

# COMMISSION OF THE EUROPEAN COMMUNITIES.

ADDENDUM:

(COMPLEMENT AU DOC. COM(94)143final  
DU 15704/94.)

COM(94) 143 final/2  
Brussels, 25.04.1994

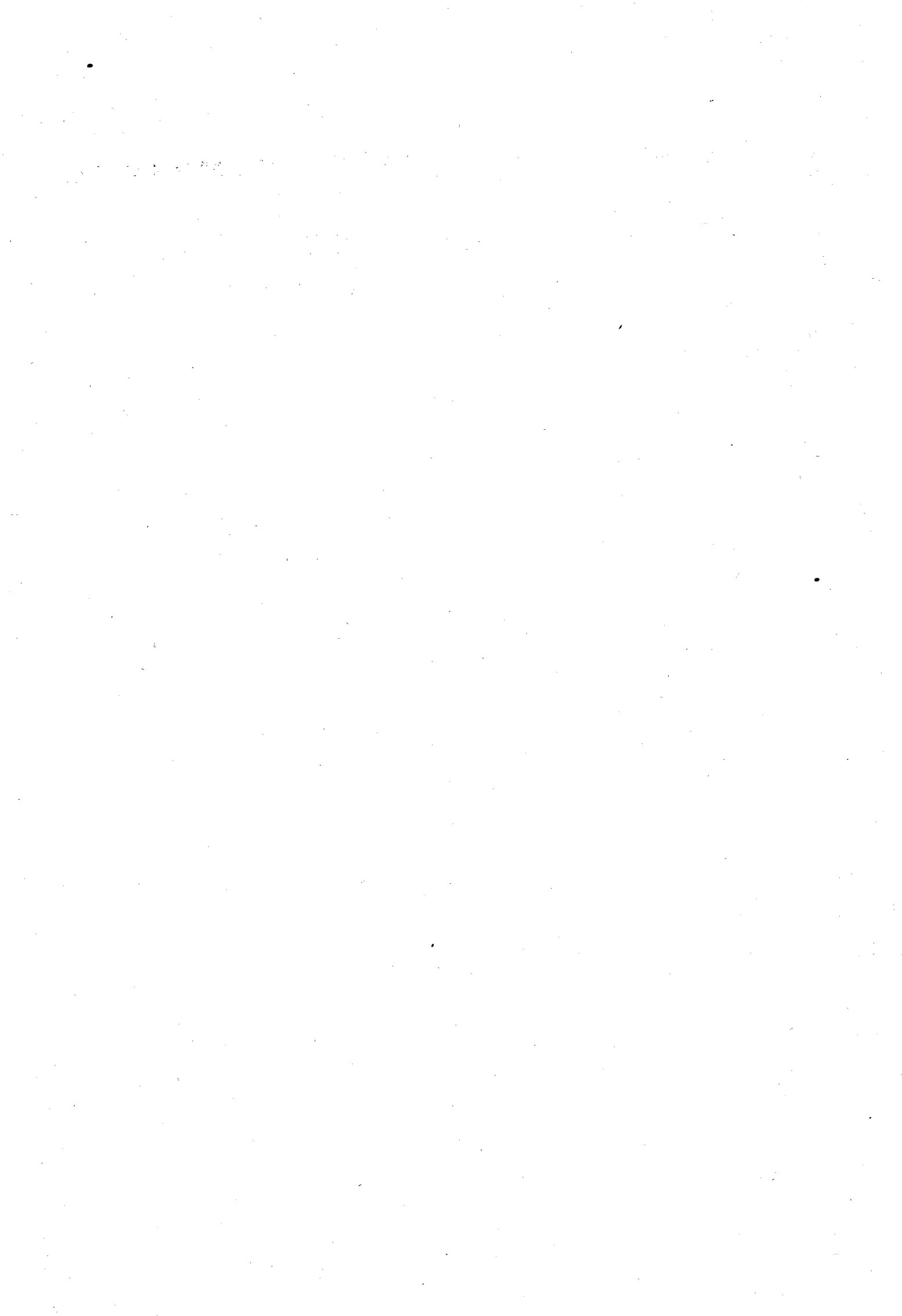
94/0114 (AVC)

Proposal for a

COUNCIL DECISION

Concerning the conclusion of the results of the  
Uruguay Round of Multilateral Trade Negotiations (1986-94)

(presented by the Commission)



- 1a -

**AGREEMENT ON  
GOVERNMENT PROCUREMENT**

**ACCORD SUR  
LES MARCHES PUBLICS**

**ACUERDO SOBRE  
CONTRATACIÓN PÚBLICA**

**Marrakesh  
15 April 1994**

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## AGREEMENT ON GOVERNMENT PROCUREMENT

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

g the need for an effective multilateral framework of rights and obligations with regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

*Recognizing* that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers;

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

*Recognizing* the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

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

*Desiring*, in accordance with paragraph 6(b) of Article IX of the Agreement on Government Procurement done on 12 April 1979, as amended on 2 February 1987, to broaden and improve the Agreement on the basis of mutual reciprocity and to expand the coverage of the Agreement to include service contracts;

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

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

Hereby *agree* as follows:

## Article I

### Scope and Coverage

1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.<sup>1</sup>
2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.
3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply *mutatis mutandis* to such requirements.
4. This Agreement applies to any procurement contract of a value of not less than the relevant threshold specified in Appendix I.

## Article II

### Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts<sup>2</sup> for purposes of implementing this Agreement.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.
4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
  - (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
  - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

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<sup>1</sup>For each Party, Appendix I is divided into five Annexes:

- Annex 1 contains central government entities.
- Annex 2 contains sub-central government entities.
- Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement.
- Annex 4 specifies services, whether listed positively or negatively, covered by this Agreement.
- Annex 5 specifies covered construction services.

Relevant thresholds are specified in each Party's Annexes.

<sup>2</sup>This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.

5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:

- (a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

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

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

### *Article III*

#### *National Treatment and Non-discrimination*

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:

- (a) that accorded to domestic products, services and suppliers; and
- (b) that accorded to products, services and suppliers of any other Party.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:

- (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and
- (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.

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

### *Article IV*

#### *Rules of Origin*

1. A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from

the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties.

2. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") and negotiations regarding trade in services, Parties shall take the results of that work programme and those negotiations into account in amending paragraph 1 as appropriate.

## *Article V*

### *Special and Differential Treatment for Developing Countries*

#### *Objectives*

1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:

- (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;
- (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
- (c) support industrial units so long as they are wholly or substantially dependent on government procurement; and
- (d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.

2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least-developed countries and of those countries at low stages of economic development.

#### *Coverage*

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.

#### *Agreed Exclusions*

4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities,

products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, *inter alia*, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

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

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.

#### *Technical Assistance for Developing Country Parties*

8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

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

- the solution of particular technical problems relating to the award of a specific contract; and
- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.

#### *Information Centres*

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

regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.

#### *Special Treatment for Least-Developed Countries*

12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least-developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least-developed countries which are not Parties, with respect to products or services originating in those countries.

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

#### *Review*

14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.

15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.

### *Article VI*

#### *Technical Specifications*

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

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

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



- (b) be based on international standards, where such exist; otherwise, on national technical regulations<sup>3</sup>, recognized national standards<sup>4</sup>, or building codes.
3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.
4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

## *Article VII*

### *Tendering Procedures*

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.
2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.
3. For the purposes of this Agreement:
- (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.
  - (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.
  - (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.

## *Article VIII*

### *Qualification of Suppliers*

In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:

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<sup>3</sup>For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

<sup>4</sup>For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (g) each Party shall ensure that:
  - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
  - (ii) efforts be made to minimize differences in qualification procedures between entities.
- (h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

*Article IX*

*Invitation to Participate Regarding Intended Procurement*

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.
6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:
  - (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;
  - (b) whether the procedure is open or selective or will involve negotiation;
  - (c) any date for starting delivery or completion of delivery of goods or services;
  - (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
  - (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
  - (f) any economic and technical requirements, financial guarantees and information required from suppliers;
  - (g) the amount and terms of payment of any sum payable for the tender documentation; and
  - (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

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

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

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

- (d) the nature of the products or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

## Article X

### *Selection Procedures*

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.
2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.
4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

## Article XI

### *Time-limits for Tendering and Delivery*

#### *General*

1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.
- (b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.

#### *Deadlines*

2. Except in so far as provided in paragraph 3,
  - (a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;
  - (b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;

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

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

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

- (i) as much of the information referred to in paragraph 6 of Article IX as is available;
- (ii) the information referred to in paragraph 8 of Article IX;
- (iii) a statement that interested suppliers should express their interest in the procurement to the entity; and
- (iv) a contact point with the entity from which further information may be obtained.

the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;

- (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;

- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or

- (d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.

4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

## *Article XII*

### *Tender Documentation*

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

2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment;
- (j) any other terms or conditions;
- (k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.

*Forwarding of Tender Documentation by the Entities*

- 3.
- (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
  - (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.
  - (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

### Article XIII

#### *Submission, Receipt and Opening of Tenders and Awarding of Contracts*

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

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender; in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and
- (b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

#### *Receipt of Tenders*

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

#### *Opening of Tenders*

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

#### *Award of Contracts*

4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
- (b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.



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

*Option Clauses*

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

*Article XIV*

*Negotiation*

- 1. A Party may provide for entities to conduct negotiations:
  - (a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or
  - (b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
- 2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
- 3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
- 4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:
  - (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;
  - (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;
  - (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and
  - (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

*Article XV*

*Limited Tendering*

- 1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:
  - (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements

in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;

- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services<sup>3</sup>;
- (e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV<sup>4</sup>;
- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;
- (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;
- (h) for products purchased on a commodity market;
- (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms

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<sup>3</sup>It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

<sup>4</sup>Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers:

- (j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

#### *Article XVI*

##### *Offsets*

1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.<sup>7</sup>

2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.

#### *Article XVII*

##### *Transparency*

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

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

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<sup>7</sup>Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

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

2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers.

### *Article XVIII*

#### *Information and Review as Regards Obligations of Entities*

1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain:

- (a) the nature and quantity of products or services in the contract award;
- (b) the name and address of the entity awarding the contract;
- (c) the date of award;
- (d) the name and address of winning tenderer;
- (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
- (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and
- (g) the type of procedure used.

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

- (a) an explanation of its procurement practices and procedures;
- (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and
- (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

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

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

*Article XIX*

*Information and Review as Regards Obligations of Parties*

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.
2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.
3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.
4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.
5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:
  - (a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;
  - (b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;
  - (c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and
  - (d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.

To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.

## *Article XX*

### *Challenge Procedures*

#### *Consultations*

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

#### *Challenge*

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

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

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- (f) witnesses can be presented;
- (g) documents are disclosed to the review body.

7. Challenge procedures shall provide for:
- (a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
  - (b) an assessment and a possibility for a decision on the justification of the challenge;
  - (c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.
8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

### *Article XXI*

#### *Institutions*

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

### *Article XXII*

#### *Consultations and Dispute Settlement*

1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.
2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.
3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this

Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible. provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.

4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:

"To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement."

In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.

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

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

7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.

### *Article XXIII*

#### *Exceptions to the Agreement*

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

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.



*Article XXIV*

*Final Provisions*

1. *Acceptance and Entry into Force*

This Agreement shall enter into force on 1 January 1996 for those governments<sup>8</sup> whose agreed coverage is contained in Annexes 1 through 5 of Appendix I of this Agreement and which have, by signature, accepted the Agreement on 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.

2. *Accession*

Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a contracting party to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30th day following the date of its accession to the Agreement.

3. *Transitional Arrangements*

- (a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.
- (b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive<sup>9</sup> provisions of the 1988 Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.
- (c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.
- (d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.

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<sup>8</sup>For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.

<sup>9</sup>All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.

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

4 *Reservations*

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

5. *National Legislation*

- (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.
- (b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

6. *Rectifications or Modifications*

- (a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.
- (b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.

7. *Reviews, Negotiations and Future Work*

- (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.

- (b) Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.
- (c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.

8. *Information Technology*

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

9. *Amendments*

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

10. *Withdrawal*

- (a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.
- (b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.

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

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

12. *Notes, Appendices and Annexes*

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

13. *Secretariat*

This Agreement shall be serviced by the WTO Secretariat.

14. *Deposit*

This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.

15. *Registration*

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

*Done* at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.

## NOTES

The terms "country" or "countries" as used in this Agreement, including the Appendices, are to be understood to include any separate customs territory Party to this Agreement.

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

### *Article 1, paragraph 1*

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

Draft Exchange of Letters between Uruguay  
and the European Community

The European Community agrees to include in its final offer on market access under the Uruguay Round an additional quantity of two thousand metric tonnes of high quality beef (0201.30.00 - 0206.10.95 meat of bovine animals, fresh or chilled; 0202.30.90 - 0206.29.91 meat of bovine animals, frozen) from Uruguay.

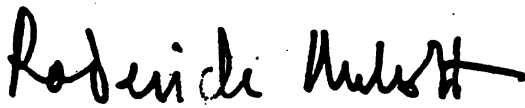
The European Community and Uruguay agree that the provision contained in the Tokyo Round agreement according to which the European Community was prepared to envisage the possibility of Uruguay being able to export additional annual quantities of high quality beef if the overall quota for such cuts was not fully used by other beneficiary countries shall cease to apply.

The above mentioned provision shall cease to apply on the same date that the additional quantity of two thousand metric tonnes is implemented.

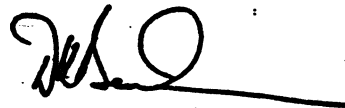
AGREED RECORD OF COMMITMENTS ON COAL NEGOTIATED BETWEEN THE  
EUROPEAN COMMUNITIES (EC) AND AUSTRALIA IN THE GATT  
MULTILATERAL TRADE NEGOTIATIONS - THE URUGUAY ROUND

The arrangements agreed upon in the bilateral negotiations on coal are as set out in the attachment to this record. In addition for the Tariff lines set out in the attachment, Australia will bind export tax rates at zero in its Uruguay Round tariff schedule. Such bindings to come into effect on the entry into force of the outcome of the Uruguay Round negotiations. For the same tariff lines the EC will bind import duties at zero in its schedule. The EC bindings on these lines will come into effect no later than 1 January 1996.

Initial negotiating rights in respect of both the export tax bindings by Australia and the tariff bindings by the EC will be inscribed in our respective Uruguay Round schedules.



**RODERICK ABBOTT**  
For the EC  
Delegation



**KINGSLEY BARKER**  
For the Australian  
Delegation

15 December 1993

URUGUAY ROUND : COAL

The following commitments by Australia and the EC together constitute an international agreement between the Parties:

COMMITMENTS BY AUSTRALIA

- (i) Australia will not use export measures in a manner which would disrupt normal and foreseeable commercial trade flows.
- (ii) Australia agrees that a working group of Australian and EC officials will be set up under the auspices of the Australian/EC High Level Group on Energy with the objective of facilitating joint ventures between Australian and EC companies to explore for and develop coal reserves in Australia.
- (iii) There shall effectively be no barriers to foreign participation in the Australian coal mining industry. (See Footnote A).

Footnote A    The relevant Australian foreign investment guidelines are designed to encourage foreign investment and are applied on a non-discriminatory basis. Should EC companies believe that Australia's foreign investment policy is restricting their ability to pursue coal mining development and/or operations in Australia, the matter can be referred to the working group mentioned in (ii) above.

WEL  
10.



COMMITMENTS BY THE EC

- (i) In addition to any degressivity in State Aids to the coal industries of Member States determined under EC laws and processes, the EC agrees to an immediate standstill in the aggregate level of subsidised coal production.
- (ii) EC subsidised coal production will be gradually and regularly reduced so that the level of subsidised coal production in any year will, to the fullest extent possible, be lower than, and in any event will not exceed, the aggregate level of the previous calendar year. The EC will transform existing measures into more transparent forms of assistance where practicable.
- (iii) With a view to examining increased degressivity of subsidised coal production the EC agrees to enter into consultations with Australia no later than 31 December, 1997.

General Provisions

- (a) This agreement will be effective from the date of implementation of the Uruguay Round. The agreement will be reviewed at a mutually agreed time no later than 31 December 1997, to examine whether it is working to the satisfaction of both parties. If either party considers the agreement not to be working to its satisfaction it may terminate the agreement on three months notice as from the 31 December 1997.
- (b) Australia commits itself not to invoke the GATT or any of its related instruments with respect to the products covered by this Agreement and the disciplines undertaken by the EC for the duration of this Agreement.
- (c) It is the expectation of both parties to the Agreement that exports of coal produced with subsidies will not deviate from around current levels and substantially displace or impede Australian exports.
- (d) The EC reserves its rights to introduce taxes or other measures for environmental or other reasons which are non-discriminatory and in accordance with Article III of the General Agreement. Australia may, upon introduction of such taxes or measures, request consultations with the EC.

*Kable*  
*S.*

PRODUCT COVERAGE

This agreement applies to the following products :

- 2701.11 Anthracite
- 2701.12 Bituminous coal
- 2701.19 Other coal
- 2701.20 Briquettes, ovoids and similar solid fuels manufactured from coal
- 2702.10 Lignite, whether or not pulverised, but not agglomerated
- 2702.20 Agglomerated lignite
- 2703.00 Peat (including peat litter), whether or not agglomerated
- 2704.00 Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon.

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## INTERNATIONAL DAIRY ARRANGEMENT

## PREAMBLE

*Recognizing* the importance of milk and dairy products to the economy of many countries<sup>1</sup> in terms of production, trade and consumption;

*Recognizing* the need, in the mutual interests of producers and consumers, and of exporters and importers, to avoid surpluses and shortages, and to maintain prices at an equitable level;

*Noting* the diversity and interdependence of dairy products;

*Noting* the situation in the dairy products market, which is characterized by very wide fluctuations and the proliferation of export and import measures;

*Considering* that improved co-operation in the dairy products sector contributes to the attainment of the objectives of expansion and liberalization of world trade, and the implementation of the principles and objectives concerning developing countries agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the Multilateral Trade Negotiations;

*Determined* to respect the principles and objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT")<sup>2</sup> and, in carrying out the aims of this Arrangement, effectively to implement the principles and objectives agreed upon in the said Tokyo Declaration;

The participants to the present Arrangement have, through their representatives, agreed as follows:

<sup>1</sup> In this Arrangement and in the Protocols annexed thereto, the term "country" is deemed to include the European Economic Community.

<sup>2</sup> This preambular provision applies only among participants that are contracting parties to the GATT.

PART ONE

GENERAL PROVISIONS

Article I

Objectives

The objectives of this Arrangement shall be, in accordance with the principles and objectives agreed upon in the Tokyo Declaration of Ministers dated 14 September 1973 concerning the Multilateral Trade Negotiations,

- to achieve the expansion and ever greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of mutual benefit to exporting and importing countries;
- to further the economic and social development of developing countries.

Article II

Product Coverage

1. This Arrangement applies to the dairy products sector. For the purpose of this Arrangement, the term "dairy products" is deemed to include the following products, as defined in the Customs Co-operation Council Nomenclature:

	<i>CCCN</i>
(a) Milk and cream, fresh, not concentrated or sweetened	04.01
(b) Milk and cream, preserved, concentrated or sweetened	04.02
(c) Butter	04.03
(d) Cheese and curd	04.04
(e) Casein	ex 35.01

2. The International Dairy Products Council established in terms of Article VII: 1(a) of this Arrangement (hereinafter referred to as the Council) may decide that the Arrangement is to apply to other products in which dairy products referred to in paragraph 1 of this Article have been incorporated if it deems their inclusion necessary for the implementation of the objectives and provisions of this Arrangement.

*Article III*  
*Information*

1. The participants agree to provide regularly and promptly to the Council the information required to permit it to monitor and assess the overall situation of the world market for dairy products and the world market situation for each individual dairy product.
2. Participating developing countries shall furnish the information available to them. In order that these participants may improve their data collection mechanisms, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.
3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance, current situation and outlook regarding production, consumption, prices, stocks and trade, including transactions other than normal commercial transactions, in respect of the products referred to in Article II of this Arrangement, and any other information deemed necessary by the Council. Participants shall also provide information on their domestic policies and trade measures, and on their bilateral, plurilateral or multilateral commitments, in the dairy sector and shall make known, as early as possible, any changes in such policies and measures that are likely to affect international trade in dairy products. The provisions of this paragraph shall not require any participant to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

*Note:* It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in dairy products, including commitments resulting from bilateral, plurilateral and multilateral negotiations.

*Article IV*

*Functions of the International Dairy Products Council and  
Co-operation between the Participants to this Arrangement*

1. The Council shall meet in order to:
  - (a) make an evaluation of the situation in and outlook for the world market for dairy products, on the basis of a status report prepared

by the secretariat with the documentation furnished by participants in accordance with Article III of this Arrangement, information arising from the operation of the Protocols covered by Article VI of this Arrangement, and any other information available to it;

(b) review the functioning of this Arrangement.

2. If after an evaluation of the world market situation and outlook, referred to in paragraph 1(a) of this Article, the Council finds that a serious market disequilibrium, or threat of such a disequilibrium, which affects or may affect international trade, is developing for dairy products in general or for one or more products, the Council will proceed to identify, taking particular account of the situation of developing countries, possible solutions for consideration by governments.

3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium- or long-term measures to contribute to improve the overall situation of the world market.

4. When considering measures that could be taken pursuant to paragraphs 2 and 3 of this Article, due account shall be taken of the special and more favourable treatment, to be provided for developing countries, where this is feasible and appropriate.

5. Any participant may raise before the Council any matter<sup>1</sup> affecting this Arrangement, *inter alia*, for the same purposes provided for in paragraph 2 of this Article. Each participant shall promptly afford adequate opportunity for consultation regarding such matter<sup>1</sup> affecting this Arrangement.

6. If the matter affects the application of the specific provisions of the Protocols annexed to this Arrangement, any participant which considers that its trade interests are being seriously threatened and which is unable to reach a mutually satisfactory solution with the other participant or participants concerned, may request the Chairman of the Committee for the relevant Protocol established under Article VII: 2(a) of this Arrangement, to convene a special meeting of the Committee on an urgent basis so as to determine as rapidly as possible, and within four working days if requested, any measures which may be required to meet the situation. If a satisfactory

<sup>1</sup> It is confirmed that the term "matter" in this paragraph includes any matter which is covered by multilateral agreements negotiated within the framework of the Multilateral Trade Negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV:5 and this footnote are without prejudice to the rights and obligations of the parties to such agreements.

solution cannot be reached, the Council shall, at the request of the Chairman of the Committee for the relevant Protocol, meet within a period of not more than fifteen days to consider the matter with a view to facilitating a satisfactory solution.

*Article V*

*Food Aid and Transactions other than Normal Commercial Transactions*

1. The participants agree:

- (a) In co-operation with FAO and other interested organizations, to foster recognition of the value of dairy products in improving nutritional levels and of ways and means through which they may be made available for the benefit of developing countries.
- (b) In accordance with the objectives of this Arrangement, to furnish, within the limits of their possibilities, dairy products to developing countries by way of food aid. Participants should notify the Council in advance each year, as far as practicable, of the scale, quantities and destinations of their proposed contributions of such food aid. Participants should also give, if possible, prior notification to the Council of any proposed amendments to the notified programme. It would be understood that contributions could be made bilaterally or through joint projects or through multilateral programmes, particularly the World Food Programme.
- (c) Recognizing the desirability of harmonizing their efforts in this field, as well as the need to avoid harmful interference with normal patterns of production, consumption and international trade, to exchange views in the Council on their arrangements for the supply and requirements of dairy products as food aid or on concessional terms.

2. Donated exports to developing countries, exports destined for relief purposes or welfare purposes in developing countries, and other transactions which are not normal commercial transactions shall be effected in accordance with the FAO "Principles of Surplus Disposal and Consultative Obligations". Consequently, the Council shall co-operate closely with the Consultative Sub-Committee on Surplus Disposal.

3. The Council shall, in accordance with conditions and modalities that it will establish, upon request, discuss, and consult on, all transactions other than normal commercial transactions and other than those covered by the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

## PART TWO

## SPECIFIC PROVISIONS

*Article VI**Protocols*

1. Without prejudice to the provisions of Articles I to V of this Arrangement, the products listed below shall be subject to the provisions of the Protocols annexed to this Arrangement:

*Annex I*

- *Protocol Regarding Certain Milk Powders*  
Milk powder and cream powder, excluding whey powder

*Annex II*

- *Protocol Regarding Milk Fat*  
Milk fat

*Annex III*

- *Protocol Regarding Certain Cheeses*  
Certain cheeses

## PART THREE

*Article VII**Administration of the Arrangement*

1. *International Dairy Products Council*
  - (a) An International Dairy Products Council shall be established within the framework of the GATT. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure.



**(b) Regular and special meetings**

The Council shall normally meet at least twice each year. However, the Chairman may call a special meeting of the Council either on his own initiative, at the request of the Committees established under paragraph 2(a) of this Article, or at the request of a participant to this Arrangement.

**(c) Decisions**

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.

**(d) Co-operation with other organizations**

The Council shall make whatever arrangements are appropriate for consultation or co-operation with intergovernmental and non-governmental organizations.

**(e) Admission of observers**

- (i) The Council may invite any non-participating country to be represented at any meeting as an observer.
- (ii) The Council may also invite any of the organizations referred to in paragraph 1(d) of this Article to attend any meeting as an observer.

**2. Committees**

(a) The Council shall establish a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Certain Milk Powders, a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Milk Fat and a Committee to carry out all the functions which are necessary to implement the provisions of the Protocol Regarding Certain Cheeses. Each of these Committees shall comprise representatives of all participants to the relevant Protocol. The Committees shall be serviced by the GATT secretariat. They shall report to the Council on the exercise of their functions.

**(b) Examination of the market situation**

The Council shall make the necessary arrangements, determining the modalities for the information to be furnished under Article III of this Arrangement, so that

- the Committee of the Protocol Regarding Certain Milk Powders may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol;
- the Committee of the Protocol Regarding Milk Fat may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol;
- the Committee of the Protocol Regarding Certain Cheeses may keep under constant review the situation in and the evolution of the international market for the products covered by this Protocol, and the conditions under which the provisions of this Protocol are applied by participants, taking into account the evolution of prices in international trade in each of the other dairy products having implications for the trade in products covered by this Protocol.

*(c) Regular and special meetings*

Each Committee shall normally meet at least once each quarter. However, the Chairman of each Committee may call a special meeting of the Committee on his own initiative or at the request of any participant.

*(d) Decisions*

Each Committee shall reach its decisions by consensus. A committee shall be deemed to have decided on a matter submitted for its consideration if no member of the Committee formally objects to the acceptance of a proposal.

PART FOUR

Article VIII

Final Provisions

1. Acceptance<sup>1</sup>

- (a) This Arrangement is open for acceptance, by signature or otherwise, by governments members of the United Nations, or of one of its specialized agencies and by the European Economic Community.
- (b) Any government<sup>2</sup> accepting this Arrangement may at the time of acceptance make a reservation with regard to its acceptance of any of the Protocols annexed to the Arrangement. This reservation is subject to the approval of the participants.
- (c) This Arrangement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each participant. The texts of this Arrangement in the English, French and Spanish languages shall all be equally authentic.
- (d) Acceptance of this Arrangement shall carry denunciation of the Arrangement Concerning Certain Dairy Products, done at Geneva on 12 January 1970 which entered into force on 14 May 1970, for participants having accepted that Arrangement and denunciation of the Protocol Relating to Milk Fat, done at Geneva on 2 April 1973 which entered into force on 14 May 1973, for participants having accepted that Protocol. Such denunciation shall take effect on the date of entry into force of this Arrangement.

2. Provisional application

Any government may deposit with the Director-General to the CONTRACTING PARTIES to the GATT a declaration of provisional application of this Arrangement. Any government depositing such a declaration shall provisionally apply this Arrangement and be provisionally regarded as participating in this Arrangement.

<sup>1</sup> The terms "acceptance" or "accepted" as used in this Article include the completion of any domestic procedures necessary to implement the provisions of this Arrangement.

<sup>2</sup> For the purpose of this Arrangement, the term "government" is deemed to include the competent authorities of the European Economic Community.

3. *Entry into force*

- (a) This Arrangement shall enter into force, for those participants having accepted it, on 1 January 1980. For participants accepting this Arrangement after that date, it shall be effective from the date of their acceptance.
- (b) The validity of contracts entered into before the date of entry into force of this Arrangement is not affected by this Arrangement.

4. *Validity*

This Arrangement shall remain in force for three years. The duration of this Arrangement shall be extended for further periods of three years at a time, unless the Council, at least eighty days prior to each date of expiry, decides otherwise.

5. *Amendment*

Except where provision for modification is made elsewhere in this Arrangement the Council may recommend an amendment to the provisions of this Arrangement. The proposed amendment shall enter into force upon acceptance by the governments of all participants.

6. *Relationship between the Arrangement and the Annexes*

The following shall be deemed to be an integral part of this Arrangement, subject to the provisions of paragraph 1(b) of this Article:

- the Protocols mentioned in Article VI of this Arrangement and contained in its Annexes I, II and III;
- the lists of reference points mentioned in Article 2 of the Protocol Regarding Certain Milk Powders, Article 2 of the Protocol Regarding Milk Fat, and Article 2 of the Protocol Regarding Certain Cheeses, contained in Annexes I(a), II(a) and III(a) respectively;
- the schedules of price differentials according to milk fat content mentioned in Article 3:4, note 3 of the Protocol Regarding Certain Milk Powders and Article 3:4, note 1 of the Protocol Regarding Milk Fat, contained in Annexes I(b) and II(b) respectively;
- the register of processes and control measures referred to in Article 3:5 of the Protocol Regarding Certain Milk Powders, contained in Annex Ic.

7. *Relationship between the Arrangement and the GATT*

Nothing in this Arrangement shall affect the rights and obligations of participants under the GATT.<sup>1</sup>

8. *Withdrawal*

- (a) Any participant may withdraw from this Arrangement. Such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT.
- (b) Subject to such conditions as may be agreed upon by the participants, any participant may withdraw from any of the Protocols annexed to this Arrangement. Such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT.

*Done at Geneva this twelfth day of April nineteen hundred and seventy-nine.*

ANNEX I

PROTOCOL REGARDING CERTAIN MILK POWDERS

PART ONE

Article 1

*Product Coverage*

1. This Protocol applies to milk powder and cream powder falling under CCCN heading No. 04.02, excluding whey powder.

<sup>1</sup> This provision applies only among participants that are contracting parties to the GATT.

M b.

PART TWO

Article 2

Pilot Products

1. For the purpose of this Protocol, minimum export prices shall be established for the pilot products of the following description:

- (a) Designation: *Skimmed milk powder*  
Milk fat content: less than or equal to 1.5 per cent by weight  
Water content: less than or equal to 5 per cent by weight
- (b) Designation: *Whole milk powder*  
Milk fat content: 26 per cent by weight  
Water content: less than or equal to 5 per cent by weight
- (c) Designation: *Buttermilk powder*<sup>1</sup>  
Milk fat content: less than or equal to 11 per cent by weight  
Water content: less than or equal to 5 per cent by weight

Packaging: in packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs., as appropriate

Terms of sale: f.o.b. ocean-going vessels from the exporting country or free-at-frontier exporting country.

By derogation from this provision, reference points are designated for the countries listed in Annex I(a).<sup>2</sup> The Committee established in pursuance of Article VII:2(2) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.

Prompt payment against documents.

Article 3

Minimum Prices

Level and observance of minimum prices

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.

2. (a) The minimum price levels set out in the present Article take account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of

<sup>1</sup> Derived from the manufacture of butter and anhydrous milk fat.

<sup>2</sup> Annex I(a) is not reproduced.

maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

- (b) The minimum prices provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol are fixed at:
- (i) US\$425<sup>1</sup> per metric ton for the skimmed milk powder defined in Article 2 of this Protocol.
  - (ii) US\$725<sup>2</sup> per metric ton for the whole milk powder defined in Article 2 of this Protocol.
  - (iii) US\$425<sup>3</sup> per metric ton for the buttermilk powder defined in Article 2 of this Protocol.
3. (a) The levels of the minimum prices specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.
- (b) The levels of the minimum prices specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the levels of the minimum prices set out in paragraph 2(b) of the present Article and the dairy support levels in the major producing participants.

*Adjustment of minimum prices*

4. If the products actually exported differ from the pilot products in respect of the fat content, packaging or terms of sale, the minimum prices shall be adjusted so as to protect the minimum prices established in this Protocol for the products specified in Article 2 of this Protocol according to the following provisions:

*Milk fat content:*

If the milk fat content of the milk powders described in Article 1 of the present Protocol excluding buttermilk powder<sup>4</sup> differs from the milk fat content of the pilot products as defined in Article 21(a) and (b) of the present Protocol, then for each full percentage point of milk fat as from 2 per cent, there shall be an upward adjustment of the minimum price in proportion to the difference between the minimum prices established for the pilot products defined in Article 21(a) and (b) of the present Protocol.<sup>5</sup>

<sup>1</sup> US\$600 per metric ton since 1 October 1981.

<sup>2</sup> US\$830 per metric ton since 5 June 1985.

<sup>3</sup> US\$600 per metric ton since 1 October 1981.

<sup>4</sup> As defined in Article 21(c) of this Protocol.

<sup>5</sup> See Annex 1(b), "Schedule of price differentials according to milk fat content". (Annex 1(b) is not reproduced).

**Packaging:**

If the products are offered otherwise than in packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs., as appropriate, the minimum prices shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

**Terms of sale:**

If sold on terms other than f.o.b. from the exporting country or free-at-frontier exporting country<sup>1</sup>, the minimum prices shall be calculated on the basis of the minimum f.o.b. prices specified in paragraph 2(b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

*Exports and imports of skimmed milk powder and buttermilk powder for purposes of animal feed*

5. By derogation from the provisions of paragraphs 1 to 4 of this Article participants may, under the conditions defined below, export or import, as the case may be, skimmed milk powder and buttermilk powder for purposes of animal feed at prices below the minimum prices provided for in this Protocol for these products. Participants may make use of this possibility only to the extent that they subject the products exported or imported to the processes and control measures which will be applied in the country of export or destination so as to ensure that the skimmed milk powder and buttermilk powder thus exported or imported are used exclusively for animal feed. These processes and control measures shall have been approved by the Committee and recorded in a register established by it.<sup>2</sup> Participants wishing to make use of the provisions of this paragraph shall give advance notification of their intention to do so to the Committee which shall meet, at the request of a participant, to examine the market situation. The participants shall furnish the necessary information concerning their transactions in respect of skimmed milk powder and buttermilk powder for purposes of animal feed, so that the Committee may follow developments in this sector and periodically make forecasts concerning the evolution of this trade.

*Special conditions of sales*

6. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum prices.

<sup>1</sup> See Article 2.

<sup>2</sup> See Annex I(c), "Register of Processes and Control Measures". It is understood that exporters would be permitted to ship skimmed milk powder and buttermilk powder for animal feed purposes in an unaltered state to importers which have had their processes and control measures inserted in the Register. In this case, exporters would inform the Committee of their intention to ship unaltered skimmed milk powder and/or buttermilk powder for animal feed purposes to those importers which have their processes and control measures registered. (Annex I(c) is not reproduced).



*Field of application*

7. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

*Transactions other than normal commercial transactions*

8. The provisions of paragraphs 1 to 7 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

*Article 4**Provision of Information*

1. In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices mentioned in Article 3:2(b) of this Protocol, and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

*Article 5**Obligations of Exporting Participants*

1. Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

*Article 6**Co-operation of Importing Participants*

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

- (a) to co-operate in implementing the minimum prices objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum prices;
- (b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;

(c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of this Protocol.

2. Paragraph 1 of this Article shall not apply to imports of skimmed milk powder and buttermilk powder for purposes of animal feed, provided that such imports are subject to the measures and procedures provided for in Article 3:5 of this Protocol.

### PART THREE

#### Article 7

##### *Derogations*

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3, paragraphs 1 to 5 of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within three months from the date of the request.

#### Article 8

##### *Emergency Action*

1. Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the Chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The Chairman of the Committee shall also be formally advised immediately notified. The Chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

## ANNEX II

## PROTOCOL REGARDING MILK FAT

## PART ONE

*Article 1**Product Coverage*

1. This Protocol applies to milk fat falling under CCUN heading No. 04.03, having a milk fat content equal to or greater than 50 per cent by weight.

## PART TWO

*Article 2**Pilot Products*

1. For the purpose of this Protocol, minimum export prices shall be established for the pilot products of the following descriptions:

- (a) Designation: *Anhydrous milk fat*  
Milk fat content: 99.5 per cent by weight
- (b) Designation: *Butter*  
Milk fat content: 80 per cent by weight

*Packaging:*

In packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs, as appropriate.

*Terms of sale:*

F.o.b. from the exporting country or free-at-frontier exporting country. By derogation from this provision, reference points are designated for the countries listed in Annex II(a).<sup>\*</sup> The Committee established in pursuance of Article VII:2(a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.  
Prompt payment against documents.

<sup>\*</sup> Annex II(a) is not reproduced.

*Article 3*

*Minimum Prices*

*Level and observance of minimum prices*

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Article 2 of this Protocol shall not be less than the minimum prices applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.
2. (a) The minimum price levels set out in the present Article take account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.
  - (b) The minimum prices provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol are fixed at:
    - (i) US\$1,100<sup>1</sup> per metric ton for the anhydrous milk fat defined in Article 2 of this Protocol.
    - (ii) US\$925<sup>2</sup> per metric ton for the butter defined in Article 2 of this Protocol.
3. (a) The levels of the minimum prices specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.
  - (b) The levels of the minimum prices specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the levels of the minimum prices set out in paragraph 2(b) of the present Article and the dairy support levels in the major producing participants.

*Adjustment of minimum prices*

4. If the products actually exported differ from the pilot products in respect of the fat content, packaging or terms of sale, the minimum prices shall be adjusted

<sup>1</sup> US\$1,200 per metric ton since 5 June 1985.

<sup>2</sup> US\$1,000 per metric ton since 5 June 1985.

so as to protect the minimum prices established in this Protocol for the products specified in Article 2 of this Protocol according to the following provisions:

**Milk fat content:**

If the milk fat content of the product defined in Article 1 of the present Protocol differs from the milk fat content of the pilot products as defined in Article 2 of the present Protocol then, if the milk fat content is equal to or greater than 82 per cent or less than 80 per cent, the minimum price of this product shall be, for each full percentage point by which the milk fat content is more than or less than 80 per cent, increased or reduced in proportion to the difference between the minimum prices established for the pilot products defined in Article 2 of the present Protocol.

**Packaging:**

If the products are offered otherwise than in packages normally used in the trade, of a net content by weight of not less than 25 kgs. or 50 lbs., as appropriate, the minimum prices shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

**Terms of sale:**

If sold on terms other than f.o.b. from the exporting country or free-at-frontier exporting country<sup>1</sup>, the minimum prices shall be calculated on the basis of the minimum f.o.b. prices specified in paragraph 2(b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

*Special conditions of sales*

5. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum prices.

*Field of application*

6. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

*Transactions other than normal commercial transactions*

7. The provisions of paragraphs 1 to 6 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

<sup>1</sup> See Article 2.

*Article 4**Provision of Information*

1. In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum prices mentioned in Article 3:2(b) of this Protocol, and without prejudice to the provisions of Article III of the Arrangement, participants shall notify to the Committee all the relevant elements for evaluating their own market-situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

*Article 5**Obligations of Exporting Participants*

1. Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

*Article 6**Co-operation of Importing Participants*

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

- (a) to co-operate in implementing the minimum prices objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum prices;
- (b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;
- (c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum prices threaten the operation of this Protocol.

## PART THREE

*Article 7**Derogations*

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3, paragraphs 1 to 4 of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within three months from the date of the request.

*Article 8**Emergency Action*

1. Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the Chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudicial, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The Chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment.

## ANNEX III

## PROTOCOL REGARDING CERTAIN CHEESES

## PART ONE

*Article 1**Product Coverage*

1. This Protocol applies to cheeses falling under CCUN heading No. 04.04, having a fat content in dry matter, by weight, equal to or more than 45 per cent and a dry matter content, by weight, equal to or more than 50 per cent.

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PART TWO

Article 2

*Pilot Product*

1. For the purpose of this Protocol, a minimum export price shall be established for the pilot product of the following description:

Designation: *Cheese*

Packaging:

In packages normally used in the trade of a net content by weight of not less than 20 kgs. or 40 lbs., as appropriate.

Terms of sale:

F.o.b. from the exporting country or free-at-frontier exporting country.

By derogation from this provision, reference points are designated for the countries listed in Annex III(a).<sup>1</sup> The Committee established in pursuance of Article VII:2(a) of the Arrangement (hereinafter referred to as the Committee) may amend the contents of that Annex.

Prompt payment against documents.

Article 3

*Minimum Price*

*Level and observance of minimum price*

1. Participants undertake to take the steps necessary to ensure that the export prices of the products defined in Articles 1 and 2 of this Protocol shall not be less than the minimum price applicable under the present Protocol. If the products are exported in the form of goods in which they have been incorporated, participants shall take the steps necessary to avoid the circumvention of the price provisions of this Protocol.
2. (a) The minimum price level set out in the present Article takes account, in particular, of the current market situation, dairy prices in producing participants, the need to ensure an appropriate relationship between the minimum prices established in the Protocols to the present Arrangement, the need to ensure equitable prices to consumers, and the desirability of maintaining a minimum return to the most efficient producers in order to ensure stability of supply over the longer term.

<sup>1</sup> Annex III(a) is not reproduced.



- (b) The minimum price provided for in paragraph 1 of the present Article applicable at the date of entry into force of this Protocol is fixed at US\$800<sup>1</sup> per metric ton.
- 3. (a) The level of the minimum price specified in the present Article can be modified by the Committee, taking into account, on the one hand, the results of the operation of the Protocol and, on the other hand, the evolution of the situation of the international market.
- (b) The level of the minimum price specified in the present Article shall be subject to review at least once a year by the Committee. The Committee shall meet in September of each year for this purpose. In undertaking this review the Committee shall take account in particular, to the extent relevant and necessary, of costs faced by producers, other relevant economic factors of the world market, the need to maintain a long-term minimum return to the most economic producers, the need to maintain stability of supply and to ensure acceptable prices to consumers, and the current market situation and shall have regard to the desirability of improving the relationship between the level of the minimum price set out in paragraph 2(b) of the present Article and the dairy support levels in the major producing participants.

*Adjustment of minimum price*

4. If the products actually exported differ from the pilot product in respect of the packaging or terms of sale, the minimum price shall be adjusted so as to provide the minimum price established in this Protocol according to the following provisions:

**Packaging:**

If the products are offered otherwise than in packages as specified in Article 2, the minimum price shall be adjusted so as to reflect the difference in the cost of packaging from the type of package specified above.

**Terms of sale:**

If sold on terms other than f.o.b. from the exporting country or free-at-frontier exporting country<sup>2</sup>, the minimum price shall be calculated on the basis of the minimum f.o.b. price specified in paragraph 2(b) of this Article, plus the real and justified costs of the services provided; if the terms of the sale include credit, this shall be charged for at the prevailing commercial rates in the country concerned.

*Special conditions of sale*

5. Participants undertake within the limit of their institutional possibilities to ensure that practices such as those referred to in Article 4 of this Protocol do not have the effect of directly or indirectly bringing the export prices of the products subject to the minimum price provisions below the agreed minimum price.

<sup>1</sup> US\$1,000 per metric ton since 1 October 1981.  
<sup>2</sup> See Article 2.

*Field of application*

6. For each participant, this Protocol is applicable to exports of the products specified in Article 1 of this Protocol manufactured or repacked inside its own customs territory.

*Transactions other than normal commercial transactions*

7. The provisions of paragraphs 1 to 6 of this Article shall not be regarded as applying to donated exports to developing countries or to exports destined for relief purposes or food-related development purposes or welfare purposes in developing countries.

*Article 4**Provision of Information*

1. In cases where prices in international trade of the products covered by Article 1 of this Protocol are approaching the minimum price mentioned in Article 3:2(b) of this Protocol and without prejudice to the provisions of Article III of the Arrangement participants shall notify to the Committee all the relevant elements for evaluating their own market situation and, in particular, credit or loan practices, twinning with other products, barter or three-sided transactions, refunds or rebates, exclusivity contracts, packaging costs and details of the packaging, so that the Committee can make a verification.

*Obligations of Exporting Participants*

1. Exporting participants agree to use their best endeavours, in accordance with their institutional possibilities, to supply on a priority basis the normal commercial requirements of developing importing participants, especially those used for food-related development purposes and welfare purposes.

*Article 6**Co-operation of Importing Participants*

1. Participants which import products covered by Article 1 of this Protocol undertake in particular:

- (a) to co-operate in implementing the minimum price objective of this Protocol and to ensure, as far as possible, that the products covered by Article 1 of this Protocol are not imported at less than the appropriate customs valuation equivalent to the prescribed minimum price;
- (b) without prejudice to the provisions of Article III of the Arrangement and Article 4 of this Protocol, to supply information concerning imports of products covered by Article 1 of this Protocol from non-participants;

- (c) to consider sympathetically proposals for appropriate remedial action if imports at prices inconsistent with the minimum price threaten the operation of this Protocol

PART THREE

Article 7

Derogations

1. Upon request by a participant, the Committee shall have the authority to grant derogations from the provisions of Article 3, paragraphs 1 to 4 of this Protocol in order to remedy difficulties which observance of minimum prices could cause certain participants. The Committee shall pronounce on such a request within thirty days from the date of the request.
2. The provisions of Article 3:1 to 4 shall not apply to exports, in exceptional circumstances, of small quantities of natural unprocessed cheese which would be below normal export quality as a result of deterioration or production faults. Participants exporting such cheese shall notify the GATT secretariat in advance of their intention to do so. Participants shall also notify the Committee quarterly of all sales of cheese effected under the provisions of this paragraph, specifying in respect of each transaction, the quantities, prices and destinations involved.

Article 8

Emergency Action

1. Any participant, which considers that its interests are seriously endangered by a country not bound by this Protocol, can request the Chairman of the Committee to convene an emergency meeting of the Committee within two working days to determine and decide whether measures would be required to meet the situation. If such a meeting cannot be arranged within the two working days and the commercial interests of the participant concerned are likely to be materially prejudiced, that participant may take unilateral action to safeguard its position, on the condition that any other participants likely to be affected are immediately notified. The Chairman of the Committee shall also be formally advised immediately of the full circumstances of the case and shall be requested to call a special meeting of the Committee at the earliest possible moment

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**ARRANGEMENT REGARDING  
BOVINE MEAT**

**GENERAL AGREEMENT ON TARIFFS AND TRADE  
GENEVA, 1970**

26b-

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## INTRODUCTION

This booklet reproduces the complete text of the *Arrangement Regarding Bovine Meat*, one of the two multilateral agreements relating to trade in agricultural products reached during the Tokyo Round of multilateral trade negotiations within GATT.

The *Arrangement Regarding Bovine Meat* aims to promote expansion, liberalization and stabilization of international trade in meat and livestock as well as to improve international co-operation in this sector. The Arrangement covers beef and veal, and live cattle.

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## ARRANGEMENT REGARDING BOVINE MEAT

### PREAMBLE

*Convinced* that increased international co-operation should be carried out in such a way as to contribute to the achievement of greater liberalization, stability and expansion in international trade in meat and live animals;

*Taking* into account the need to avoid serious disturbances in international trade in bovine meat and live animals;

*Recognizing* the importance of production and trade in bovine meat and live animals for the economies of many countries, especially for certain developed and developing countries,

*Mindful* of their obligations to the principles and objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");<sup>1</sup>

*Determined*, in carrying out the aims of this Arrangement to implement the principles and objectives agreed upon in the Tokyo Declaration of Ministers, dated 14 September 1973 concerning the Multilateral Trade Negotiations, in particular as concerns special and more favourable treatment for developing countries;

The participants in the present Arrangement have, through their representatives, agreed as follows:

### PART ONE

#### GENERAL PROVISIONS

##### *Article I*

##### *Objectives*

The objectives of this Arrangement shall be:

- (1) to promote the expansion, ever greater liberalization and stability of the international meat and livestock market by facilitating the progressive dismantling of obstacles and restrictions to world trade in bovine meat

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<sup>1</sup> This provision applies only among GATT contracting parties.

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and live animals, including those which compartmentalize this trade, and by improving the international framework of world trade to the benefit of both consumer and producer, importer and exporter;

- (2) to encourage greater international co-operation in all aspects affecting the trade in bovine meat and live animals with a view in particular to greater rationalization and more efficient distribution of resources in the international meat economy;
- (3) to secure additional benefits for the international trade of developing countries in bovine meat and live animals through an improvement in the possibilities for these countries to participate in the expansion of world trade in these products by means of *inter alia*:
  - (a) promoting long-term stability of prices in the context of an expanding world market for bovine meat and live animals; and
  - (b) promoting the maintenance and improvement of the earnings of developing countries that are exporters of bovine meat and live animals;

the above with a view thus to deriving additional earnings, by means of securing long-term stability of markets for bovine meat and live animals;

- (4) to further expand trade on a competitive basis taking into account the traditional position of efficient producers.

*Article II*

*Product Coverage*

This Arrangement applies to bovine meat. For the purpose of this Arrangement, the term "bovine meat" is considered to include:

	CCCN
(a) Live bovine animals . . . . .	01.02
(b) Meat and edible offals of bovine animals, fresh, chilled or frozen . . . . .	ex 02.01
(c) Meat and edible offals of bovine animals, salted, in brine, dried or smoked . . . . .	ex 02.06
(d) Other prepared or preserved meat or offal of bovine animals . . . . .	ex 16.02

and any other product that may be added by the International Meat Council, as established under the terms of Article V of this Arrangement, in order to accomplish the objectives and provisions of this Arrangement.

*Article III*  
*Information and Market Monitoring*

1. All participants agree to provide regularly and promptly to the Council, the information which will permit the Council to monitor and assess the overall situation of the world market for meat and the situation of the world market for each specific meat.

2. Participating developing countries shall furnish the information available to them. In order that these countries may improve their data collection mechanism, developed participants, and any developing participants able to do so, shall consider sympathetically any request to them for technical assistance.

3. The information that the participants undertake to provide pursuant to paragraph 1 of this Article, according to the modalities that the Council shall establish, shall include data on past performance and current situation and an assessment of the outlook regarding production (including the evolution of the composition of herds), consumption, prices, stocks of and trade in the products referred to in Article II, and any other information deemed necessary by the Council, in particular on competing products. Participants shall also provide information on their domestic policies and trade measures including bilateral and plurilateral commitments in the bovine sector, and shall notify as early as possible any changes in such policies and measures that are likely to affect international trade in live bovine animals and meat. The provisions of this paragraph shall not require any participant to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

4. The secretariat of the Arrangement shall monitor variations in market data, in particular herd sizes, stocks, slaughterings and domestic and international prices, so as to permit early detection of the symptoms of any serious imbalance in the supply and demand situation. The secretariat shall keep the Council apprized of significant developments on world markets, as well as prospects for production, consumption, exports and imports.

*Note:* It is understood that under the provisions of this Article, the Council instructs the secretariat to draw up, and keep up to date, an inventory of all measures affecting trade in bovine meat and live animals, including commitments resulting from bilateral, plurilateral and multi-lateral negotiations.

*Article IV*  
*Functions of the International Meat Council*  
*and Co-operation between the Participants to this Arrangement*

1. The Council shall meet in order to:
  - (a) evaluate the world supply and demand situation and outlook on the basis of an interpretative analysis of the present situation and of probable developments drawn up by the secretariat of the Arrangement, on the basis of documentation provided in conformity with Article III of the present Arrangement, including that relating to the operation of domestic and trade policies and of any other information available to the secretariat;
  - (b) proceed to a comprehensive examination of the functioning of the present Arrangement;
  - (c) provide an opportunity for regular consultation on all matters affecting international trade in bovine meat.
2. If after evaluation of the world supply and demand situation referred to in paragraph 1 (a) of this Article, or after examination of all relevant information pursuant to paragraph 3 of Article III, the Council finds evidence of a serious imbalance or a threat thereof in the international meat market, the Council will proceed by consensus, taking into particular account the situation in developing countries, to identify, for consideration by governments, possible solutions to remedy the situation consistent with the principles and rules of GATT.
3. Depending on whether the Council considers that the situation defined in paragraph 2 of this Article is temporary or more durable, the measures referred to in paragraph 2 of this Article could include short-, medium-, or long-term measures taken by importers as well as exporters to contribute to improve the overall situation of the world market consistent with the objectives and aims of the Arrangement, in particular the expansion, ever greater liberalization, and stability of the international meat and livestock markets.
4. When considering the suggested measures pursuant to paragraphs 2 and 3 of this Article, due consideration shall be given to special and more favourable treatment to developing countries, where this is feasible and appropriate.
5. The participants undertake to contribute to the fullest possible extent to the implementation of the objectives of this Arrangement set forth in Article I. To this end, and consistent with the principles and rules of the

General Agreement, participants shall, on a regular basis, enter into the discussions provided in Article IV:1 (c) with a view to exploring the possibilities of achieving the objectives of the present Arrangement, in particular the further dismantling of obstacles to world trade in bovine meat and live animals. Such discussions should prepare the way for subsequent consideration of possible solutions of trade problems consistent with the rules and principles of the GATT, which could be jointly accepted by all the parties concerned, in a balanced context of mutual advantages.

6. Any participant may raise before the Council any matter<sup>2</sup> affecting this Arrangement, *inter alia*, for the same purposes provided for in paragraph 2 of this Article. The Council shall, at the request of a participant, meet within a period of not more than fifteen days to consider any matter<sup>2</sup> affecting the present Arrangement.

## PART TWO

### Article V

#### *Administration of the Arrangement*

##### 1. *International Meat Council*

An International Meat Council shall be established within the framework of the GATT. The Council shall comprise representatives of all participants to the Arrangement and shall carry out all the functions which are necessary to implement the provisions of the Arrangement. The Council shall be serviced by the GATT secretariat. The Council shall establish its own rules of procedure, in particular the modalities for consultations provided for in Article IV.

##### 2. *Regular and special meetings*

The Council shall normally meet at least twice each year. However the Chairman may call a special meeting of the Council either on his own initiative, or at the request of a participant to this Arrangement.

<sup>2</sup> Note: It is confirmed that the term "matter" in this paragraph includes any matter which is covered by multilateral agreements negotiated within the framework of the Multilateral Trade Negotiations, in particular those bearing on export and import measures. It is further confirmed that the provisions of Article IV, paragraph 6, and this footnote are without prejudice to the rights and obligations of the Parties to such agreements.

### 3. *Decisions*

The Council shall reach its decisions by consensus. The Council shall be deemed to have decided on a matter submitted for its consideration if no member of the Council formally objects to the acceptance of a proposal.

### 4. *Co-operation with other organizations*

The Council shall make whatever arrangements are appropriate for consultation or co-operation with intergovernmental and non-governmental organizations.

### 5. *Admission of observers*

- (a) The Council may invite any non-participating country to be represented at any of its meetings as an observer.
- (b) The Council may also invite any of the organizations referred to in paragraph 4 of this Article to attend any of its meetings as an observer.

## PART THREE

### • *Article VI*

#### *Final Provisions*

#### 1. *Acceptance*<sup>3</sup>

- (a) This Arrangement is open for acceptance, by signature or otherwise, by governments members of the United Nations, or of one of its specialized agencies and by the European Economic Community.
- (b) Any government<sup>4</sup> accepting this Arrangement may at the time of acceptance make a reservation with regard to its acceptance of any of the provisions in the present Arrangement. This reservation is subject to the approval of the participants.
- (c) This Arrangement shall be deposited with the Director General to the CONTRACTING PARTIES to the GATT who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof to each participant. The texts of this Arrangement in the English, French and Spanish languages shall all be equally authentic.

<sup>3</sup> The terms "acceptance" or "accepted" as used in this Article include the completion of any domestic procedures necessary to implement the provisions of this Arrangement.

<sup>4</sup> For the purpose of this Arrangement, the term "government" is deemed to include the competent authorities of the European Economic Community.

(d) The entry into force of this Arrangement shall entail the abolition of the International Meat Consultative Group.

2. *Provisional application*

Any government may deposit with the Director-General to the CONTRACTING PARTIES to the GATT a declaration of provisional application of this Arrangement. Any government depositing such a declaration shall provisionally apply this Arrangement and be provisionally regarded as participating in this Arrangement.

3. *Entry into force*

This Arrangement shall enter into force, for those participants having accepted it, on 1 January 1980. For participants accepting this Arrangement after that date, it shall be effective from the date of their acceptance.

4. *Validity*

This Arrangement shall remain in force for three years. The duration of this Arrangement shall be extended for further periods of three years at a time, unless the Council, at least eighty days prior to each date of expiry, decides otherwise.

5. *Amendment*

Except where provision for modification is made elsewhere in this Arrangement the Council may recommend an amendment to the provisions of this Arrangement. The proposed amendment shall enter into force upon acceptance by the governments of all participants.

6. *Relationship between the Arrangement and the GATT*

Nothing in this Arrangement shall affect the rights and obligations of participants under the GATT.<sup>3</sup>

7. *Withdrawal*

Any participant may withdraw from this Arrangement. Such withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT.

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<sup>3</sup> This provision applies only among GATT contracting parties.



ISSN 0254-1475

COM(94) 143/2 final

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Catalogue number : CB-CO-94-171-EN-C

ISBN 92-77-67832-1

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Office for Official Publications of the European Communities

L-2985 Luxembourg

