period shall be:

(a) for a least developed country, five years after its accession to this Agreement; and

(b) for any other developing country, only the period necessary to implement the specific obligation and not to exceed three years.

5. Any developing country that has negotiated an implementation period for an obligation under paragraph 4 shall list in its Annex 7 to Appendix I the agreed implementation period, the specific obligation subject to the implementation period and any interim obligation with which it has agreed to comply during the implementation period.

6. After this Agreement has entered into force for a developing country, the Committee, on request of the developing country, may:

(a) extend the transition period for a measure adopted or maintained under paragraph 3 or any implementation period negotiated under paragraph 4; or

(b) approve the adoption of a new transitional measure under paragraph 3, in special circumstances that were unforeseen during the accession process.

7. A developing country that has negotiated a transitional measure under paragraph 3 or 6, an implementation period under paragraph 4 or any extension under paragraph 6 shall take such steps during the transition period or implementation period as may be necessary to ensure that it is in compliance with this Agreement at the end of any such period. The developing country shall promptly notify the Committee of each step.

8. The Parties shall give due consideration to any request by a developing country for technical cooperation and capacity building in relation to that country's accession to, or implementation of, this Agreement.

9. The Committee may develop procedures for the implementation of this Article. Such procedures may include provisions for voting on decisions relating to requests under paragraph 6.

10. The Committee shall review the operation and effectiveness of this Article every five years.

Article VI Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to any Party, on request.

2. Each Party shall list:

(a) in Appendix II, the electronic or paper media in which the Party publishes the information described in paragraph 1;

(b) in Appendix III, the electronic or paper media in which the Party publishes the notices required by Articles VII, IX:7 and XVI:2; and

(c) in Appendix IV, the website address or addresses where the Party publishes:

(i). its procurement statistics pursuant to Article XVI:5; or

(ii). its notices concerning awarded contracts pursuant to Article XVI:6.

3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in Appendix II, III or IV.

Article VII Notices

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Appendix III, except in the circumstances described in Article XIII. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice. The notices shall:

(a) for procuring entities covered under Annex 1, be accessible by electronic means free of charge through a single point of access, for at least any minimum period of time specified in Appendix III; and

(b) for procuring entities covered under Annex 2 or 3, where accessible by electronic means, be provided, at least, through links in a gateway electronic site that is accessible free of charge.

Parties, including their procuring entities covered under Annex 2 or 3, are encouraged to publish their notices by electronic means free of charge through a single point of access.

2. Except as otherwise provided in this Agreement, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) where, pursuant to Article IX, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Agreement.

Summary Notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Appendix III as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement

and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Annex 2 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article VIII Conditions for Participation

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

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and

(b) may require relevant prior experience where essential to meet the requirements of the procurement.

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

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article IX Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimize differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.

Selective Tendering

4. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in Article VII:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in Article VII:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article XI:3(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

Multi-Use Lists

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) where published by electronic means, made available continuously,

in the appropriate medium listed in Appendix III.

8. The notice provided for in paragraph 7 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(e) an indication that the list may be used for procurement covered by this Agreement.

9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article XI:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity

of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

Annex 2 and Annex 3 Entities

12. A procuring entity covered under Annex 2 or 3 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 and includes the information are required under paragraph 8, as much of the information required under Article VII:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VII:2, to the extent such information is available.

13. A procuring entity covered under Annex 2 or 3 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article X Technical Specifications and Tender Documentation

Technical Specifications

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

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

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

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

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

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

Tender Documentation

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

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

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

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Article XI Time-Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:

(a) the procuring entity has published a notice of planned procurement as described in Article VII:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i). a description of the procurement;

(ii). the approximate final dates for the submission of tenders or requests for participation;

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

(iv). the address from which documents relating to the procurement may be obtained; and

(v). as much of the information that is required for the notice of intended procurement under Article VII:2, as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

8. Where a procuring entity covered under Annex 2 or 3 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

Article XII Negotiation

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

   (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VII:2; or

   (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

   (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

   (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article XIII Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VII through IX, X (paragraphs 7 through 11), XI, XII, XIV and XV only under any of the following circumstances:

   (a) where:

      (i). no tenders were submitted or no suppliers requested participation;

      (ii). no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii). no suppliers satisfied the conditions for participation; or

(iv). the tenders submitted have been collusive, provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i). the requirement is for a work of art;

(ii). the protection of patents, copyrights or other exclusive rights; or

(iii). due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i). cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii). would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may

include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i). the contest has been organized in a manner that is consistent with the principles of this Agreement, in particular relating to the publication of a notice of intended procurement; and

(ii). the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

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

Article XIV Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article XV Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Agreement.

Article XVI Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVII, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

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

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article XIII, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XIII; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Collection and Reporting of Statistics

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

(a) for Annex 1 procuring entities:

(i). the number and total value, for all such entities, of all contracts covered by this Agreement;

(ii). the number and total value of all contracts covered by this Agreement awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and

(iii). the number and total value of all contracts covered by this Agreement awarded by each such entity under limited tendering;

(b) for Annex 2 and 3 procuring entities, the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex; and

(c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.

5. Where a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such statistics.

6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such data.

Article XVII Disclosure of Information

Provision of Information to Parties

1. On request of any other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Agreement, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Agreement, a Party, including its procuring entities, shall not provide to any particular

supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Agreement shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article XVIII Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

(a) a breach of the Agreement; or

(b) where the supplier does not have a right to challenge directly a breach of the Agreement under the domestic law of a Party, a failure to comply with a Party's measures implementing this Agreement,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right

to seek corrective measures under the administrative or judicial review procedure.

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

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

Article XIX Modifications and Rectifications to Coverage

Notification of Proposed Modification

1. A Party shall notify the Committee of any proposed rectification, transfer of an entity from one annex to another, withdrawal of an entity or other modification of its annexes to Appendix I (any of which is hereinafter referred to as "modification"). The Party proposing the modification (hereinafter referred to as "modifying Party") shall include in the notification:

(a) for any proposed withdrawal of an entity from its annexes to Appendix I in exercise of its rights on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence of such elimination; or

(b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided for in this Agreement.

Objection to Notification

2. Any Party whose rights under this Agreement may be affected by a proposed modification notified under paragraph 1 may notify the Committee of any objection to the proposed modification. Such objections shall be made within 45 days from the date of the circulation to the Parties of the notification, and shall set out reasons for the objection.

Consultations

3. The modifying Party and any Party making an objection (hereinafter referred to as "objecting Party") shall make every attempt to resolve the objection through consultations. In such consultations, the modifying and objecting Parties shall consider the proposed modification:

(a) in the case of a notification under paragraph 1(a), in accordance with any indicative criteria adopted pursuant to paragraph 8(b), indicating the effective elimination of government control or influence over an entity's covered procurement; and

(b) in the case of a notification under paragraph 1(b), in accordance with any criteria adopted pursuant to paragraph 8(c), relating to the level of compensatory adjustments to be offered for modifications, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement.

Revised Modification

4. Where the modifying Party and any objecting Party resolve the objection through consultations, and the modifying Party revises its proposed modification as a result of those consultations, the modifying Party shall notify the Committee in accordance with paragraph 1, and any such revised modification shall only be effective after fulfilling the requirements of this Article.

Implementation of Modifications

5. A proposed modification shall become effective only where:

(a) no Party submits to the Committee a written objection to the proposed modification within 45 days from the date of circulation of the notification of the proposed modification under paragraph 1;

(b) all objecting Parties have notified the Committee that they withdraw their objections to the proposed modification; or

(c) 150 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification.

Withdrawal of Substantially Equivalent Coverage

6. Where a modification becomes effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage. Notwithstanding Article IV:1(b), a withdrawal pursuant to this paragraph may be implemented solely with respect to the modifying Party. Any objecting Party shall inform the Committee in writing of any such withdrawal at least 30 days before the withdrawal becomes effective. A withdrawal pursuant to this paragraph shall be consistent with any criteria relating to the level of compensatory adjustment adopted by the Committee pursuant to paragraph 8(c).

Arbitration Procedures to Facilitate Resolution of Objections

7. Where the Committee has adopted arbitration procedures to facilitate the resolution of objections pursuant to paragraph 8, a modifying or any objecting Party may invoke the arbitration procedures within 120 days of circulation of the notification of the proposed modification:

(a) Where no Party has invoked the arbitration procedures within the time-period:

(i). notwithstanding paragraph 5(c), the proposed modification shall become effective where 130 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification; and

(ii). no objecting Party may withdraw coverage pursuant to paragraph 6.

(b) Where a modifying Party or objecting Party has invoked the arbitration procedures:

(i). notwithstanding paragraph 5(c), the proposed modification shall not become effective before the completion of the arbitration procedures;

(ii). any objecting Party that intends to enforce a right to compensation, or to withdraw substantially equivalent coverage pursuant to paragraph 6, shall participate in the arbitration proceedings;

(iii). a modifying Party should comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c); and

(iv). where a modifying Party does not comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage pursuant to paragraph 6, provided that any such withdrawal is consistent with the result of the arbitration procedures.

Committee Responsibilities

8. The Committee shall adopt:

(a) arbitration procedures to facilitate resolution of objections under paragraph 2;

(b) indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement; and

(c) criteria for determining the level of compensatory adjustment to be offered for modifications made pursuant to paragraph 1(b) and of substantially equivalent coverage under paragraph 6.

Article XX Consultations and Dispute Settlement

1. Each Party shall accord sympathetic consideration to and shall afford adequate opportunity for consultation regarding any representation made by another Party with respect to any matter affecting the operation of this Agreement.

2. Where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of:

(a) the failure of another Party or Parties to carry out its obligations under this Agreement; or

(b) 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 solution to the matter, have recourse to the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as "the Dispute Settlement Understanding").

3. The Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, with the exception that, notwithstanding paragraph 3 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 Appendix 1 of the Dispute Settlement Understanding.

Article XXI Institutions

Committee on Government Procurement

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

2. The Committee may establish working parties or other subsidiary bodies that shall carry out such functions as may be given to them by the Committee.

3. The Committee shall annually:

(a) review the implementation and operation of this Agreement; and

(b) inform the General Council of its activities, pursuant to Article IV:8 of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and of developments relating to the implementation and operation of this Agreement.

Observers

4. Any WTO Member that is not a Party to this Agreement shall be entitled to participate in the Committee as an observer by submitting a written notice to the Committee. Any WTO observer may submit a written request to the Committee to participate in the Committee as an observer, and may be accorded observer status by the Committee.

Article XXII Final Provisions

Acceptance and Entry into Force

1. This Agreement shall enter into force on 1 January 1996 for those governments[1] whose agreed coverage is contained in the Annexes 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 have subsequently ratified the Agreement before 1 January 1996.

Accession

2. Any Member of the WTO may accede to this Agreement on terms to be agreed between that Member and the Parties, with such terms stated in a decision of the Committee. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for a Member acceding to it on the 30th day following the deposit of its instrument of accession.

Reservations

3. No Party may enter a reservation in respect of any provision of this Agreement.

[1] For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Union.

Domestic Legislation

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

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

Future Negotiations and Future Work Programmes

6. Each Party shall seek to avoid introducing or continuing discriminatory measures that distort open procurement.

7. Not later than the end of three years from the date of entry into force of the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012, and periodically thereafter, the Parties shall undertake further negotiations, with a view to improving this Agreement, progressively reducing and eliminating discriminatory measures, and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, taking into consideration the needs of developing countries.

8. (a) The Committee shall undertake further work to facilitate the implementation of this Agreement and the negotiations provided for in paragraph 7, through the adoption of work programmes for the following items:

(i). the treatment of small and medium-sized enterprises;

(ii). the collection and dissemination of statistical data;

(iii). the treatment of sustainable procurement;

(iv). exclusions and restrictions in Parties' Annexes; and

(v). safety standards in international procurement.

(b) The Committee:

(i). may adopt a decision that contains a list of work programmes on additional items, which may be reviewed and updated periodically; and

(ii). shall adopt a decision setting out the work to be undertaken on each particular work programme under subparagraph (a) and any work programme adopted under subparagraph (b)(i).

9. Following the conclusion of the work programme to harmonize rules of origin for goods being undertaken under the Agreement on Rules of Origin in Annex 1A to the WTO Agreement and negotiations regarding trade in services, the Parties shall take the results of that work programme and those negotiations into account in amending Article IV:5, as appropriate.

10. Not later than the end of the fifth year from the date of entry into force of the Protocol Amending the Agreement on Government Procurement, the Committee shall examine the applicability of Article XX:2(b).

Amendments

11. The Parties may amend this Agreement. A decision to adopt an amendment and to submit it for acceptance by the Parties shall be taken by consensus. An amendment shall enter into force:

(a) except as provided for in subparagraph (b), in respect of those Parties that accept it, upon acceptance by two thirds of the Parties and thereafter for each other Party upon acceptance by it;

(b) for all Parties upon acceptance by two thirds of the Parties if it is an amendment that the Committee, by consensus, has determined to be of a nature that would not alter the rights and obligations of the Parties.

Withdrawal

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

13. Where a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect on the date on which it ceases to be a Member of the WTO.

Non-application of this Agreement between Particular Parties

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

Appendices

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

Secretariat

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

Deposit

17. 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 Article XIX and of each amendment pursuant to paragraph 11, and a notification of each accession thereto pursuant to paragraph 2 and of each withdrawal pursuant to paragraphs 12 or 13.

Registration

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

DECISIONS AND OTHER DOCUMENTS OF THE WTO COMMITTEE ON GOVERNMENT PROCUREMENT

1. DECISIONS ON PROCEDURAL MATTERS UNDER THE AGREEMENT ON GOVERNMENT PROCUREMENT (1994)

Participation of Observers in the Committee on Government Procurement (1994)*

Decision

1. Members of the World Trade Organization which are not Parties to the Agreement may follow the proceedings of the Committee on Government Procurement in an observer capacity.

2. Governments which are not Members of the World Trade Organization, but are in the process of, or have expressed the intent of, accepting or acceding to the WTO Agreement and which are also interested in initiating negotiations for accession to the Agreement on Government Procurement (1994) and have an interest in following the proceedings of the Committee on Government Procurement in an observer capacity, should communicate a request to the Director-General of the World Trade Organization indicating their desire to have observer status in the Committee on Government Procurement. The Committee shall decide on each request.

3. The Committee shall decide on the conditions of observership, including with respect to the provision of information by observers. Observers may participate in the discussions but decisions shall be taken only by Parties.

4. The Committee on Government Procurement may deliberate on confidential matters in special restricted sessions.

* Decision of the Committee of 27 February 1996 (Annex 1 to GPA/1, of 5 March 1996), page 2.

5. The Committee may invite, as appropriate, international organizations to participate in sessions of the Committee on Government Procurement in an observer capacity. In addition, requests from international organizations to participate in sessions of the Committee on Government Procurement, in an observer capacity, shall be considered on a case-by-case basis by the Committee. In such considerations, the criteria and conditions for observer status for intergovernmental organizations in the WTO shall be taken into account.

6. This Decision is without prejudice to the provisions of paragraph 2 of Article XVII of the Agreement.

MODALITIES FOR NOTIFYING THRESHOLD FIGURES IN NATIONAL CURRENCIES*

Decision

General

Each Party will calculate and convert for itself the value of the thresholds contained in its Appendix I into its own national currency, it being understood that these calculations will be based on the conversion rates published by the IMF in its monthly "International Financial Statistics" (for the EC, the Member States' currency equivalents of the ECU for determining the value of public contracts are calculated and published by the EC Commission). Parties will notify without delay to the Committee the method and result of their calculation, for possible examination and challenge in the Committee.

Basis for calculation[1]

The conversion rates will be the average of the daily values of the respective national currency in terms of the SDR over the two-year period preceding 1 October or 1 November of the year prior to the thresholds in national currency becoming effective which will be from 1 January. For Israel and Japan the conversion rate will be established in the same way as above but the relevant date for the calculation will be 1 January (rather than 1 October or 1 November) and the newly-established conversion rate will take effect on 1 April.

* Decision of the Committee of 27 February 1996 (Annex 3 to GPA/1, of 5 March 1996), page 4.

[1] It is understood that the EC calculates its thresholds based on a unilateral reduction of 13 per cent in the thresholds applicable to the EC (pursuant to the relevant decision by the Committee under the Tokyo Code of 20 May 1987, in furtherance of the panel decision on Value-Added Tax and Threshold (GPR/21, GPA/IC/W/2, pages 3 and 4).

Period of validity of national thresholds

Thresholds expressed in national currencies will be fixed for two years, i.e. calendar years for all Parties except Israel and Japan, where the fiscal year (1 April-31 March) will be used.

Safeguard mechanism

If a major change in a national currency vis-à-vis the SDR during a year were to create a significant problem with regard to the application of the Agreement, the matter will be considered in the Committee.

2. INDICATIVE TIME-FRAME FOR ACCESSION NEGOTIATIONS AND REPORTING ON THE PROGRESS OF WORK*

Note by the Secretariat

Revision

1. In the context of its discussion regarding the improvement of the procedures for accession under Article XXIV:2, the Committee has addressed the establishment of an indicative time-frame for accession negotiations together with a procedure for regular reporting to each Committee meeting on progress in bilateral consultations on the basis of an earlier version of this note. The present revision takes into account the comments made by Parties at the March and September 2000 meetings.

2. Certain basic procedures for accession negotiations have already been adopted by the Committee in its Decision of February 1996 on the Procedures for Accession under Article XXIV:2 of the Agreement (GPA/1, Annex 2) . This Decision reads as follows:

"1. In accordance with paragraph 2 of Article XXIV of the Agreement on Government Procurement (1994), any government which is a Member of the WTO may accede to this Agreement on terms to be agreed between that government and the Parties.

"2. To this effect, a government interested in accession shall communicate its interest to the Director-General of the WTO and, through him, to the Committee on Government Procurement and shall submit relevant information including an offer by way of appropriate Appendices containing lists of entities and services which would be covered by the Agreement, as well as lists of relevant publications, having regard to the provisions of the Agreement, in particular Article I and, where appropriate, Article V.

* Note by the Secretariat, GPA/W/109/Rev.2, of 3 January 2001.

"3. The government interested in accession shall hold consultations with the Parties to the Agreement on the terms for its accession to the Agreement.

"4. With a view to facilitating accession, the Committee on Government Procurement shall establish a working party if the applicant government, or any Party to the Agreement, so requests. The working party should examine: (i) the coverage offer made by the applicant government; and (ii) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant government and export opportunities for the Parties in the market of the applicant government.

"5. Upon a decision by the Committee on Government Procurement agreeing to the terms of accession including the lists of entities and services as well as of relevant publications of the applicant government, the applicant government shall deposit with the Director-General of the WTO an instrument of accession which states the terms so agreed. The applicant government's lists of entities, services and publications in their authentic WTO language(s) shall be appended to the Agreement."

3. Attached is a suggested indicative timetable for accession negotiations. It will be noted that the table does not specifically include the option of establishing a working party, as provided for under paragraph 4 of the above Decision. The reason is that, in practice, this option has not been availed of so far. However, should an applicant government or any Party to the Agreement request the establishment of such a working party, consequential modifications would need to be made to the suggested indicative timetable.

4. The suggested indicative timetable seeks to take into account the fact that accession negotiations have two main aspects and involve basically two mechanisms. The first aspect is the negotiation of an agreed coverage to be reflected in Appendices containing lists of entities and services as well as lists of relevant publications. The second is ensuring the consistency of the applicable national legislation with the provisions of the Agreement. The two main mechanisms used for these purposes are bilateral consultations between an acceding country and

interested Parties and plurilateral consultations. The negotiations on commitments to be included in the Appendices are more focused on bilateral consultations whereas the other aspect of the negotiations is largely conducted through the plurilateral mechanism. These two aspects and mechanisms overlap to some extent and should proceed in parallel. As the Committee has already indicated, it is important that there should be a regular plurilateral review of the bilateral parts of the accession process and, of course, the results of both aspects of the negotiations must come together at the plurilateral level in the preparation and adoption of a decision setting out the terms of accession.

5. It will be noted that although paragraph 2 of the Committee Decision of February 1996 would not seem to necessarily require acceding countries to submit their initial offer together with their application for accession, applicant countries have, on the whole, done so. While the suggested procedures are sufficiently flexible to allow for the possibility of an initial round of plurilateral and bilateral discussions before the submission of the initial offer, they should also allow an applicant country to submit its initial offer at the same time as its application if it is in a position to do so. The submission of initial offers might be envisaged at any time during the first six months after the application but should not be any later.

6. With regard to the largely plurilateral process of provision by the applicant country of information on its procurement regime, the Committee has already adopted a Checklist of Issues to act as a guide to applicant countries in submitting such information (GPA/35). It is suggested in the attached indicative timetable that, following the circulation of the responses to the Checklist and other relevant data, provision might be made for Parties to seek further clarification of the applicable legislation and procedures through informal plurilateral consultations including a written question and answer procedure. The questions put and answers provided would be circulated to all Parties. If necessary, provision could also be made for follow-up questions and answers and further informal consultations at a later stage in the process. It is suggested that the timetable for the review of a procurement regime runs from the date of application for accession and, for the negotiation of Appendices, from the date of the submission of the applicant's initial offer. Every effort would be made to align bilateral/plurilateral consultations that are envisaged in each of the timetables and the timetables would be applied with the necessary flexibility to facilitate this.

7. The suggested indicative timetable for general accession process envisages that the process, from the date of the application to the adoption of the decision containing the terms of accession, should normally be completed within 18 months. It would, of course, have to be understood that a certain degree of flexibility would be necessary to take account of such factors as the state of preparation of the acceding country, the complexity of its procurement regime and government structure and the timing of Committee meetings. On the other hand, not all the stages envisaged may be necessary in some accession negotiations and some of the steps in the timetable, for instance exchange of follow-up written questions and replies, submission of a revised offer or further plurilateral consultations, could be omitted which would have the effect of reducing the overall time-frame by approximately six months.

8. In its request for the preparation of this note, the Secretariat was asked to consider the question of a procedure for regular reporting to each Committee meeting on progress in the bilateral consultations. Hitherto, the Committee's overview of accession negotiations has mainly consisted of the acceding country or interested Parties reporting orally to the Committee at its meetings on an ad hoc basis. To provide a more systematic basis for the Committee's overview of the accession process and to improve transparency, consideration might be given to providing to the Committee a brief note outlining the state of play in the accession process of each applicant. This might be done, for example, through the annotated provisional agenda, which is circulated by the Secretariat prior to each Committee meeting. The information contained therein could be updated at the meeting, where necessary, by the Chair, the applicant country and parties. Based on this, the Committee might take stock of the progress of each accession process and, where appropriate, the Chair might seek to draw conclusions about moving to the next stage of the indicative timetable.

9. The work involved in the provision of relevant information on national procurement regimes, any amendments to such regimes required and the preparation of offers by an acceding developing country may require technical cooperation, for example in the form of advice and assistance from Parties and the Secretariat, country visits and training. At the outset of the accession process, the Secretariat might enter into contact with the applicant country with a view to drawing up a technical cooperation programme for that country, taking into account its specific needs and circumstances. Parties should be ready to make resources available bilaterally and/or through the Secretariat for this purpose.

ATTACHMENT

SUGGESTED INDICATIVE TIMETABLE FOR THE ACCESSION PROCESS

The timetable that follows is intended to be purely indicative in nature and sets out what is considered to be the normal time-frame for the accession process. Not all the stages envisaged may be necessary in some accession negotiations and that it may be possible to complete the process more rapidly, while in some other cases additional time may be required due to special factors.

The suggested timetable for the accession process is in two parts, that relating to the negotiation of Appendices and that relating to other aspects, in particular the applicant country's procurement regime and its consistency with the Agreement. The timetable for the latter process runs from the date of application for accession and for the former process from the date of the submission of the applicant's initial offer, which should be within six months from the date of application. Every effort would be made to align bilateral/plurilateral consultations that are envisaged in each of the timetables and the timetables would be applied with the necessary flexibility to facilitate this. Both aspects of the timetable should normally be completed to permit the decision on accession to be taken within 18 months of the date of application.

Indicative Timetable for General Accession Process and Review of Procurement Regime

(Timetable to run from application for accession)

0 months	Application for Accession
2 months	Receipt of replies to the Checklist in GPA/35
4 months	Receipt of written questions from Parties
6 months	First round of informal bilateral/plurilateral consultations, including responses to written questions
8 months	Receipt of any follow-up questions
10 months	Further informal bilateral/plurilateral consultations
12 months	Follow-up written questions and replies, if necessary

14 months	Report by the acceding country on status of any steps needed to align its procurement regime with the requirements of the GPA
16 months	Further informal bilateral/plurilateral consultations, if necessary
18 months	Circulation and review of the draft decision on terms of accession including the final offer and adoption of the Committee Decision

Indicative Timetable for Negotiation of Appendices
(Timetable to run from submission of initial offer – sometime within six months of application for accession)

	(Bilateral/plurilateral consultations on possible content of initial offer)
0 months	Submission of initial offer
2 months	Receipt of written questions from Parties
4 months	Informal bilateral/plurilateral consultations, including responses to written questions
7 months	Submission of revised offer, if necessary
9 months	Further informal bilateral/plurilateral consultations, if necessary
11 months	Submission of second revised offer, if necessary

3. CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO ACCESSION TO THE REVISED AGREEMENT ON GOVERNMENT PROCUREMENT[1]*

The revised WTO Agreement on Government Procurement (the "Agreement") entered into effect on 6 April 2014. Having regard to the provisions of the Agreement and to facilitate consultations relating to accession to it, please provide a description of the government procurement regime applied in your country by replying, to the extent possible, to the questions in the checklist of issues below. If there is no specific provision on a particular issue, the response should state this.

Please provide, either separately or attached to your replies to this checklist, a copy of the text of your national procurement legislation. In the event that the legislation is not drafted in one of the three official WTO languages, please also provide for consideration by the WTO Committee on Government Procurement a translation into one of the WTO languages.

The information to be provided in this context is without prejudice to any additional information which Parties to the Agreement may wish to request from acceding governments on any other aspects of their procurement regimes. For each item on the checklist, please identify any legal or administrative actions that will need to be taken in order to align your government procurement regime with the requirements of the Agreement and ensure full implementation of the Agreement following accession.

If your government is aware of any need for training or other capacity-building efforts relating to any of the items on this checklist, please describe the need in as specific and concrete terms as possible, and describe any steps your government is taking, whether independently or in cooperation with other Members or international organizations, to address that need.

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1 For use by WTO Members pursuing accession to the Agreement.

* Committee document of 14 October 2015 (GPA/132).

For clarity, this Checklist supersedes the earlier Checklist relating to the 1994 Agreement on Government Procurement that is contained in GPA/35 of 21 June 2000.

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1. LEGAL FRAMEWORK

1.1. Is there a single central law on procurement? If so, please specify?

1.2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of procuring entities.

1.3. To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.

2. SCOPE AND COVERAGE

2.1. Please summarize the organization of the government in your country at each level.

2.2. Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.

2.3. What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?

2.4. Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type entities) owned and controlled by the government that engage in procurement? Please specify.

2.5. Do procuring entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation

provided by the federal or central level of government or are they autonomous from federal or central government in their procurement rules and practices? Where any of these procuring entities are not subject to the main procurement law, please list the procuring entities concerned and indicate which laws, regulations, etc., they are subject to. How will your government ensure the implementation of the Agreement by such procuring entities below the central/federal government level?

2.6. Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defence or security reasons? Please provide details.

2.7. Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by procuring entity and by categories of goods and services.

3. NON-DISCRIMINATION

3.1. Identify the specific provisions in the legislation which reflect the non-discrimination commitments of Article IV:1-2 of the Agreement.

3.2. Please provide details of any provisions in national legislation according domestic goods, services and suppliers treatment more favourable than that accorded to foreign goods, services or suppliers or according goods, services or suppliers of any country more favourable treatment than those of any other country.

3.3. Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or service being supplied.

3.4. Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or goods/services.

3.5. Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing

of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, goods or services or in the evaluation of tenders and award of contracts.

4. AVOIDANCE OF CONFLICTS OF INTEREST AND PREVENTION OF CORRUPT PRACTICES

4.1. Article IV:4(b) and (c) of the Agreement require procuring entities to conduct covered procurement in a transparent and impartial manner that "avoids conflicts of interest" and "prevents corrupt practices". Please indicate the measures taken in your procurement system to ensure compliance with these provisions - whether under your procurement legislation or under related legislation.

5. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

5.1. Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.

5.2. Identify the provision in your country's legislation requiring non-discrimination as regards the qualification and selection of suppliers in terms of Article IX of the Agreement. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?

5.3. In situations where qualification procedures and selective tendering may be used, to what extent do procuring entities allow suppliers to become qualified during the procurement process? To what extent do procuring entities maintain multi-use lists of suppliers?

5.4. In the light of Article X:6 of the Agreement, please specify whether there is any measure in your procurement system to allow procuring entities to prepare, adopt or apply technical specifications to promote the conservation of national resources or protect the environment.

5.5. What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under

Article XIII of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign goods/services/suppliers or in favour of domestic goods/services/suppliers?

5.6. Article XII of the Agreement allows for negotiation under certain conditions. Are procuring entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?

5.7. Article XI of the Agreement sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.

5.8. Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by procuring entities?

5.9. Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by procuring entities as part of the evaluation criteria.

5.10. Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.

6. INFORMATION

6.1. Article VI of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the relevant publication(s) and indicate the media used for this purpose. Please also provide, where available, the address of an

Internet website where the legislation referred to in questions 1 and 2 can be found.

6.2. Article VII:1 of the Agreement foresees the publication of a notice of intended procurement for each covered procurement undertaken by a procuring entity. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.

6.3. Please specify the types of information that your legislation requires to be included in notices of intended procurement or in tender documentation, and identify the relevant provisions of your legislation.

6.4. Article IX:7 of the Agreement foresees publication of multi-use lists of suppliers by procuring entities maintaining such lists. Please give the name of the relevant publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such lists are published.

6.5. Article XVI:2 of the Agreement foresees the publication of details of contract award notices by procuring entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.

6.6. Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.

6.7. Please specify the relevant provisions in your legislation and/or administrative procedures enabling, as foreseen in Article XVI:1 of the Agreement, the provision of information to unsuccessful tenderers regarding the reasons why a tender was not selected.

6.8. Please specify the procedures that your government will have in place to ensure, as foreseen in Article XVII:1 of the Agreement, the prompt provision to any other Party, on request, of any information necessary to determine whether a procurement was conducted fairly, impartially

and in accordance with the Agreement, including information on the characteristics and relative advantages of the successful tender.

7. DOMESTIC REVIEW PROCEDURES

7.1. Please provide information on existing domestic review procedures.

7.2. Are there specific provisions enabling access of foreign suppliers to domestic review procedures?

7.3. To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:

a. The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in your domestic legislation?

b. What body is responsible for the domestic review procedures? Is this a "court" or an "impartial and independent review body"? If the latter:

   i. How are its members selected?

   ii. Are its decisions subject to judicial review?

   iii. If not, how will the requirements of paragraph 6 of Article XVIII of the Agreement be taken into account?

c. What is the applicable law by reference to which the review body will examine complaints?

d. Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?

   i. Do these measures include the possibility to suspend the procurement process? On what conditions?

e. How do domestic review procedures provide for correction of breaches of the Agreement and/or of your measures implementing the Agreement? What types of compensation for loss or damages suffered can the review body order?

f. Give any available information on the time-periods for the stages of the domestic review process, including to obtain interim measures and a final decision.

g. What are the usual costs to conduct a domestic review procedure? Are there possibilities foreseen to do so free of charge?

8. OTHER MATTERS

8.1. To what extent is information technology being used in the process of government procurement? Are notices of intended procurement and/or notices of contract awards published electronically? Please provide the address of such electronic publications.

8.2. Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.

4. DECISION ON NOTIFICATION REQUIREMENTS UNDER ARTICLES XIX AND XXII OF THE AGREEMENT*

Decision of 30 March 2012

The Committee on Government Procurement,

Considering the importance of transparency of laws and regulations relevant to this Agreement, including changes thereto as required by Article XXII:5 of the Agreement;

Considering also the importance of maintaining accurate lists of entities covered under a Party's Annexes to Appendix I of the Agreement, in accordance with Article XIX of the Agreement;

Acknowledging the challenges to Parties of submitting timely notifications to the Committee of changes to their laws and regulations relevant to the Agreement, as required by Article XXII:5 of the Agreement, and of proposed rectifications to its Annexes to Appendix I, as required by Article XIX:1 of the Agreement;

Considering that the provisions of Article XIX of the Agreement distinguish between notifications of proposed rectifications that do not change the mutually agreed coverage provided for in the Agreement and other types of proposed modifications of its Annexes to Appendix I;

Recognizing that technological changes have allowed many Parties to make use of electronic means to provide information on their government procurement regimes and to notify Parties of changes to that regime;

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex A to Appendix 2 of GPA/113, of 2 April 2012), page 436.

Hereby decides as follows:

Annual Notifications of Changes in Laws and Regulations

1. Where a Party maintains officially designated electronic media that provide links to its current laws and regulations relevant to this Agreement and its laws and regulations are available in one of the WTO official languages, and such media are listed in Appendix II, the Party may fulfil the requirement in Article XXII:5 by notifying the Committee annually, at the end of the year, of any changes unless such changes are substantive, that is, they may affect the Party's obligations under the Agreement; and in such cases, a notification shall be made immediately.

2. The Parties shall have an opportunity to discuss the annual notification of a Party during the first informal meeting of the Committee in the following year.

Proposed Rectifications of a Party's Annexes to Appendix 1

3. The following changes to a Party's Annexes to Appendix I shall be considered a rectification under Article XIX of the Agreement:

(a) a change in the name of an entity;

(b) merger of two or more entities listed within an Annex; and

(c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

4. In the case of proposed rectifications to a Party's Annexes under Appendix I covered under paragraph 3, the Party shall notify the Committee every two years, commencing with the entry into force of the Protocol of Amendment to the Existing (1994) Agreement.

5. A Party may notify the Committee of an objection to a proposed rectification within 45 days from the date of the circulation to the Parties of the notification. In accordance with Article XIX:2, where a Party submits an objection, it shall set out the reasons for the objection, including the reasons why it believes the proposed rectification would

affect the mutually agreed coverage under the Agreement and therefore the proposed rectification is not subject to paragraph 3. If there is no written objection, the proposed rectifications become effective 45 days after the circulation of the notification, as provided for in Article XIX:5(a).

6. Within four years of the adoption of this Decision, the Parties shall review its operation and effectiveness, and make any necessary adjustments.

5. DECISION ON ADOPTION OF WORK PROGRAMMES*

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that pursuant to Article XXII:8(b), the Committee may adopt a decision listing additional work programmes, which the Committee shall undertake to facilitate the implementation of the Agreement and the negotiations provided for in Article XXII:7 of the Agreement;

Decides as follows:

1. The following work programmes are added to the list of work programmes on which the Committee shall conduct future work:

(a) a review of the use, transparency and the legal frameworks of public-private partnerships, and their relationship to covered procurement;

(b) the advantages and disadvantages of developing common nomenclature for goods and services; and

(c) the advantages and disadvantages of developing standardized notices.

2. The Committee shall develop the scope and timetable for each such work programme at a later date.

3. The Committee shall periodically review this list of programmes and make appropriate adjustments.

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex B to Appendix 2 of GPA/113, of 2 April 2012), page 438.

6. DECISION ON A WORK PROGRAMME ON SMEs*

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on small and medium-sized enterprises (SMEs);

Recognizing the importance of facilitating the participation of SMEs in government procurement; and

Recognizing that Parties have agreed in Article XXII:6 to seek to avoid introducing or continuing discriminatory measures that distort open procurement;

Hereby adopts the following work programme with respect to SMEs:

1. **Initiation of Work Programme on SMEs:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on SMEs. The Committee shall review measures and policies for SMEs that the Parties use to assist, promote, encourage, or facilitate participation by SMEs in government procurement and prepare a report of the results of the review.

2. **Avoidance of Discriminatory SME Measures:** The Parties shall avoid introducing discriminatory measures that favour only domestic SMEs and shall discourage the introduction of such measures and policies by acceding Parties.

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex C to Appendix 2 of GPA/113, of 2 April 2012), page 439.

3. Transparency Programme and SME Survey

3.1 Transparency Programme

Upon entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Parties that maintain in their Appendix I specific provisions on SMEs, including set-asides, shall notify the Committee of such measures and policies. The notification should include a full description of the measures and policies, their relevant legal framework together with their operation and the value of the procurement subject to such measures. In addition, those Parties shall notify the Committee of any substantial change in such measures and policies, in accordance with Article XXII:5 of the Agreement.

3.2 SME Survey

(a) The Committee shall survey the Parties, through the use of a questionnaire seeking information regarding the measures and polices used to assist, promote, encourage, or facilitate participation by SMEs in government procurement. The questionnaire should seek information from each Party regarding:

(i) a description of the measures and policies used by the Party, including the economic, social, and other goals of the measures and policies and how they are administered;

(ii) how the Party defines SMEs;

(iii) the extent to which the Party has specialized agencies or institutions to assist SMEs with respect to government procurement;

(iv) the level of participation in government procurement in terms of both value and number of contracts awarded to SMEs;

(v) a description of SME subcontracting measures and policies, including subcontracting goals, guarantees, and incentives;

(vi) facilitation of SMEs participation in joint bidding (with other large or small suppliers);

(vii) measures and policies focused on providing opportunities for SMEs to participate in government procurement (such as enhanced transparency and availability of government procurement information to SMEs; simplifying qualifications for participation in tendering; reducing contract sizes; and ensuring timely payments for deliveries of goods and services); and

(viii) the use of government procurement measures and policies to stimulate SME innovation.

(b) Compilation of SME Survey by WTO Secretariat: The WTO Secretariat shall fix a deadline for the transmission of the responses to the questionnaire by all Parties to the WTO Secretariat. Upon receipt of the responses, the Secretariat shall prepare a compilation of the responses and circulate the responses and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding responses.

(c) Exchanges among Parties on Responses to SME Questionnaires: On the basis of the document prepared by the WTO Secretariat, the Committee shall establish a period for the exchange of questions, requests for additional information, and comments on the responses of the other Parties.

4. **Assessment of the Results of SME Survey and Implementation of Its Outcome**

4.1 **Assessment of the Results of SME Survey**

The Committee shall identify the measures and policies that it considers to be best practices for promoting and facilitating the participation of SMEs of the Parties in government procurement and prepare a report that includes the best practices of the measures and policies and a list of the other measures.

4.2 **Implementation of the Outcome of the SME Survey**

(a) The Parties shall promote the adoption of the best practices identified in the assessment of the survey to encourage and facilitate participation of SMEs of the Parties in government procurement.

(b) With respect to other measures, the Committee shall encourage the Parties that maintain such measures to review them with a view to eliminating them or applying them to the SMEs of the other Parties. These Parties shall inform the Committee about the outcome of the review.

(c) The Parties that maintain other measures shall include the value of the procurement subject to such measures in the statistics that they submit to the Committee pursuant to Article XVI:4 of the Agreement.

(d) Parties may request the inclusion of such other measures in future negotiations under Article XXII:7 of the Agreement, and such requests shall be favorably considered by the Party maintaining such measures.

5. **Review**

Two years after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall review the effect of the best practices on expanding the participation of SMEs of the Parties in government procurement, and consider whether other practices would further enhance participation by SMEs. It may also consider the effect of other measures on the participation by SMEs of the other Parties in the government procurement of the Parties maintaining such measures.

7. DECISION ON A WORK PROGRAMME ON THE COLLECTION AND REPORTING OF STATISTICAL DATA*

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on the collection and reporting of statistical data;

Considering the importance of the collection and reporting of statistical data, as required by Article XVI:4 of the Agreement on Government Procurement (Agreement), in providing transparency of procurement covered under the Agreement;

Considering that statistical data that illustrate the extent to which the Parties procure goods and services covered by the Agreement from other Parties to the Agreement could be an important tool in encouraging other WTO Members to accede to the Agreement;

Recognizing the overall challenges of Parties to the Agreement in collecting data in the area of government procurement and in particular in determining the country of origin of the goods and services that they procure under the Agreement; and

Recognizing that Parties use different methodologies in their collection of statistics to meet the reporting requirements in Article XVI:4 of the Agreement, and may use different methodologies in the collection of data for central government entities and sub-central government entities;

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex D to Appendix 2 of GPA/113, of 2 April 2012), page 442.

Hereby adopts the following work programme with respect to the collection and reporting of statistical data:

1. **Initiation of Work Programme on the Collection and Reporting of Statistical Data:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on the Collection and Reporting of Statistical Data. The Committee shall review the collection and reporting of statistical data by the Parties, consider the potential of harmonizing them, and prepare a report of the results.

2. **Submission of Data by the Parties:** The Committee shall agree on a date by which each_Party shall submit to the Committee the following information with respect to statistical data on procurement covered by the Agreement:

(a) a description of the methodology that it uses to collect, evaluate, and report statistical data, above and below Agreement thresholds and for procurement described in paragraph 4.2(c) of the SME Work Programme, including whether it bases the data on procurement covered by the Agreement on the full value of awarded contracts or the total expenditure for procurement in a given time-frame;

(b) whether the statistical data that it collects includes the country of origin of the goods or services that are procured, and if so, how it determines or estimates the country of origin, and the technical impediments in collecting country of origin data;

(c) an explanation of the classifications used in statistical reports; and

(d) a description of the sources of data.

3. **Compilation of Submissions:** The Secretariat shall prepare a compilation of the submissions and circulate the submissions and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding submissions.

4. **Recommendations:** The Committee shall review the submissions of the Parties and make recommendations on:

(a) whether the Parties should adopt a common method for collection of statistics;

(b) whether the Parties are able to standardize the classifications in the statistical data reported to the Committee;

(c) means for facilitating the collection of country of origin of goods and services covered by the Agreement; and

(d) other technical issues in government procurement data reporting raised by any Party.

5. The Committee shall develop, as appropriate, recommendations relating to:

(a) potential harmonization of statistical reporting with the aim of including government procurement statistics in the annual reporting of the WTO;

(b) the Secretariat's provision of technical assistance relating to statistical reporting to WTO Members that are in the process of acceding to the Agreement; and

(c) means of ensuring that WTO Members that are acceding to the Agreement have the appropriate means for complying with statistical data collection and reporting requirements.

6. **Analysis of data:** The Committee shall consider how the statistical data submitted to the Secretariat annually by Parties may be used for further analyses to facilitate greater understanding of the economic importance of the Agreement, including the impact of thresholds on the performance of the Agreement.

8. DECISION ON A WORK PROGRAMME ON SUSTAINABLE PROCUREMENT*

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on sustainable procurement;

Recognizing that several Parties have developed national and sub-national sustainable procurement policies;

Affirming the importance of ensuring that all procurement is undertaken in accordance with the principles of non-discrimination and transparency as reflected in the Agreement;

Hereby adopts a work programme with respect to sustainable procurement:

1. **Initiation of Work Programme on Sustainable Procurement**: At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Sustainable Procurement.

2. The work programme shall examine topics that include:

   (a) the objectives of sustainable procurement;

   (b) the ways in which the concept of sustainable procurement is integrated into national and sub-national procurement policies;

   (c) the ways in which sustainable procurement can be practiced in a manner consistent with the principle of "best value for money"; and

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex E to Appendix 2 of GPA/113, of 2 April 2012), page 444.

(d) the ways in which sustainable procurement can be practiced in a manner consistent with Parties' international trade obligations.

3. The Committee shall identify measures and policies that it considers to be sustainable procurement practiced in a manner consistent with the principle of "best value for money" and with Parties' international trade obligations and prepare a report that lists the best practices of the measures and policies.

9. DECISION ON A WORK PROGRAMME ON EXCLUSIONS AND RESTRICTIONS IN PARTIES' ANNEXES*

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on exclusions and restrictions in Parties' Annexes;

Recognizing that Parties have included exclusions and restrictions in their respective Annexes to Appendix I of the Agreement (exclusions and restrictions);

Recognizing the importance of transparent measures regarding government procurement; and

Considering the importance of progressively reducing and eliminating exclusions and restrictions in future negotiations provided for in Article XXII:7 of the Agreement;

Hereby adopts the following work programme with respect to exclusions and restrictions in Parties' Annexes:

1. **Initiation of Work Programme on Exclusions and Restrictions:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Exclusions and Restrictions in Parties' Annexes with the objectives of:

(a) enhancing transparency with respect to the scope and effect of exclusions and restrictions specified in Parties' Annexes to Appendix I to the Agreement; and

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex F to Appendix 2 of GPA/113, of 2 April 2012), page 445.

(b) providing information relating to exclusions and restrictions to facilitate negotiations provided for in Article XXII:7 of the Agreement.

2. **Transparency Programme:** Each Party shall submit to the Committee, no later than six months following the initiation of the Work Programme, a list of:

(a) country specific exclusions it maintains in its Annexes to Appendix I to the Agreement; and

(b) any other exclusion or restriction specified in its Annexes to Appendix I to the Agreement that falls within the scope of Article II:2(e) of the Agreement, except for exclusions or restrictions under review in the Work Programme on SMEs or where a Party has a commitment to phase out an exclusion or restriction in an Annex to Appendix I to the Agreement.

3. **Compilation of Submissions:** The Secretariat shall prepare a compilation of the submissions and circulate the submissions and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding submissions.

4. **Requests for Additional Information:** Any Party may periodically request additional information concerning any exclusion or restriction within the scope of paragraph 2(a) and (b), including measures that fall within the scope of any exclusion or restriction, their legal framework, implementation policies and practices and the value of the procurement subject to such measures. A Party receiving such a request shall promptly provide the requested information.

5. **Compilation of Additional Information:** The Secretariat shall prepare a compilation of the additional information in respect of any Party and shall circulate it to the Parties.

6. **Review by the Committee:** At the annual meeting provided for in Article XXI:3(a) of the Agreement, the Committee shall review the information submitted by Parties with the view to determining whether it provides:

(a) the fullest possible degree of transparency with respect to the exclusions and restrictions specified in Parties' Annexes to Appendix I to the Agreement; and

(b) satisfactory information to facilitate the negotiations provided for in Article XXII:7 of the Agreement.

7. **New Party Acceding to the Agreement:** A new Party that accedes to the Agreement shall submit to the Committee the list in paragraph 2 within six months of its accession.

*10. DECISION ON A WORK PROGRAMME ON SAFETY STANDARDS IN INTERNATIONAL PROCUREMENT**

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on safety standards in international procurement;

Noting that Article X:1 of the Agreement provides that procuring entities "shall not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to international trade";

Noting that Article III:2(a) of the Agreement does not prevent Parties from imposing or enforcing measures necessary to protect of public safety, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustified discrimination or a disguised restriction on international trade;

Recognizing the need for a balanced approach between public safety and unnecessary obstacles to international trade;

Recognizing that diverging practices among the Parties as regards public safety may have an adverse effect on the performance of the Agreement;

Hereby adopts the following work programme with respect to safety standards:

1. **Initiation of Work Programme on Safety Standards in International Procurement:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Safety Standards in International Procurement.

* Decision of the Committee on Government Procurement of 30 March 2012 (Annex G to Appendix 2 of GPA/113, of 2 April 2012), page 447.

2. The Work Programme shall examine topics with the view to sharing best practices on items that include:

(a) The manner in which public safety concerns are addressed in legislation, regulations and practices of the Parties and guidelines relating to the implementation of the Agreement by procuring entities;

(b) The relationship between the technical specifications provisions in Article X and protection of public safety in Article III of the Agreement and in the Parties' Annexes to Appendix 1;

(c) The best practices that may be adopted to protect public safety in light of the provisions on technical specifications and tender documentation in Article X.

3. The Committee shall develop the scope and timetable for the examination of each topic identified in paragraph 2. The Committee shall prepare a report that summarizes the outcome of its examination of these issues and lists the best practices identified in paragraph 2(c).

*11. DECISION ON ARBITRATION PROCEDURES PURSUANT TO ARTICLE XIX:8 OF THE REVISED GPA**

The Committee on Government Procurement ("the Committee"),

Noting that Article XIX:8 of the Revised Agreement on Government *Procurement* ("the Agreement") requires the Committee to develop arbitration procedures to facilitate resolution of objections under Article XIX:2 of the Agreement; and

Confirming the importance of Article XIX:8(b) and (c) of the Agreement to these arbitration procedures and reiterating the Parties' commitment to adopt decisions pursuant to Article XIX:8(b) and (c) of the Agreement.

Hereby adopts the following arbitration procedures to facilitate the resolution of objections under Article XIX:2 of the Agreement:

Invocation of Arbitration Procedures

1. Pursuant to Article XIX:7 of the Agreement, where the modifying Party and an objecting Party are unable to resolve an objection to a proposed modification under Article XIX:1 of the Agreement, the modifying Party or any objecting Party may refer the proposed modification to arbitration, stating the reasons for its request, by notifying the Committee no earlier than 45 days after the date of circulation of the notification of the proposed modification under Article XIX:1 of the Agreement.

2. Where two or more Parties refer the same proposed modification to arbitration prior to the appointment of all the arbitrators, the modifying Party and all objecting Parties shall agree to a single arbitration addressing all objections to the same proposed modification. If additional referrals on the same proposed modification are made after the appointment of all the arbitrators, the modifying Party and all objecting Parties shall agree to a single arbitration whenever feasible.

* Decision of the Committee of 22 June 2016 (GPA/139, of 23 June 2016).

Appointment of the Arbitrators

3. Arbitration shall be carried out by arbitrators. Unless the Parties to the arbitration otherwise agree, there shall be three arbitrators. Arbitrators shall meet the requirements set out for panelists under Articles 8(1), 8(2), and 8(9) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

4. The Secretariat of the Committee shall on request from a Party to the arbitration, propose nominations for the arbitrators. The Parties to the arbitration shall not oppose nominations except for compelling reasons. Citizens of the Parties to the arbitration and government officials of the third Parties shall not be appointed as arbitrators, unless otherwise agreed by the Parties to the arbitration.

5. Where the Parties to the arbitration cannot agree on who should be appointed as arbitrators within 20 days after referring the proposed modification to arbitration, at the request of a Party to the arbitration, the Director-General shall appoint the arbitrators within 10 days, after consulting Parties to the arbitration and the Chair of the Committee.

Third Party Participation

6. Any Party to the Agreement having a substantial interest in a proposed modification brought to arbitration and having notified its interest to the Committee (referred to herein as "third Party") within 10 days after the proposed modification being referred to arbitration shall be invited to make a written submission, attend substantive meetings of the arbitrators with the Parties to the arbitration, make oral statements, and be entitled to respond to questions from the arbitrators.

Procedures

7. In its proceedings, the arbitrators shall apply the relevant provisions of the Agreement and be guided by the decision adopted by the Committee in accordance with Article XIX:8(b) of the Agreement, once it is adopted. In addition, the following working procedures shall apply:

a. The Secretariat of the Committee shall promptly transmit to the arbitrators the applicable notification and objection under paragraph 1 or 2 of Article XIX of the Agreement. Within 10 days of the appointment of the arbitrators, and after consultations with the Parties to the arbitration, the arbitrators shall adopt a timetable for the conduct of the arbitration proceedings. The timetable should be based on the timetable included in the Annex to this Decision.

b. Unless the Parties to the arbitration agree that it is unnecessary, the arbitrators shall hold a substantive meeting with the Parties to the arbitration. Before the substantive meeting, the Parties to the arbitration shall transmit to the arbitrators written submissions in which they present the facts of the case and their arguments.

c. Where a Party to the arbitration submits information that it has designated as confidential to the arbitrators, the arbitrators, the other Parties to the arbitration and third Parties shall treat that information as confidential. Upon request of a Party to the arbitration, the arbitrators shall establish additional procedures necessary to preserve the confidentiality of such information.¨

d. Where a Party to the arbitration designates information in its written submissions as confidential, the Party shall, on request of another Party to the arbitration or a third Party, provide a non-confidential summary of the information contained in its submission that could be disclosed to the public.

e. At the substantive meeting, the arbitrators shall ask the Party that has requested arbitration to present its case by making an oral submission. The Party against which the arbitration has been brought shall then be asked to present its point of view by making an oral submission.

f. The substantive meetings of the arbitrators shall be open to the public, except where a Party to the arbitration requests that the meeting be closed to protect information designated as confidential.

g. The arbitrators may, at any time, put questions to the Parties to the arbitration and third Parties and ask them for explanations either in the course of the meeting or in writing.

h. The written submissions of the Parties to the arbitration, including any responses to questions put by the arbitrators, shall be made available to the other Party or Parties to the arbitration as well as to the third Parties. The Parties to the arbitration shall submit a written version of their oral statements made at the meeting with the arbitrators to the arbitrators, the other Party or Parties to the arbitration and to the third Parties.

i. The written submissions, responses to questions, and written versions of oral statements of the third Parties shall be made available to the arbitrators, the Parties to the arbitration and other third Parties, and shall be reflected in the arbitrators' report.

j. The deliberations of the arbitrators shall be kept confidential.

k. The arbitrators may seek information from any relevant source and may consult experts. The arbitrators shall provide to the Parties to the arbitration and third Parties any information provided to or received from experts. The Parties to the arbitration shall have an opportunity to comment on any input received from experts.

l. Any additional procedures specific to the arbitration shall be determined by the arbitrators in consultation with the Parties to the arbitration.

m. Subject to paragraph 7.c., nothing in these procedures shall preclude a Party to the arbitration or a third Party from disclosing statements of its own positions to the public.

8. The ***Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*** shall apply to each person serving as an arbitrator under these procedures and, as specified in the ***Rules of Conduct*** and the relevant provisions of the Staff Regulations, to those members of the Secretariat called upon to assist the arbitrators.

9. Where Parties to the arbitration reach a mutually agreed solution to objections to the proposed modification, they shall promptly notify the arbitrators. Upon receipt of the notification, the arbitrators shall terminate the proceedings for those Parties. The details of any mutually agreed solution shall be notified to the Committee, where any Party to the Agreement may comment.

Arbitrators' Determination

10. The terms of reference for the arbitrators shall require the arbitrators to determine:

a. in the case of a proposed withdrawal under Article XIX:1(a) of the Agreement, whether government control or influence over the covered procurement of the entity proposed to be withdrawn has been effectively eliminated; or

b. in the case of any other proposed modification under Article XIX:1(b), whether the proposed modification maintains a balance of rights and obligations and a comparable level of mutually agreed coverage provided in the Agreement and, where appropriate, the level of compensatory adjustment.

11. The arbitrators shall issue a report containing its reasoned determination to the Parties to the arbitration within 90 days or, in the event that the timetable is modified by the arbitrators, no later than 120 days of:

a. the appointment of the arbitrators where an arbitration is conducted pursuant to paragraph 1.; or

b. the request where an arbitration is conducted pursuant to paragraph 12.

The time period set out in this paragraph may be extended by mutual agreement of the Parties to the arbitration. The Secretariat of the Committee shall promptly circulate the report to the Parties to the Agreement following translation.

12. Where the arbitrators make a negative determination under paragraph 10.a., and where the arbitrators made no determination of compensatory adjustment under paragraph 10.b., any Party to the arbitration may request after 30 days and no later than 60 days following the circulation of the arbitrators' report that the same arbitrators, where available, shall determine the level of compensatory adjustment that would result in a comparable level of coverage and maintain the balance of rights and obligations under the Agreement. In doing so, the arbitrators shall be guided by the decision adopted by the Committee in accordance with Article XIX:8(c) of the Agreement, once it is adopted. Where any of the original arbitrators are not available, a replacement shall be appointed in accordance with paragraphs 3. to 5.

Implementation

13. The Parties to the arbitration shall accept the arbitrators' determination as final.

14. For the purposes of Article XIX:7(b)(i) of the Agreement, the arbitration procedures are completed:

a. when a report under paragraph 11. that does not give rise to the right to further proceedings under paragraph 12. is circulated to the Parties to the Agreement; or

b. where Parties to the arbitration do not exercise a right available to them under paragraph 12., upon the expiration of the time period set out in that paragraph.

ANNEX

PROPOSED TIMETABLE FOR ARBITRATION

The arbitrators shall base the timetable adopted under paragraph 7.a. on the following:

a. Receipt of written submissions of the Parties to the arbitration:

(1) Requesting Party: ---------- 2 weeks
(2) Responding Party: ---------- 2 weeks

b. Receipt of third party submissions: ---------- 1 week

c. Substantive meeting with the arbitrators: ----------1-2 weeks

d. Responses to questions to Parties and third Parties to the arbitration: ---------- 1-2 weeks

e. Issuance and circulation of the arbitrators' report on its determination: ---------- 4 weeks

Consistent with the provisions of paragraph 11., the arbitrators may change the above timetable and may schedule additional meetings with the Parties to the arbitration after consulting them.

*12. RULES OF PROCEDURE FOR THE SELECTION OF THE CHAIRPERSON OF THE WTO COMMITTEE ON GOVERNMENT PROCUREMENT (THE "COMMITTEE")**

The Committee on Government Procurement,

Decides as follows:

1. The Parties shall select a Chairperson from among their representatives to the Committee on Government Procurement on a yearly basis.

2. The Parties may decide to extend the term of the Chairperson, drawing on Chairperson's work plan for the following year.

3. A candidate shall be selected as Chairperson on the basis of the candidate's capacity, experience, availability and competencies to undertake the attendant responsibilities. The Chairperson will serve in a personal capacity.

4. The outgoing Chairperson shall hold consultations to facilitate the selection. If there is no Chairperson, the Parties may appoint, by consensus, an interim Chairperson or invite the Party that provided the previous Chairperson to hold such consultations.

5. Prior to or during the course of the consultations, the candidate(s) for the position of the Chairperson shall be given an opportunity to present proposed plans to the Parties for the period of chairing the Committee.

6. The appointment shall take place at the first regular Committee meeting of the year. If the office of Chairperson becomes vacant in the middle of a year, the Parties shall aim to find a replacement within the shortest possible delay.

* Decision of the Committee of 17 May 2023 (GPA/CD/3, of 17 May 2023).

7. The appointment shall take effect at the end of the meeting provided in the preceding paragraph. If there is no Chairperson at that time, it shall take effect immediately.

8. The Chairperson shall hold office until the end of the first regular meeting of the following calendar year, unless the Chairperson is no longer able to serve or resigns at an earlier time.

9. If the Parties are unable to reach consensus on the selection of a Chairperson, so that the Committee is prevented from fulfilling its obligation to meet at least once a year, the Committee may appoint, by consensus, an interim Chairperson from among the candidates, or alternatively invite the Party that provided the previous Chairperson, to temporarily facilitate the meetings of the Committee until such time as a Chairperson can be appointed.

10. The Parties may decide to complement these rules of procedure further. The rules of procedure may be reviewed within five years of their adoption.

13. REPORT OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON BEST PRACTICES FOR PROMOTING AND FACILITATING THE PARTICIPATION OF SMEs IN GOVERNMENT PROCUREMENT*

Article XXII.8 of the Agreement on Government Procurement 2012 (GPA 2012), which tasks the Committee to undertake the Work Programmes, states that "*the Committee shall undertake further work to facilitate the implementation of this Agreement.*". In its Decision of 30 March 2012[1], the Committee adopted a Work Programme for SMEs containing five elements:

1. Initiation of Work Programme on SMEs;
2. Avoidance of Discriminatory SME measures;
3. Transparency Programme and SME Survey;
4. Assessment of the Results of SME Survey and Implementation of Its Outcome, and
5. Review.

The first stages of the work have been completed, including the circulation of a small and medium enterprise (SME) survey pursuant to paragraph 3.2 of the Decision. The majority of Parties to the GPA 2012 replied to a questionnaire seeking information regarding the measures and policies used to assist, promote, encourage or facilitate participation by SMEs in government procurement. The Secretariat prepared and circulated a compilation of the responses by Parties to the SME questionnaire.[2]

Paragraph 4.1 of the Decision sets out that "*the Committee shall identify the measures and policies that it considers to be best practices for promoting and facilitating the participation of SMEs of the Parties in government procurement and prepare a report that includes these best practices and a list of the other measures*". Such practices could be

* Decision of the Committee of 9 October 2024 (GPA/CD/6, of 9 October 2024).

1 Annex C to Appendix 2 of GPA/113, pp. 439-441.

2 GPA/WPS/SME/16 and GPA/WPS/SME/38/Rev.1.

applied to covered procurement as the Work Programmes are intended to facilitate implementation of the Agreement.

Taking note of this mandate and the existing GPA 2012 principles, the Committee provides the following indicative list of best practices. This list contains some best practices put forward by Parties and is non-exhaustive. As the Parties have not engaged in, nor provided an assessment of these measures, the list includes measures and policies that are considered useful for promoting and facilitating SME participation in government procurement, as covered by the Agreement. At the present stage, the Parties have not agreed on a list of other measures, as required in 4.1 of the Decision.

Among the practices listed in Annex I to this report, Parties could decide which practices to apply, based on their needs and suitability for their environment.

This report is without prejudice to the rights of Parties under the GPA 2012.

Considering the various nature of the measures, they were grouped in several headings:

1. Enhanced transparency;
2. Reduction of administrative burden;
3. Procurement opportunities for SMEs, including through proportional qualification and selection criteria; and
4. Enhancing the professionalisation of procuring entities as well as the cooperation and dialogue with SMEs.

Some suggested practices may fall under more than one of the headings. The order of the listing does not reflect the importance, efficiency or effectiveness of the measures and policies.

ANNEX I

PRACTICES CONCERNING MEASURES AND POLICIES USEFUL FOR PROMOTING AND FACILITATING THE PARTICIPATION OF SMEs IN GOVERNMENT PROCUREMENT

1 Enhanced transparency

Transparent, open and fair measures regarding government procurement are the precondition to functioning and SME-friendly government procurement, thereby contributing to increased SME export opportunities and competitiveness and reducing unnecessary obstacles to international trade. Enhanced transparency to be ensured through visible, easy and quick access to procurement information and opportunities.

1.1. Providing information for SMEs through special websites designed to help SMEs (such as "how to" videos or SME-specific guides, access to open data, etc.) to understand the procurement process.

1.2. Ensuring the online publication of government procurement measures (legislation, regulations and policies).

1.3. Promoting the use of electronic tools in government procurement (from notification to submission and the following stages), free of charge.

1.4. Making publicly available, by recording and putting online, public industry engagement and related question and answer sessions. For example, record and publish pre-solicitation conferences or "Industry Day briefings" and all related questions and answers.

2 Reduction of administrative burden

Administrative burden is a major obstacle for participation in government procurement for all companies, in particular for SMEs.

2.1. Using e-procurement systems by procuring entities in a manner so that it ensures simplified and shortened processes, and reductions in red-tape and administrative burdens.

2.2. Using online supplier registrations, standing price quotations, and purchasing schedules.

2.3. Streamlining documentation requirements by allowing SMEs to self-declare compliance with qualification criteria and/or by eliminating requirements for official government-provided documentation.

2.4. Reducing the number of procurement portals SMEs must access by integrating various functional systems such as registration, payment systems, tender documentation release and submission systems.

2.5. Eliminating in-person requirements in order to submit a bid and submit for payment.

2.6. Providing electronic access to all tender information including tender notices, bid documents and contracting forms and resources such as templates, checklists and other supporting tools.

2.7. Establishing multi-use lists to reduce administrative burden of SMEs in submitting tenders of similar nature.

2.8. Establishing procedures that require government agencies to review regulations on an as needed basis for their impact on SMEs and consider more flexible and less burdensome alternatives.

3 Procurement opportunities for SMEs, including through proportional qualification and selection criteria

SMEs can supply quality goods, services and innovative solutions, but for this they need the appropriate conditions. Overly demanding qualification and selection criteria, in particular economic and financial requirements, can constitute a barrier to participation of SMEs in government procurement.

3.1. Providing an option for contracting authorities to structure larger contracts into lots in full respect of the GPA 2012 obligations, and with the view to reinforce competition and facilitate access of smaller undertakings to public procurement contracts. Structuring into lots shall not be discriminatory or used with the intention to lower the estimated

value of the contract below the threshold so as to circumvent the application of procurement rules.

3.2. Raising awareness about opportunities for joint bidding and subcontracting for government tenders in order to facilitate access of smaller undertaking to important government procurement contracts, for example, through online resources that connects SMEs to prime contractors (winning bidders) to supply goods or services.

3.3. Providing room for SME innovations by refraining from developing overly prescriptive specifications that do not impact service delivery or quality and which may advantage one supplier over another, and by including opportunities for the bidders to submit an alternative in their bids.

3.4. Requiring prompt payment by procuring entities, including in subcontracting. Ensuring contract types and payment structures used do not discourage SME's participation in public procurement.

3.5. Identifying the risks, mitigating and distributing them appropriately between the procuring entity and business.

3.6. Ensuring that procuring entities consider the financial capability of SMEs in developing tender requirements, such as the bid bond and guarantees values.

3.7. Ensuring that insurance costs and any other conditions for participation are not unnecessarily prohibitive for SMEs, (including through providing government-backed bond guarantees to allow SMEs to participate in government procurement).

4 Enhancing the professionalisation of procuring entities as well as the cooperation and dialogue with SMEs

The implementation of all elements mentioned under previous headings require professional procuring entities, while a robust supply chain of SMEs in government procurement requires dedicated engagement and education by government authorities.

4.1. Tasking an agency or otherwise establishing a function to identify and reduce barriers to SME's access to government procurement, to develop guidance for procuring entities on how to develop SME–friendly technical specifications, to share information across procuring entities, and to develop and share guidance on SME's access to procurement opportunities.

4.2. Providing SMEs with a point of contact (phone, email and/or web form) to raise questions on how to do business with the government.

4.3. Using different formats, such as interview sessions for complex contracts, letters, etc., to debrief businesses after they have bid for government contracts.

4.4. Creating an advisory committee, co-chaired by the public and private sector, along with membership from industry associations, to discuss potential improvements with government procurement processes.

4.5. Building partnerships with business associations and other organizations, participating in industry events/trade shows, and conducting seminars with SMEs to enhance their understanding on how to do business with the government.

4.6. Consulting regularly with SME suppliers on barriers or other concerns in government procurement, including through surveying SMEs on such barriers or concerns.

14. PROCEDURES FOR THE CIRCULATION AND DERESTRICTION OF DOCUMENTS OF THE COMMITTEE ON GOVERNMENT PROCUREMENT*

The Committee on Government Procurement (the "Committee"),

Having regard to the Decision on Procedures for the Circulation and Derestriction of WTO Documents of 14 May 2002 (WT/L/452) and Article XXI of the Agreement on Government Procurement as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012 (the "amended Agreement (2012)"), and Article II:3 of the Marrakesh Agreement Establishing the World Trade Organization,

Having regard to the Decision on Procedures for the Circulation and Derestriction of Documents of the Committee on Government Procurement of 8 October 2002 (GPA/72, the "2002 Decision"), and in particular its paragraph 5,

Considering that there is a need to modify the 2002 Decision in the light of the experience gained from its operation and to reflect the entry into force of the amended Agreement (2012),

Emphasizing the importance of transparency in the functioning of the Committee,

Decides as follows:

* Decision of the Committee of 26 November 2025 (GPA/CD/9, of 26 November 2025).

1. All official documents of the Committee and of any subsidiary body established by it[1] shall be unrestricted. In addition, the following unofficial documents shall be unrestricted: annotated agendas for meetings and reports by the Chair to formal meetings.

2. Notwithstanding the provisions of paragraph 1,

(a) any Party may submit a document as restricted, which shall be automatically derestricted after its first consideration by the relevant body or 60 days after the date of circulation, whichever is earlier, unless requested otherwise by that Party.[2] In the latter case, the document may remain restricted for further periods of 30 days, subject to renewed requests by that Party within each 30-day period. The Secretariat shall remind Parties of such deadlines and derestrict the document in the absence of a contrary request by the Party that submitted the document. Any document may be derestricted at any time during the restriction period at the request of the Parties concerned;

(b) minutes and summaries of meetings (including records, reports and notes) shall be restricted and shall be automatically derestricted 30 days after the date of circulation[3];

[1] For the purposes of this Decision, an official document shall be any document submitted by a WTO Member or an international intergovernmental organization with observer status in the Committee or prepared by the Secretariat to be circulated in the following WTO document series: GPA-series (including official documents related to arbitrations under Article XIX:7 of the amended Agreement (2012) and circulated in the GPA/ARB-series) and ICN/GPA series. Where a new subseries under the GPA/ document series is created, it shall be covered by the present Decision, unless the Committee decides otherwise, taking into account the present Decision. It is understood that "official documents related to arbitrations under Article XIX:7 of the amended Agreement (2012) and circulated in the GPA/ARB-series" includes the invocation of arbitration procedures, the appointment of arbitrators, arbitration reports, and notifications of any mutually agreed solutions.

[2] However, any document that contains only information that is publicly available or information that is required to be published under the provisions of Article VI:1 of the amended Agreement (2012) shall be unrestricted.

[3] It is understood that, normally, minutes and summaries of meetings (including records, reports and notes) shall be circulated within three weeks after a meeting of the Committee and not later than the notice convening the following meeting of the Committee.

(c) documents relating to modifications and rectifications to coverage pursuant to Article XIX of the amended Agreement (2012) shall be automatically derestricted upon circulation;

(d) official documents related to arbitrations under Article XIX:7 of the amended Agreement (2012) and circulated in the GPA/ARB-series, which contain information designated as confidential by the submitting Party under the Decision on Arbitration Procedures Pursuant to Article XIX:8 of the Revised GPA of 22 June 2016 (GPA/139), and any amended versions of the Decision contained in GPA/139[4], shall be restricted. These documents shall be derestricted after redaction by the submitting Party of the information designated as confidential;

(e) documents relating to any further negotiations pursuant to Article XXII:7 of the amended Agreement (2012) shall be restricted and the Committee will consider their derestriction five years after the entry into force of the further amended Agreement or new Agreement for all Parties;

(f) documents relating to any accession shall be restricted and shall be automatically derestricted upon the entry into force of the amended Agreement (2012) for the WTO Member concerned; and

(g) documents relating to the Committee's work programmes pursuant to Article XXII:8 of the amended Agreement (2012) shall be restricted and shall be automatically derestricted after their first consideration by the Committee or 60 days after the date of circulation, whichever is earlier, unless requested otherwise by the Party submitting the document. In the latter case, the document may remain restricted for further periods of 30 days, subject to renewed requests by that Party within each 30-day period. The Secretariat shall remind Parties of such deadlines and derestrict the documents in the absence of a contrary request by the Party that submitted the document. Any document may be derestricted at any time during the restriction period at the request of the Parties concerned.

[4] The Committee will review its Decision contained in GPA/139 and revise it if appropriate to ensure its consistency with the present decision.

3. Translation of official documents of the Committee in all three official WTO languages (English, French and Spanish) shall be completed expeditiously. Once translated into all three official WTO languages, all official documents of the Committee that are not restricted shall be made available via the WTO website to facilitate their dissemination to the public at large.[5]

4. The 2002 Decision shall be superseded with regard to all documents of the Committee circulated after the date of adoption of the present Decision.

5. In the light of the experience gained from the operation of these procedures and changes in any other relevant procedures under the WTO, the Committee will, at an appropriate time, review and if necessary modify the procedures.

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[5] Notwithstanding paragraph 3, any document that contains information that is publicly available or information required to be published under Article VI:1 of the amended Agreement (2012) shall continue to be made available via the WTO website immediately in the original WTO language in which it is written.

OTHER RELEVANT WTO AGREEMENTS

1. Marrakesh Agreement Establishing the World Trade Organization*

Article II

Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.

...

3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

...

Article III

Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

...

* Marrakesh Agreement.

Article IV

Structure of the WTO

...

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article IX

Decision-Making

...

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X

Amendments

...

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement....

Article XII

Accession

...

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII

Non-Application of Multilateral Trade Agreements between Particular Members

...

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XV

Withdrawal

...

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI

Miscellaneous Provisions

...

5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

...

2. General Agreement on Tariffs and Trade (GATT 1994)*

Article I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III*, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

...

* GATT 1994.

* Footnote omitted.

Article III*

National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.[**]

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.[***]

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* Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article III.

[**] The application of paragraph 1 to internal taxes imposed by local governments and authorities with the territory of a contracting party is subject to the provisions of the final paragraph of Article XXIV. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article III, are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article III, the term "reasonable measures" would permit a contracting party to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties.

[***] A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.[****]

6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; Provided that any such regulation which is contrary to the

[****] Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.

provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Article XVII

State Trading Enterprises

1.* (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,[**] such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

(b) The provisions of subparagraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations,[***] including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) No contracting party shall prevent any enterprise (whether or not an enterprise described in subparagraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (a) and (b) of this paragraph.

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* The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of subparagraphs (a) and (b).
The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.
The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

[**] Governmental measures imposed to insure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

[***] A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods[****] for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

...

[****] The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

3. Agreement on Agriculture*

Annex 2: Domestic Support: the Basis for Exemption from the Reduction Commitments

...

3. Public stockholding for food security purposes[5]

Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

...

* Agreement on Agriculture.

5 For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.

*4. Agreement on Technical Barriers to Trade**

Article I: General Provisions

...

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

...

TBT

* Agreement on Technical Barriers to Trade.

*5. General Agreement on Trade in Services**

Article II: Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article XIII: Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

* General Agreement on Trade in Services.

Article XVI: Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[8]

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

[8] If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

[9] Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article XVII: National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[10]

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

[10] Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

6. Agreement on Trade in Civil Aircraft*

Article 4

Government-Directed Procurement, Mandatory Sub-Contracts and Inducements

4.1 Purchasers of civil aircraft should be free to select suppliers on the basis of commercial and technological factors.

4.2 Signatories shall not require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft, nor exert unreasonable pressure on them, to procure civil aircraft from any particular source, which would create discrimination against suppliers from any Signatory.

4.3 Signatories agree that the purchase of products covered by this Agreement should be made only on a competitive price, quality and delivery basis. In conjunction with the approval or awarding of procurement contracts for products covered by this Agreement a Signatory may, however, require that its qualified firms be provided with access to business opportunities on a competitive basis and on terms no less favourable than those available to the qualified firms of other Signatories.[4]

4.4 Signatories agree to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any Signatory.

...

[4] Use of the phrase "access to business opportunities ... on terms no less favourable ..." does not mean that the amount of contracts awarded to the qualified firms of one Signatory entitles the qualified firms of other Signatories to contracts of a similar amount.

* Agreement on Trade in Civil Aircraft.

*7. Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)**

Article 1: Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

* Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Article 2: Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

...

Article 22: Compensation and the Suspension of Concessions

...

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, "sector" means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[14]

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

[14] The list in document MTN.GNS/W/120 identifies eleven sectors.

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

...

Appendix 1: Agreements covered by the Understanding

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A:	Multilateral Agreements on Trade in Goods
Annex 1B:	General Agreement on Trade in Services
Annex 1C:	Agreement on Trade-Related Aspects of Intellectual Property Rights
Annex 2:	Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4:	Agreement on Trade in Civil Aircraft Agreement on Government Procurement International Dairy Agreement International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

Appendix 2

Special or additional rules and procedures contained in the covered agreements

Agreement	***Rules and Procedures***
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

RELEVANT DECISIONS AND OTHER DOCUMENTS OF OTHER WTO COMMITTEES

1. Ministerial Decision on Accession to the Agreement on Government Procurement*

Ministerial Decision of 15 December 1993

1. *Ministers invite* the Committee on Government Procurement established under the Agreement on Government Procurement in Annex 4(b) of the Agreement Establishing the World Trade Organization to clarify that:

(a) a Member interested in accession according to paragraph 2 of Article XXIV of the Agreement on Government Procurement would communicate its interest to the Director-General of the WTO, submitting relevant information, including a coverage offer for incorporation in Appendix I having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article V;

(b) the communication would be circulated to Parties to the Agreement;

(c) the Member interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement;

(d) with a view to facilitating accession, the Committee would establish a working party if the Member in question, or any of the Parties to the Agreement, so requests. The working party should examine: (i) the coverage offer made by the applicant Member; and (ii) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant Member and export opportunities for the Parties in the market of the applicant Member;

* Decision on Accession to the Agreement on Government Procurement.

(e) upon a decision by the Committee agreeing to the terms of accession including the coverage lists of the acceding Member, the acceding Member would deposit with the Director-General of the WTO an instrument of accession which states the terms so agreed. The acceding Member's coverage lists in English, French and Spanish would be appended to the Agreement;

(f) prior to the date of entry into force of the WTO Agreement, the above procedures would apply mutatis mutandis to contracting parties to the GATT 1947 interested in accession, and the tasks assigned to the Director-General of the WTO would be carried out by the Director-General to the CONTRACTING PARTIES to the GATT 1947.

2. It is noted that Committee decisions are arrived at on the basis of consensus. It is also noted that the non-application clause of paragraph 11 of Article XXIV is available to any Party.

2. MINISTERIAL DECISION ON PUBLIC STOCKHOLDING FOR FOOD SECURITY PURPOSES*

Ministerial decision of 7 December 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Decides as follows:

1. Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution[1], for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference.

2. In the interim, until a permanent solution is found, and provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops[2] in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision[3].

* Ministerial Decision of 7 December 2013 (WT/MIN(13)/38; WT/L/913, of 11 December 2013)

1 The permanent solution will be applicable to all developing Members.

2 This term refers to primary agricultural products that are predominant staples in the traditional diet of a developing Member.

3 This Decision does not preclude developing Members from introducing programmes of public stockholding for food security purposes in accordance with the relevant provisions of the Agreement on Agriculture.

NOTIFICATION AND TRANSPARENCY

3. A developing Member benefiting from this Decision must:

   a. have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both of its Aggregate Measurement of Support (AMS) limits (the Member's Bound Total AMS or the ***de minimis*** level) as result of its programmes mentioned above;

   b. have fulfilled and continue to fulfil its domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995, as specified in the Annex;

   c. have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes; and

   d. provide any additional relevant statistical information described in the Statistical Appendix to the Annex as soon as possible after it becomes available, as well as any information updating or correcting any information earlier submitted.

ANTI-CIRCUMVENTION/SAFEGUARDS

4. Any developing Member seeking coverage of programmes under paragraph 2 shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members.

...

3. MINISTERIAL DECISION ON WORLD FOOD PROGRAMME FOOD PURCHASES EXEMPTION FROM EXPORT PROHIBITIONS OR RESTRICTIONS*

Adopted on 17 June 2022

The *Ministerial Conference*,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Pursuant to Article 12 of the Agreement on Agriculture and Article XI of the GATT 1994;

In view of the critical humanitarian support provided by the World Food Programme, made more urgent as global hunger levels have increased sharply;

With the understanding that the World Food Programme always takes procurement decisions on the basis of its principles to "do no harm" to the supplying Member and promote local and regional food procurement;

Decides as follows:

1. Members shall not impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme.

2. This Decision shall not be construed to prevent the adoption by any Member of measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements.

* Decision of 17 June 2022 (WT/MIN(22)/29; WT/L/1149, of 22 June 2022)

4. GENERAL COUNCIL DECISION ON ACCESSION OF LEAST-DEVELOPED COUNTRIES*

Decision of 10 December 2002

The General Council,

Having regard to paragraph 2 of Article IV and paragraph 1 of Article XII of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), the commitment made by Ministers, in paragraph 42 of the Doha Ministerial Declaration of 14 November 2001, to facilitate and accelerate the accession negotiations with acceding least-developed countries (LDCs), and the Decision-Making Procedures under Article IX and XII of the WTO Agreement agreed by the General Council (WT/L/93);

Considering the relevant provisions of the WTO Multilateral Trade Agreements, as well as Ministerial Decisions, and WTO legal instruments, on special and differential treatment for developing and least-developed countries;

Conducting the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

Recalling that the Director General shall submit a status report to the Fifth Ministerial Conference on the "Implementation of the commitment by Ministers to facilitate and accelerate the accession of LDCs";

Noting with concern that no LDC has acceded to the Organization in accordance with Article XII of the WTO Agreement since 1995;

Recognizing the need to build on recent progress and for further positive efforts designed to assist LDCs to participate in the rules-based multilateral trading system, as embodied by the WTO and its Agreements;

* Decision of 10 December 2002 (WT/L/508, of 20 January 2003)

Taking into account the commitments undertaken by LDC WTO Members at similar levels of development;

Also taking into account the statements made on the accession of LDCs to the WTO:

- By Ministers in the Integrated WTO Plan of Action for the LDCs adopted at the Singapore Ministerial Conference on 13 December 1996;

- by WTO Members at the High Level Meeting on Integrated Initiatives for LDCs' Trade Development on 27-28 October 1997; and

- by the Third United Nations Conference on Least-Developed Countries (LDC-III) in the Brussels Declaration and Programme of Action;

- by LDC Ministers in their Zanzibar Declaration of 24 July 2001; and

Pursuant to the follow-up work undertaken by Members with the adoption of the WTO Work Programme for LDCs on 12 February 2002 (WT/COMTD/LDC/11);

Decides that:

1. Negotiations for the accession of LDCs to the WTO, be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the guidelines set out hereunder:

I. MARKET ACCESS

- WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs' Members;

- acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services.

II. WTO RULES

- Special and Differential Treatment, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession;

- transitional periods/transitional arrangements foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs;

- transitional periods/arrangements shall be accompanied by Action Plans for compliance with WTO rules. The implementation of the Action Plans shall be supported by Technical Assistance and Capacity Building measures for the acceding LDCs'. Upon the request of an acceding LDC, WTO Members may coordinate efforts to guide that LDC through the implementation process;

- commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO. As provided in paragraph 5 of Article IX and paragraph 3 of Article XII of the WTO Agreement, decisions on the Plurilateral Trade Agreements shall be adopted by the Members of, and governed by the provisions in, those Agreements. WTO Members may seek to ascertain acceding LDCs interests in the Plurilateral Trade Agreements.

III. PROCESS

- The good offices of the Director-General shall be available to assist acceding LDCs and Chairpersons of the LDCs' Accession Working Parties in implementing this decision;

- efforts shall continue to be made, in line with information technology means and developments, including in LDCs themselves, to expedite documentation exchange and streamline accession procedures for LDCs to make them more effective and efficient, and less onerous. The Secretariat will assist in this regard. Such efforts will, inter-alia, be based upon the WTO Reference Centres that are already operational in acceding LDCs;

- WTO Members may adopt additional measures in their bilateral negotiations to streamline and facilitate the process, e.g., by holding bilateral negotiations in the acceding LDC if so requested;

- upon request, WTO Members may through coordinated, concentrated and targeted technical assistance from an early stage facilitate the accession of an acceding LDC.

IV. TRADE-RELATED TECHNICAL ASSISTANCE AND CAPACITY BUILDING

- Targeted and coordinated technical assistance and capacity building, by WTO and other relevant multilateral, regional and bilateral development partners, including inter alia under the Integrated Framework (IF), shall be provided, on a priority basis, to assist acceding LDCs. Assistance shall be accorded with the objective of effectively integrating the acceding LDC into the multilateral trading system;

- effective and broad-based technical cooperation and capacity building measures shall be provided, on a priority basis, to cover all stages of the accession process, i.e. from the preparation of documentation to the setting up of the legislative infrastructure and enforcement mechanisms, considering the high costs involved and in order to enable the acceding LDC to benefit from and comply with WTO rights and obligations.

2. The implementation of these guidelines shall be reviewed regularly in the agenda of the Sub-Committee on LDCs. The results of this review shall be included in the Annual Report of the Committee on Trade and Development to the General Council. In pursuance of their commitments on LDCs' accessions in the Doha Ministerial Declaration, Ministers will take stock of the situation at the Fifth Ministerial Conference and, as appropriate, at subsequent Ministerial Conferences.

World Trade Organization
Centre William Rappard
Rue de Lausanne 154
CH-1211 Geneva 2
Switzerland
Tel. (switchboard): +41 (0)22 739 51 11
E-mail: enquiries@wto.org
Website: www.wto.org

GPA Market Access Information Gateway (e-GPA Gateway):
https://e-gpa.wto.org/