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CONCERNING NEGOTIATIONS REGARDING

ACCESS TO THIRD COUNTRY PUBLIC PROCUREMENT MARKETS

IN THE FIELDS COVERED BY

DIRECTIVE 93/38 (THE UTILITIES DIRECTIVE).

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INTRODUCTION

1. This report describes the state of play as of 31 December 1997 regarding access for Community suppliers and service providers to third country markets in the fields covered by Directive 93/38/EEC of 14 June 1993, on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ("the Utilities Directive")¹. It is presented in accordance with Article 36 (6) and Article 37 (2) of that Directive.
2. On 3 March 1993, the Commission presented a first progress report² on negotiations in the fields covered by Directive 90/531/EEC of 17 September 1990³. This Directive has in the meantime been replaced by Directive 93/38/EEC of 14 June 1993 covering supplies and works contracts as well as services contracts. A second progress report⁴ was presented by the Commission on 7 September 1994. Since then, no other reports have been presented by the Commission due to the fact that no further multi- nor bilateral agreements were concluded during the period immediately following the conclusion of the Uruguay Round.
3. In 1996 and 1997 some progress has been made. Hence, the results obtained are presented in this report. However, in order to assess all the new (and prospective) implications of the negotiation processes, the Commission has preferred to present in this report not only the progress made, but also the general state of play in this field. This report therefore gives and, where necessary, up-dates information on the agreements which the Community has already signed with third countries and which cover procurement in the fields covered by the Directive, including the WTO Agreement on Government Procurement.
4. After a summary of the negotiations in section A of the report, section B deals with the agreements in force, presented by legal instrument. Section C then presents the results by sector. Negotiation processes concluded but not yet in force are described in part D. Part E provides information on barriers in the field of public procurement and proposed lines of action. The current bilateral or multilateral negotiations that the Commission is conducting or could conduct with third countries in the same fields are described in part F. Information is given in section G on how to find

1 OJ L 199/84, of 9 August 1993.

2 COM (93) 80 final, of 3 March 1993.

3 OJ L 297/1, of 29 October 1990.

4 COM (94) 342 final, of 7 September 1994.

opportunities abroad, as well as on the rights from which European suppliers and service providers benefit. Finally, lists of all the relevant agreements and publication references are included in sections H and I.

A. SUMMARY OF THE NEGOTIATIONS

5. At multilateral level, the GPA entered into force on 1 January 1996. The Commission has started to monitor the implementation by other parties of the obligations set out in the Agreement. Negotiations with third countries for accession to the GPA have been completed for Aruba; Hong Kong, China⁵; Liechtenstein and Singapore which are now full GPA members. Discussions continue with Chinese Taipei⁶ and Panama on their offers. However, for Chinese Taipei GPA membership must await completion of the WTO accession procedure (see sections B.1 and D.1.1).
6. However the most important results obtained by the Union in this period in terms of market access agreements in the field of public procurement are the conclusion of bilateral agreements with Israel and Korea, and the negotiations with Switzerland.
7. Two agreements were reached with Israel. The first one deals with the bilateral broadening of the scope of the GPA for both parties. New commitments particularly concern the urban transport sector, which will now be open to EC suppliers. The second agreement concerns procurement by telecommunications operators. This bilateral agreement remains outside the scope of the GPA (see sections B.1 and B.4).
8. A similar agreement has also been negotiated with Korea. It opens the Korean telecommunications equipment (and related services) market to European suppliers. The agreement only concerns the Korean public operator. However, in a separate memorandum, Korea is committed not to interfere in the procurement policy of the privately-owned telecommunications service providers (see section B.4).
9. With respect to Switzerland, the Commission services have been negotiating with the Swiss authorities on a comprehensive agreement on public procurement. Agreement has been reached on virtually all issues, but can only be formalised as part of the wider negotiations package with Switzerland. It is expected that this agreement would open to EC suppliers all sectors covered by Directive 93/38, including procurement by public and private entities having exclusive and special rights (see section E.2.2).
10. Further negotiations are envisaged with a number of countries pursuant in particular to those bilateral agreements already signed by the EC which provide for future negotiations. Also at multilateral level, three parallel

⁵ Hong Kong, China is now the official name of this territory. This is therefore the name that will be used in this report. However, it must be noted that only Hong Kong is party to the WTO (and the GPA), while the rest of China is not.

⁶ Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, hereinafter referred to as Chinese Taipei.

processes have started in 1997 within the WTO framework: an early review of the GPA, the negotiations on procurement rules on services and discussions on transparency in government procurement (see section F).

B. AGREEMENTS IN FORCE (AS OF 31 DECEMBER 1997): BY INSTRUMENT

11. Several agreements concluded between the Community and other third countries in the fields covered by the directive have entered into force. The most important one is the Agreement on Government Procurement (GPA), a plurilateral agreement concluded within the framework of the World Trade Organisation (WTO) (see section 1). This agreement, however, does not in practice cover all the sectors covered by the Utilities directive.
12. The framework established by the GPA is completed by other agreements which apply independently, such as the Agreement on the European Economic Area (see section 2 *infra*) or the bilateral agreements with the Central and Eastern European Countries (see section 3 *infra*). Finally, the telecommunications sector is dealt with in a separate section of this report (see section 4 *infra*).

1. THE WTO AGREEMENT ON GOVERNMENT PROCUREMENT.

1.1. Introduction.

13. In pursuance of Article IX:6(b) of the GATT Government Procurement Agreement (Tokyo Round), negotiations were undertaken with a view to broadening its coverage to entities at sub-central level and entities operating in utility sectors and extending it to cover works and other services contracts. The negotiations were conducted in the framework of the Uruguay Round and were concluded on 15 December 1993 in Geneva. The new Government Procurement Agreement ("the GPA") was signed on 15 April 1994, subject to ratification, at the Marrakesh Ministerial Conference. It entered into force on 1 January 1996⁷.
14. At Community level, the GPA, as one of the plurilateral agreements in annex 4 to the Agreement establishing the WTO was concluded on behalf of the EC by a Council Decision⁸. The decision was adopted by the Council following the ratification procedure established in article 228 (3) second subparagraph, which requires the assent of the European Parliament. Such assent was delivered on 14 December 1994.

⁷ As for Korea; Aruba; Hong Kong, China; Liechtenstein and Singapore, see *infra*.

⁸ Council Decision 94/800/EC of 22 December 1994, OJ L 336/1, of 23 December 1994. Moreover, the text of the GPA was published in all the official languages of the EC later in 1996 (OJ C 258/1, of 3 September 1996).

15. The following countries are parties to the Agreement: Canada, the European Communities and fifteen Member States, Hong Kong, China,⁹ Israel, Japan, Korea¹⁰, Liechtenstein¹¹, the Kingdom of the Netherlands with respect to Aruba¹², Norway, Singapore¹³, Switzerland and the United States.
16. Seven WTO Members have observer status: Argentina, Australia, Bulgaria, Chile, Colombia, Iceland, Panama, Poland and Turkey. Two non-WTO members have also observer status: Chinese Taipei and Latvia. Observer status has been granted to the International Monetary Fund (IMF) and to the Organisation for Economic Co-operation and Development (OECD). The European Free Trade Association (EFTA) and the Inter-American Development Bank (IABD) have also requested observer status. Some of the countries having observer status have applied for accession to the agreement (see infra, section D.1).
17. The GPA can be seen as consisting of two separate parts. The first part deals with procedural rules which covered entities must apply when awarding contracts (see point 1.2 infra), while the second part is made up of annexes detailing coverage for each of the Parties. Coverage depends on the contracting entity on the one hand (see point 1.3 infra) and on the supply, work or service concerned (v. point 1.4 infra).

1.2. Procedural Rules

18. The procedural rules lay down requirements regarding publicity for entities' intended procurement, qualification systems, calls for tender and contract awards; specification of goods, works and services in a manner intended to ensure that the market is open to a wide range of bidders; transparent procedures for the selection of candidates and the evaluation of bids; objective criteria for the award of contracts announced in advance; and challenge procedures to ensure that bidders who find that their rights are not being respected can obtain timely redress.

⁹ As regards Hong Kong, China, the instrument of accession was deposited on 20 May 1997 and the agreement entered into force on 19 June 1997.

¹⁰ As regards Korea, the agreement entered into force on 1 January 1997.

¹¹ As regards Liechtenstein, the instrument of accession was deposited on 19 August 1997 and the agreement entered into force on 18 September 1997.

¹² As regards Aruba, the instrument of accession was deposited on 25 September 1996 and the agreement entered into force on 25 October 1996.

¹³ As regards Singapore, the instrument of accession was deposited on 20 September 1997 and the agreement entered into force on 20 October 1997.

19. The procedures laid down in the GPA are essentially identical to those of the Community's procurement Directives. Thus amendments to the latter were not really necessary. However, it has been considered appropriate to nevertheless slightly amend the EC directives on some points so as to simplify and clarify the application in practice of both the Directives and the GPA. A directive has been adopted modifying the classical sector directives¹⁴, the other directive modifying the utilities directive will be soon adopted.

1.3. The coverage of the GPA: contracting entities contained in the national offers.

20. The second part of the Agreement contains the specific national annexes which list the central and sub-central government entities¹⁵ and other public bodies and utilities which must carry out their procurement in line with the rules of the Agreement¹⁶. These rules only apply above predetermined thresholds, which may vary from one country to another (see section C, table 2 infra). The rights of the suppliers, contractors and service providers from each country party to the agreement vary according to the scope of the respective national offers under the Agreement. Consequently, the obligations of contracting entities are not the same within a particular sector with respect to the treatment to be accorded to suppliers, contractors and service providers from the other countries which are parties to the agreement. In addition, those obligations are not identical as regards the different sectors within one country.
21. Coverage at central government level was reached on a Most Favoured Nation treatment basis, only for the countries party to the Agreement. At sub-central government level, agreement was reached on a reciprocal basis.
22. Coverage in the utilities sector was also agreed on a reciprocal basis, strictly in line with the provisions of Article 36 of the EC Utilities Directive. The Community's reciprocal approach is reflected in the general notes and derogations from the principle of Most Favoured Nation treatment which are contained in its offer.

¹⁴ See European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively; OJ L 328/1, of 28 November 1997.

¹⁵ Annexes 1 and 2 of Appendix I of the GPA.

¹⁶ Annex 3 of Appendix I of the GPA.

23. A detailed analysis of the opportunities of access for EC suppliers to the markets of other Parties was given in a former Report¹⁷ with respect to the following parties: Canada, Israel, Japan, Korea, Norway, Switzerland and the United States. Since then, no changes have been produced, except for Israel with which the EC concluded a bilateral agreement expanding the scope of their GPA commitments. Details are given below. In addition, details are also given on the offers made by Aruba; Hong Kong, China; Liechtenstein and Singapore, as these are the countries that have joined the GPA since then. Interpretative tables by sector are provided in part C of this report.

- Broadening the scope of the GPA with respect to existing contracting parties: Israel.

24. Israel made no offer on urban transport; however, except for the bus services, it has been included in a bilateral agreement¹⁸. Article 36 therefore only applies to Israeli suppliers and service providers as regards bus services. This bilateral agreement also broadens the GPA bilaterally concerning certain services and procurement carried out by hospitals.
25. In addition, the agreement goes beyond the GPA obligations, and Israel has also committed itself to applying the national treatment principle to EC suppliers, products and services with respect to procurement by the municipalities not covered by the list of sub-central entities in the GPA.

¹⁷ COM (94) 342 final, of 7 September 1994.

¹⁸ Negotiation of this bilateral agreement has been pursued in parallel with another bilateral agreements on procurement by telecommunications operators (see infra). See Council Decision of 24 February concerning the conclusion of two Agreements between the EC and the State of Israel on procurement by government and telecommunications operators, OJ L 202/72, in particular pages 85 and seq., of 30 July 1997. The Agreement was signed on 10 July 1997 and entered into force on 1st August 1997.

- The Aruban Offer.

26. Aruba has made a comprehensive offer, including all sectors covered by the EC's final offer¹⁹, which includes publicly owned entities operating in the electrical, water, urban transport, port and airport sectors²⁰. Aruba has gone even further by including in its list of commitments procurement by its telecommunications operator.

- The Hong Kong, China offer.

27. The Hong Kong, China offer includes the water, urban transport, port and airport sectors. The Water Supplies Department, the Environmental Protection Department and the Drainage Services Department are among the Central Government entities that procure in accordance with the provisions of the GPA. The thresholds above which the access to EC suppliers is guaranteed are 130 000 SDR for goods and services, and 5 000 000 SDR for construction services.
28. The two public contracting authorities in the field of urban transport are the Mass Transit Railway Corporation and the Kowloon Canton Railway Corporation. They operate the mass transit system, the suburban railway and the light railway. Moreover, the Mass Transit Railway Corp. will operate the new railway system for Hong Kong, China's second airport at Chek Lap Kok. Both corporations are included in the annex 3 of the Hong Kong, China offer. The thresholds that apply are 400 000 SDR for supplies and services and 5 000 000 SDR for construction services. Only the Peak funicular railway and the traditional street tramway fall outside the scope of GPA commitments. However, these two rail systems are owned by private operators.
29. As regards airports, the Airport Authority is also included in annex 3 of the offer. Therefore, the same thresholds apply to those used in the urban transport sector. The Airport Authority is the main contracting authority for works projects in the airport sector, in particular for the new airport at Chek Lap Kok, already under construction. Equipment is procured through the New Airport Buying Group of the Procurement Division of the Government Supplies Department, which is included in the annex 1 list (Central Government). As a result, the thresholds are lower: 130 000 SDR for supplies. The Civil Aviation Authority is also included in the annex 1 list.

¹⁹ Although as regards Aruba, there are some differences in the list of services and construction services committed.

²⁰ The other sectors covered by the Utilities Directive are not therefore included in the GPA, i.e.: energy other than electricity, transport other than urban transport and telecommunications. Award of services contracts by utilities in Spain is only subject to the GPA from 1 January 1997. In Portugal and Greece, award of any contract by utilities is not subject to the GPA prior to 1 January 1998.

30. The main procurement authority in the port sector is the Civil Engineering Department the Works Branch of the Government. The Marine Department and the Planning Department are advisory authorities which are also subject to the rules of the GPA. It has to be stressed that the port of Hong Kong, China and related industries account for approximately 15% of Hong Kong, China's GDP. It is the busiest container port in the world and its position on the South China Coast is of strategic importance, both as an entrepot for China as well as a hub port for Asian and World trade.
31. Hong Kong, China has not offered its electricity sector in its list of commitments because of the private nature of the operators. However, the Hong Kong, China Government has made a commitment to self-denial, ensuring that it does not hold any interest in the electricity companies nor seeks to influence their procurement policy. The regulatory authority, Electrical and Mechanical Services Department, is itself included. Even though it does not operate the electricity network and does not supply services to the public, it procures electronic and electrical equipment for the needs of other public departments or projects, such as hospitals and government laboratories. Therefore, given that market access is guaranteed, the EC discriminatory provision will also be removed in this sector.
32. However, challenge procedures will only be in place one year following the entry into force of the agreement.

- The Liechtenstein offer.

33. Liechtenstein is part of the European Economic Area. EC suppliers therefore benefit from a wider coverage under this Agreement than under the GPA (see infra section B.2). As a result, it is unnecessary to give details on its GPA offer.

- The Singapore offer.

34. The Singapore offer includes contracting authorities in the urban transport, port and airport sectors. As regards water supply, Singapore relies to a great extent on water supplies from Malaysia and Indonesia. As a result, the Singapore Government was unable to offer a commitment in this sector. Only procurement through the Ministry of Environment or through the Ministry of Trade and Industry would be subject to the GPA. In particular, sewerage and pollution control are the responsibility of the Ministry of the Environment. The threshold values for the Central Government authorities are 130 000 SDR for supplies and services, and 5 000 000 SDR for construction services.

35. With respect to electricity, the Singapore Government is in the process of privatising Singapore Power, the public operator, which is not bound by the Agreement. As a result, only procurement done by the Ministry of Trade and Industry will be subject to the GPA. In this regard, the European Community will mirror Singapore's offer by including a reference in the EC General Notes to the Agreement. As a result article 36 Community preference of the Utilities Directive will not be waived in the electricity sector vis-à-vis products originating in Singapore.
36. The Maritime and Port Authority of Singapore, the Land Transport Authority of Singapore and the Civil Aviation Authority of Singapore are the main contracting authorities for the port, urban transport and airport sectors. All of them are included in the list of commitments. The threshold values are 400 000 SDR for goods and services and 5 000 000 SDR for construction services. As a result, article 36 discriminatory provisions will be removed with respect to these three sectors.

1.4. The Coverage of the GPA: supplies, services and construction services contracts.

37. The contracts concerned by the GPA are supplies, services and construction services. As regards supply of goods, all products are covered by the Agreement (if the contracting entity is covered). The only exceptions apply to defence and a very limited number of other products.
38. As regards services and construction services contracts, only the categories listed by each country in annexes 4 and 5 of Appendix I are covered by the GPA. Moreover, some countries apply the principle of reciprocity for each category of service. This entails that a contracting entity of one of the parties to the agreement is obliged to ensure equal treatment of requests for participation and tenders from the European Union only where the EU has accepted to open its markets for the service in question to service providers from that particular country (see tables in part C infra)²¹.
39. In addition, GPA commitments in the services sectors are only binding with reference to their respective schedule of commitments in the General Agreement of Trade and Services (GATS). In other words, procurement in sectors specified is only opened to GPA members to the extent that the services sector in question has been covered in the GATS schedule of commitments of the offeror country.

²¹ However, it must be recalled that with respect to the United States, EU service providers have access to the US contracts at sub-federal level, although EC service contracts at sub-federal level are closed to the US service providers. This situation derives from the bilateral agreement and is linked to the limited number of entities committed by the US at sub-federal level.

1.5. Consequence of the entry into force of the GPA with respect to Article 36 of Directive 93/38.

40. Article 36 of the Utilities Directive allows for a Community preference, but provides that this shall apply only to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those countries.
41. Following the conclusion of the GPA and the bilateral agreement with the US expanding its coverage, Article 36 of Directive 93/38 no longer applies in the fields covered by these agreements to tenders comprising products originating in the countries signatories to the GPA, depending on their offer. To make clear this consequence of the GPA, an explanatory declaration was published in the Official Journal²². See section G.2 *infra*, for more information.

2. THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA: EFTA COUNTRIES.

42. The Agreement on the European Economic Area ("the EEA Agreement") signed on 2 May 1992 by the Community, its Member States and the EFTA Countries, provides in its Article 65 and Annex XVI that the provisions of the Utilities Directive be applied in the EFTA Countries²³. The EEA Agreement entered into force on January 1994 for the following EFTA Countries: Austria, Finland, Iceland, Norway and Sweden; and on January 1996 for Liechtenstein. As regards Norway, complete reciprocal opening was achieved by the end of the derogation period (31 December 1994). Following enlargement of the European Union on January 1, 1995 with Austria, Finland and Sweden, the three remaining EFTA countries bound by the public procurement provisions of the EEA Agreement are Iceland (since 01.01.1994), Liechtenstein (since 01.01.1996) and Norway (since 01.01.1995).

²² See OJ C 322/9, of 9 December 1995, Entry into force of the WTO Agreement on Government Procurement in the light of Article 36 of Directive 93/38/EEC.

²³ See OJ L 1/3, of 3 January 1994.

3. **ASSOCIATION AGREEMENTS: CENTRAL AND EASTERN EUROPEAN COUNTRIES (CEECs).**

43. The Community has signed a number of bilateral agreements with most of the CEECs. Most of these agreements, the so-called "Europe Agreements" are association agreements which provides for the preparation of the signatory countries for future accession to the EU. The European Council meeting in Copenhagen in June 1993 established that those countries that had signed "Europe Agreements" with the EU could be eligible for membership. Currently, only six out of the ten Europe Agreements negotiated are in force: **Bulgaria**²⁴, the **Czech Republic**²⁵, **Hungary**²⁶, **Poland**²⁷, **Romania**²⁸ and the **Slovak Republic**²⁹.
44. The "Europe Agreements", contain a public procurement clause. This clause, almost identical in all of these six agreements, establishes that companies of the CEEC concerned enjoy full access to the contract award procedures in the Community under conditions no less favourable than those applied to Community companies.
45. National treatment has also been granted to Community companies established under specific forms in the countries concerned. These must be joint-ventures and subsidiaries. Branches or agencies are excluded. This is clearly indicated in the agreements with Romania and Bulgaria. As for the other four agreements, there is a complementary exchange of letters with the same intention³⁰.
46. By the end of the transitional periods, which for these 6 countries are of ten years from the entry into force of the agreements, national treatment will be granted to all Community companies and full access to procurement will be established on a reciprocal basis³¹. Until such time, article 36 still applies.

²⁴ OJ L 358, of 31 December 1994, in force from 1 February 1995. See Art. 68.

²⁵ OJ L 360, of 31 December 1994, in force from 1 February 1995. See Art. 68.

²⁶ OJ L 347, of 31 December 1993, in force from 1 February 1994. See Art. 66.

²⁷ OJ L 348, of 31 December 1993, in force from 1 February 1994. See Art. 67.

²⁸ OJ L 357, of 31 December 1994, in force from 1 February 1995. See Art. 68.

²⁹ OJ L 359, of 31 December 1994, in force from 1 February 1995. See Art. 68.

³⁰ See OJ L 347/267 of 31 December 1993; OJ L 348/182 of 31 December 1993 for Poland; OJ L 359/212 of 31 December 1994 for the Slovak Republic and OJ L 360/212 of 31 December 1994 for the Czech Republic.

³¹ The end of the transitional periods for these countries will be: 31 January 2004 for Hungary and Poland; and 31 January 2005 for Bulgaria, the Czech Republic, Romania and the Slovak Republic.

4. PROCUREMENT IN THE TELECOMMUNICATIONS SECTOR.

4.1. Introduction.

47. Parties signatories to the EEA must apply the EC rules on public procurement, which include procurement in the telecommunication sector. EC suppliers therefore have access to the markets of **Iceland, Liechtenstein and Norway.**
48. The telecommunications sector was not included in the GPA, and the EC withdrew its offer on telecommunications in the closing stages of the negotiations in the absence of any credible counter offer from other major Parties. As a result, most parties to the GPA decided not to bind the procurement of their telecommunications operators under the agreement. Only **Aruba** has completely bound its telecommunications operator (Setar) to the rules of the agreement. While Israel offered its national communications company on a reciprocal basis, Korea also included its public operator (Korea Telecom), except for procurement of telecommunications equipment.
49. Hence, negotiations with Israel were pursued outside the GPA framework leading to the conclusion of a bilateral agreement. Following the entry into force of the Korea-US telecommunications agreement which discriminates against European suppliers, the EC also negotiated an agreement with Korea outside the GPA framework on the access to the Korean market of telecommunications equipment.
50. As a result, Article 36 of the Utilities Directive is only waived in this sector with respect to Iceland, Liechtenstein, Norway, Aruba, Israel and Korea.

4.2. Israel, the bilateral agreement on procurement by telecommunications operators.

51. The first bilateral agreement concluded in this sector is the one negotiated with Israel. During the negotiations of the GPA, Israel offered its national communications company, Bezeq, on a reciprocal basis (with the exception of the procurement of cables). As the Community finally withdrew its offer in this sector, bilateral negotiations started between Israel and the EC covering telecommunications and other sectors (mainly urban transport, v.

supra section 1.3) which have led to the conclusion of the bilateral agreement on procurement by telecommunications operators³².

52. As regards Israel, the agreement covers procurement by Bezeq, mobile telecommunication operators, cable operators when they provide telecommunication services, and international operators. The EC telecommunications operators are those which must already follow the rules set out in Directive 93/38. Standard procurement and challenge procedures apply to contracts above certain thresholds: SDR 355 000 as regards supplies and services, and SDR 8 500 000 as regards construction services in the case of Israel. Thresholds in the case of the EC are equal to those in the directives (ECU 600 000 and ECU 5 000 000 respectively). With respect to services, including construction services, this Agreement applies to those listed in Annex II of the Agreement. In any case, the principle of non-discrimination applies to all procurement contracts by telecommunications operators, regardless of their value.
53. The agreement takes into account the particular provision of the EC Utilities Directive which establishes that procurement rules shall not apply to contracts awarded by telecommunications operators that are operating under full and effective competition in accordance with relevant legislation³³. It also foresees that the entry into force of the agreement as regards Portugal and Greece shall not be before 1 January 1998.

4.3. Korea, the bilateral agreement on procurement by telecommunications operators.

54. Following intense negotiations with Korea, the EC has reached an agreement with Korea to open its telecommunications equipment (and related services) market to European suppliers³⁴. The value of the Korean annual market is around US\$ 6 billion. It has to be remembered that Korea Telecom is already included in Annex 3 of the Korean offer in the GPA for procurement other than telecommunications equipment.

³² Negotiations of this bilateral agreement have been carried out in parallel with another bilateral agreement on procurement by telecommunications operators (v. supra). See Council Decision of 24 February concerning the conclusion of two Agreements between the EC and the State of Israel on procurement by government and telecommunications operators, OJ L 202/72, in particular pages 74 and seq., of 30 July 1997. The Agreement was signed on 10 July 1997 and entered into force on 1st August 1997.

³³ See article 8.1 of the Utilities Directive (loc.cit.), and art. 1.6 of the Agreement.

³⁴ See Council Decision of 22 April 1997 concerning the conclusion of an Agreement on telecommunications procurement and an Agreement in the form of a memorandum concerning the procurement of private telecommunications operators between the European Community and the Republic of Korea, OJ L 321/30, of 22 November 1997. The Agreement was signed on 29 October 1997 and entered into force on 1st November 1997.

55. The agreement only binds the network of Korea Telecom, the government-owned operator, which accounts for some 80% of the Korean market. In addition, private operators tender for contracts in an independent and non-discriminatory way. As a result of the agreement, Korea will remove discriminatory procurement legislation and practices, and the EC will cease to apply Article 36 of the Utilities directive.
56. Standard procurement and challenge procedures apply to contracts above certain thresholds: SDR 450 000 in the case of Korea. Thresholds in the case of the EC are equal to those in the directives (ECU 600 000). In any case, the principle of national treatment applies to contracts above SDR 130 000.
57. The agreement takes into account the particular provision of the EC Utilities Directive which establishes that procurement rules shall not apply to contracts awarded by telecommunications operators that are operating under full and effective competition in accordance with relevant legislation³⁵. It also provides that the entry into force of the agreement as regards Portugal and Greece shall not be before 1 January 1998.
58. Although the Agreement only entered into force on 1st November 1997, Korea Telecom accepted preliminary proposals for qualification by European suppliers from the date of initialisation (22 November 1996). As a result, a European firm was able to win a contract valued at US\$ 30 million in early December 1996.

³⁵ See article 8.1 of the Utilities Directive (*loc.cit.*), and art. 1.5.2 of the Agreement.

C. AGREEMENTS IN FORCE (AS OF 31 DECEMBER 1997): BY SECTOR

59. Tables 1.1 and 1.2 below describe the rights of suppliers, contractors and service providers of the EU in third countries as regards access to procurement markets in the various utility sectors. Access is granted above the threshold values indicated in this table.
60. However, it should be noted that only the EEA countries and Switzerland follow the sectoral approach which is used in the EU, that is, opening or closing a complete sector to suppliers of a particular country. As regards the other countries, they bind certain contracting entities which operate in these fields³⁶. In some cases, access can be rather reduced because of the limited number of entities covered. In those circumstances, due to the absence of comparable access, the EU has not given national treatment in the sector in question. Nevertheless, EU companies may benefit from national treatment in this particular sector with respect to that limited number of entities offered by the third country³⁷.
61. Table 2 contains the exchange values in national currencies of the thresholds established by the GPA in Special Drawing Rights.
62. As regards services and construction services, the list of services or construction services covered by each country in those sectors may be different. Details are given in tables 3.1 to 3.10 and tables 4.1 to 4.10.

³⁶ However, these contracting entities could be government departments or local authorities, covered as such under Annexes 1 and 2 of the GPA. They are not therefore necessarily contained in Annex 3 of the GPA.

³⁷ This is particularly the case as regards the United States, given the balance reached in the bilateral agreement. For instance, EU companies have access to contracts awarded by some airports in the US. However, given their limited number, the EU has not opened its airport sector to US suppliers.

-Table 1.1: Rights of suppliers, contractors and service providers of the EU in third countries.

Access is granted above the threshold values indicated in this table (a). Please note that the sectors are only indicative. The full list of contracting entities for the country in question should be consulted (b).

Countries		EEA countries: Iceland, Norway & Liechtenstein	ARUBA	CANADA	HONG KONG, CHINA	ISRAEL
Sectors						
WATER	Supplies	EC directives	400 000 SDR		130 000 SDR	355 000 SDR
	Works	EC directives	5 000 000 SDR		5 000 000 SDR	8 500 000 SDR
	Services	EC directives	400 000 SDR		130 000 SDR	355 000 SDR
ELECTRICITY	Supplies	EC directives	400 000 SDR		Privatised (no barriers)	355 000 SDR
	Works	EC directives	5 000 000 SDR		Privatised (no barriers)	8 500 000 SDR
	Services	EC directives	400 000 SDR		Privatised (no barriers)	355 000 SDR
ENERGY NETWORKS OTHER THAN ELECTRICITY		EC directives				
		EC directives				
		EC directives				
ENERGY (exploitation of geographical area)		EC directives				
		EC directives				
		EC directives				
PORTS	Supplies	EC directives	400 000 SDR		130 000 SDR	355 000 SDR
	Works	EC directives	5 000 000 SDR		5 000 000 SDR	8 500 000 SDR
	Services	EC directives	400 000 SDR		130 000 SDR	355 000 SDR
AIRPORTS	Supplies	EC directives	400 000 SDR		4 000 000 SDR	355 000 SDR
	Works	EC directives	5 000 000 SDR		5 000 000 SDR	8 500 000 SDR
	Services	EC directives	400 000 SDR		400 000 SDR	355 000 SDR
URBAN TRANSPORT NETWORKS	Supplies	EC directives	400 000 SDR		4 000 000 SDR	355 000 SDR (c)
	Works	EC directives	5 000 000 SDR		5 000 000 SDR	8 500 000 SDR (c)
	Services	EC directives	400 000 SDR		400 000 SDR	355 000 SDR (c)
TRANSPORT NETWORKS OTHER THAN URBAN TRANSPORT	Supplies	EC directives				
	Works	EC directives				
	Services	EC directives				
TELECOMS	Supplies	EC directives	400 000 SDR			355 000 SDR
	Works	EC directives	5 000 000 SDR			8 500 000 SDR
	Services	EC directives	400 000 SDR			355 000 SDR
Sectors						
Countries		EEA countries: Iceland, Norway & Liechtenstein	ARUBA	CANADA	HONG KONG, CHINA	ISRAEL

- Table 1.2: Rights of suppliers, contractors and service providers of the EU in third countries.

Access is granted above the threshold values indicated in this table (a). Please note that the sectors are only indicative. The full list of contracting entities for the country in question should be consulted (b).

Countries		JAPAN	KOREA	SINGAPORE	SWITZERLAND	U.S.A.
Sectors						
WATER	Supplies	130 000 SDR	450 000 SDR		400 000 SDR	Mostly excluded
	Works	15 000 000 SDR	15 000 000 SDR		5 000 000 SDR	Mostly excluded
	Services	130 000 SDR (d)	450 000 SDR		400 000 SDR	Mostly excluded
ELECTRICITY	Supplies		450 000 SDR	In the process of privatisation	400 000 SDR	400 000 SDR
	Works		15 000 000 SDR		5 000 000 SDR	5 000 000 SDR
	Services		450 000 SDR		400 000 SDR	400 000 SDR Certain services excluded
ENERGY NETWORKS OTHER THAN ELECTRICITY		EC directives	450 000 SDR some entities			
		EC directives	15 000 000 SDR some entities			
		EC directives	450 000 SDR some entities			
ENERGY (exploitation of geographical area)		EC directives	450 000 SDR some entities			
		EC directives	15 000 000 SDR some entities			
		EC directives	450 000 SDR some entities			
PORTS	Supplies	130 000 SDR	130 000 SDR	400 000 SDR	400 000 SDR	400 000 SDR (e)
	Works	15 000 000 SDR	5 000 000 SDR	5 000 000 SDR	5 000 000 SDR	5 000 000 SDR
	Services	130 000 SDR (d)	130 000 SDR	400 000 SDR	400 000 SDR	400 000 SDR (f) Certain services excluded
AIRPORTS	Supplies	130 000 SDR	Excluded for EU	400 000 SDR	400 000 SDR	Mostly excluded
	Works	15 000 000 SDR	Excluded for EU	5 000 000 SDR	5 000 000 SDR	Mostly excluded
	Services	130 000 SDR (d)	Excluded for EU	400 000 SDR	400 000 SDR	Mostly excluded
URBAN TRANSPORT NETWORKS	Supplies	130 000 SDR some rail entities	Excluded for EU	400 000 SDR	400 000 SDR	Mostly excluded
	Works	15 000 000 SDR some rail entities	Excluded for EU	5 000 000 SDR	5 000 000 SDR	Mostly excluded
	Services	130 000 SDR only some rail entities (d)	Excluded for EU	400 000 SDR	400 000 SDR	Mostly excluded
TRANSPORT NETWORKS OTHER THAN URBAN TRANSPORT	Supplies	130 000 SDR some rail entities	Excluded for EU			
	Works	15 000 000 SDR some rail entities	Excluded for EU			
	Services	130 000 SDR only some rail entities (d)	Excluded for EU			
TELECOMS	Supplies		450 000 SDR (g)			
	Works		15 000 000 SDR			
	Services		450 000 SDR			
Sectors		JAPAN	KOREA	SINGAPORE	SWITZERLAND	U.S.A.
Countries						

(a) Thresholds indicated here correspond to the thresholds indicated in the different Annexes 3, which generally include entities operating in those sectors. However, contrary to the EU annexes, it might be possible to find a contracting entity operating in these sectors which is included in annex 1 (e.g. national port authority) or 2 (e.g. municipal utility). In those cases, the thresholds applicable are the ones indicated in those annexes. Table 2 below contains all the thresholds with the equivalent of SDRs in national currencies.

(b) See the relevant agreement. In most cases it will be the GPA.

(c) Except entities operating bus services

(d) The threshold for architectural, engineering and other technical services covered by the Agreement (i.e. CPC reference n° 867 except 86712-13, 22, 24 and 86727) in Japan is 450 000 SDR.

(e) For certain contracting entities in the USA, the threshold for supplies and services is the equivalent in SDR of US \$ 250 000.

(f) Contracts regarding naval construction excluded.

(g) Procurement by Korea Telecom is included in the GPA, except for telecommunications equipment, which is the subject of a separate bilateral agreement.

(*) AS REGARDS SERVICES AND WORKS, SEE TABLES 3.1 TO 3.10 AND 4.1 TO 4.10.

- Table 2: Equivalence of SDR (Special Drawing Rights) in national currencies

COUNTRY	TYPE OF CONTRACT	THRESHOLD VALUE - SDR	THRESHOLD VALUE IN NATIONAL CURRENCY
EEA COUNTRIES: ICELAND, LIECHTENSTEIN AND NORWAY	Supplies, services and works.	Thresholds established in Directive 93/38	Thresholds established in Directive 93/38
ARUBA	Supplies and services GPA, Annex 1	130 000	
	Supplies and services GPA, Annex 3	400 000	
	Construction services	5 000 000	
CANADA*	Supplies and services GPA Annex 1	130 000	
	Supplies and services GPA Annex 2		
	Supplies and services GPA Annex 3	355 000	
	Construction services	5 000 000	
HONG KONG, CHINA	Supplies and services GPA Annex 1	130 000	HK \$ 1 433 000
	Supplies and services GPA Annex 2	200 000	HK \$ 2 204 000
	Supplies and services GPA Annex 3	400 000	HK \$ 4 409 000
	Construction services	5 000 000	HK \$ 55 109 000
ISRAEL	Supplies and services GPA Annex 1	130 000	US \$ 190 000
	Supplies and services GPA Annex 2	250 000	US \$ 366 000
	Supplies and services GPA Annex 3	355 000	US \$ 519 000
	Construction services	8 500 000	US \$ 12 430 000
JAPAN	Supplies and certain services GPA Annex 1 & 3	130 000	Yen 18 000 000
	Supplies and certain services GPA Annex 2	200 000	Yen 28 000 000
	Architectural, engineering and other technical services - GPA Annex 1 & 3	450 000	Yen 65 000 000
	Architectural, engineering and other technical services - GPA Annex 2	1 500 000	Yen 210 000 000
	Construction services GPA Annex 1	4 500 000	Yen 650 000 000
	Construction services GPA Annex 2 & 3	15 000 000	Yen 2 160 000 000

KOREA	Supplies and services GPA Annex 1	130 000	Won 151 000 000
	Supplies and services GPA Annex 2	200 000	Won 233 000 000
	Supplies and services GPA Annex 3	450 000	Won 524 000 000
	Construction services GPA Annex 1	5 000 000	Won 5 830 000 000
	Construction services GPA Annex 2 & 3	15 000 000	Won 17 490 000 000
SINGAPORE	Supplies and services GPA Annex 1	130 000	
	Supplies and services GPA Annex 3	400 000	
	Construction services	5 000 000	
SWITZERLAND	Supplies and services GPA Annex 1	130 000	SFR 248 950
	Supplies and services GPA Annex 2	200 000	SFR 383 000
	Supplies and services GPA Annex 3	400 000	SFR 766 000
	Construction services	5 000 000	SFR 9 575 000
UNITED STATES OF AMERICA	Supplies and services GPA Annex 1	130 000	US \$ 190 000
	Supplies and services GPA Annex 2	355 000	US \$ 519 000
	Certain supplies and services GPA Annex 3	400 000	US \$ 585 000
	Certain supplies and services GPA Annex 3	-	US \$ 250 000
	Construction services	5 000 000	US \$ 7 311 000

* Canada has made no commitments as yet in the fields of water, energy, transport and telecommunications.

- Tables 3.1 to 3.10: List of services covered with respect to EU service providers

Table 3.1. EEA countries: Iceland, Liechtenstein and Norway

SERVICE	CPC N°
All services listed in annex XVIA and XVIB of Directive 93/38/EEC	

Table 3.2. Aruba

SERVICE	CPC N°
Legal services	861
Accountancy	862
Taxation services	863
Engineering services	8672
Computer services	841
Management consulting services	865
Franchising	8929
Insurance	812,814
Banking and securities trade	811,813
Hotel lodging services	8411
Entertainment services	9619
Recreation park and beach services	98491
Sporting services	9641
Shipping (freight and passenger transport)	72
Maritime auxiliary services: cargo handling	74
Freight transport: agency services/freight forwarding	74
Maritime auxiliary services: storage/warehousing	74
Road transport	71231, 71234, 71239

Table 3.3. Canada

SERVICE	CPC N°
Canada has made no commitments as yet in the fields of water, energy, transport and telecommunications.	

Table 3.4. Hong Kong, China

SERVICE	CPC N°
Computer and related services	843, 844, 845, 849
Rental/Leasing services without operators	83101 to 83106, 83109
Maintenance and repair of equipment	833, 8861, 8866
Market research & public opinion polling services	864
Security services	87304
Building cleaning services	874
Advertising services	871
Courier services	
Telecommunications services (Provisions of certain types of service may require licensing under the Telecommunications ordinance).	7523, 843, 7521, 7529, 754
Environmental services (sewage, refuse disposal)	9401, 9402
Financial services (there is a list of exceptions: 81402, 81339, 8119, 81323, 81339, 81319, 8131, 8133, 81339, 81333, 81321)	Ex 81
Air transportation services (excluding transportation of mail)	731, 732, 734
Road transport services	712, 6112, 8867

Table 3.5. Israel

SERVICE	CPC N°
Architectural services	8672-3
Engineering services	8671
Urban planning	8674
Computer and related services	841-3
Advertising services	871
Market research and public opinion	864
Management consulting	865-8
Environmental services	9401-5

Table 3.6. Japan

SERVICE	CPC N°
Maintenance and repair services of motor vehicles	6112
Maintenance and repair services of motorcycles and snowmobiles	6122
Other land transport services (except 71235 Mail transportation by land)	712
Rental services of sea-going vessels with operator	7213
Rental services of non-sea-going vessels with operator	7223
Air transport services (except 73210 Mail transportation by air)	73
Freight transport agency services	748
Courier services	7512
Telecommunications services	
- Electronic mail	7523
- Voice mail	7521
- On-line information and data base retrieval	7523
- Electronic data interchange (EDI)	7523
- Enhanced facsimile services	7529
- Code and protocol conversion	7523
- On-line information and/or data processing (including transaction processing)	7523
Computer and related services	84
Market research and public opinion polling services	864
Architectural, engineering and other technical services	867
Advertising services	871
Armoured car services	87304
Building-cleaning services	874
Publishing and printing services	88442
Repair services incidental to metal products, machinery and equipment	886
Sewage and refuse disposal, sanitation and other environmental protection services	94

Notes:

- 6112 Maintenance and repair services are not included with respect to those motor vehicles, motorcycles and snowmobiles which are specifically modified and inspected to meet regulations of the entities.
- 7512 Courier services are not included with respect to letters.
- 867 Architectural, engineering and other technical services related to construction services, with the exception of the following services when procured independently, are included:
- Final design services of CPC 86712 Architectural design services;
 - CPC 86713 Contract administration services;
 - Design services consisting of one or a combination of final plans, specifications and cost estimates of either CPC 86722 Engineering design services for the construction of foundations and building structures, or CPC 86723 Engineering design services for mechanical and electrical installations for buildings, or CPC 86724 Engineering design services for the construction of civil engineering works; and
 - CPC 86727 Other engineering services during the construction and installation phase.
- 88442 Publishing and printing services are not included with respect to materials containing confidential information.

Table 3.7. Korea

In the Korean General Notes it is specified that a service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4. In practice, this means that only the following list of services is covered with respect to EU service providers:

SERVICE	CPC N°
Maintenance and repair of equipment	633, 8861, 8862, 8863, 8864, 8865,
Maintenance and repair of vessels	8866
Land transport services: only transportation of containerized freight, excluding cabotage	71233
Telecommunications services: electronic mail, voice mail, on-line information and data-base retrieval, electronic data interchange, enhance/value-added facsimile services including store and forward, store and retrieve	7523
Computer and related services:	
- Consultancy services related to the installation of computer hardware	841
- software implementation services	842
- data processing services	843
- data base services	844
- maintenance and repair services of office machinery and equipment (including computers)	845
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and project management services	865, 36601
Architectural services	8671
Engineering services	8672
Integrated engineering services	8673
Urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	8674
Related scientific and technical consulting services	86751, 86752
Composition and purity testing and analysis services (only inspection, testing and analysis services of air, water, noise level and vibration level)	86761,
Technical inspection services	86764
Advertising Agency services	8711, 8719
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services:	
- Refuse water disposal services (only collection and treatment services of industrial waste water):	9401
- Industrial refuse disposal services (only collection, transport and disposal services of industrial refuse)	9402
- Cleaning services of exhaust gases and noise abatement services (services other than construction work services)	9404, 9405
- Environmental testing and assessment services (only environmental impact assessment services)	9406, 9409

Table 3.8. Singapore

SERVICE	CPC N°
Accounting, Auditing and Book-keeping services	862
Architectural services	8671
Management and consulting services	865
Building-cleaning services	874
Hotels and restaurants (Incl. Catering)	641-643
Travel Agencies and Tour operators	74710
Tourist guide services	7472
Data Processing Services	843
Database Services	844
Veterinary Services	932
Consultancy services related to the installation of computer hardware	84100
Systems and Software consulting services	84210
Translation and interpretation services	87905
Electronic Mail	7523
Voice Mail	7523
On-line information and database retrieval	7523
Electronic Data Interchange	7523
Motion picture or videotape production services	96112
Motion picture or videotape distribution services	96113
Motion picture projection services	96121
Videotape projection services	96122
Library services	96311
Engineering services	8672
Courier services	7512
Biotechnology services	
Exhibition services	
Commercial market research	
Interior design services, excluding architecture	
Professional, advisory and consulting services relating to agriculture, forestry, fishing and	

Table 3.9. Switzerland

SERVICE	CPC N°
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752* (except 7524, 7525, 7526)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investments services**	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866***
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201 - 82208
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

* except voice telephony, telex, radiotelephony, paging and satellite services.

** except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. In Finland payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).

*** except arbitration and conciliation services.

Table 3.10. United States of America

In principle, all services listed in the Universal List of Services (document MTN.GNS/W/120) are covered, except the following categories, which are excluded:

1. All transportation services, including Launching Services (CPC Categories 71, 72, 73, 74, 8859, 8868).
Note: Transportation services, where incidental to a contract for the procurement of supplies, are not subject to this Agreement.
2. Dredging.
3. All services purchased in support of military forces located overseas.
4. Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (FFRDCs).
5. Public utilities services, including telecommunications and ADP-related telecommunications services except enhanced (i.e., value-added) telecommunications services.
6. Research and Development.
7. Printing Services (for Annex 2 -subfederal- entities only)

However, in the General Notes it is specified that a service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4. In practice, this means that only the following list of services is covered with respect to EU service providers:

SERVICE	CPC N°
Maintenance and repair services	8112, 8122, 833, 888
Land transport services	Only 7512, 87304
Telecommunications services*	752* (except 7524, 7525, 7528)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and Investments services**	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866***
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201 - 82208
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

- * except voice telephony, telex, radiotelephony, paging and satellite services.
- ** except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. In Finland payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).
- *** except arbitration and conciliation services.

- Tables 4.1 to 4.10: List of construction services covered with respect to EU service providers

Table 4.1. EEA countries: Iceland, Liechtenstein and Norway

CONSTRUCTION SERVICES	CPC N°
All activities listed in annex XI of Directive 93/37/EEC	

Table 4.2. Aruba

CONSTRUCTION SERVICES	CPC N°
Construction work for buildings	612

Table 4.3. Canada

CONSTRUCTION SERVICES	CPC N°
Canada has made no commitments as yet in the fields of water, energy, transport and telecommunications.	

Table 4.4. Hong Kong, China

CONSTRUCTION SERVICES	CPC N°
All construction services listed in division 61 of CPC	61

Table 4.5. Israel

CONSTRUCTION SERVICES	CPC N°
Pre-erection work at construction sites	611
Construction work for buildings	612
Construction work for civil engineering	613
Assembly and erection of prefabricated construction	614
Special trade construction work	615
Installation work	616
Building completion and finishing work	617
Renting services related to equipment for construction	618

Table 4.6. Japan

CONSTRUCTION SERVICES	CPC N°
All construction services listed in division 51 of CPC	51

Table 4.7. Korea

CONSTRUCTION SERVICES	CPC N°
Pre-erection work at construction sites	511
Construction work for buildings	512
Construction work for civil engineering	513
Assembly and erection of prefabricated construction	514
Special trade construction work	515
Installation work	516
Building completion and finishing work	517

Table 4.8. Singapore

CONSTRUCTION SERVICES	CPC N°
Pre-erection work at construction sites	511
Construction work for buildings	512
Construction work for civil engineering	513
Assembly and erection of prefabricated construction	514
Special trade construction work	515
Installation work	516
Building completion and finishing work	517
Renting services related to equipment for construction	518

Table 4.9. Switzerland

CONSTRUCTION SERVICES	CPC N°
Pre-erection work at construction sites	511
Construction work for buildings	512
Construction work for civil engineering	513
Assembly and erection of prefabricated construction	514
Special trade construction work	515
Installation work	516
Building completion and finishing work	517
Renting services related to equipment for construction	518

Table 4.10. United States of America

CONSTRUCTION SERVICES	CPC N°
All construction services listed in division 51 of CPC	51

**D. NEGOTIATIONS CONCLUDED BUT AGREEMENTS NOT YET IN FORCE AS OF
31 DECEMBER 1997**

1. NEGOTIATIONS WITHIN THE GPA FRAMEWORK: ACCESSION OF NEW MEMBERS.

63. Negotiations within the GPA framework have sought to enlarge the number of signatories to the agreement. After the entry into force of the Agreement in January 1996, other countries, such as Panama, have formally applied for membership. Some have already become members (v. supra section B.1).
64. Chinese Taipei³⁸, which is not as yet a member of the WTO, has also formally requested accession to the agreement.

2. ASSOCIATION AGREEMENTS: CENTRAL AND EASTERN EUROPEAN COUNTRIES (CEECs).

65. Europe Agreements have also been negotiated with Estonia³⁹, Latvia⁴⁰, Lithuania⁴¹ and Slovenia⁴²; they have not yet however entered into force as of 31 December 1997.
66. The provisions concerning public procurement in these agreements are similar to those included in the other six already described. There is however an important difference with respect to the transitional periods envisaged.
67. In the case of Estonia there is no transitional period and access to all kinds of Community companies should be accorded as of the entry into force of the Agreement. In the case of Latvia and Lithuania, the transitional periods end at the latest on 31 December 1999. Transitional periods do not apply to subsidiaries and joint-ventures created by Community companies.

³⁸ See document GPA/IC/5, of June 1994.

³⁹ Signed on 12 June 1995, see art. 67, doc. COM (95) 207final. It will enter into force on 1 February 1998.

⁴⁰ Signed on 12 June 1995, see art. 68, doc. COM (95) 207final. It will enter into force on 1 February 1998.

⁴¹ Signed on 12 June 1995, see art. 68, doc. COM (95) 207final. It will enter into force on 1 February 1998.

⁴² Signed on 10 June 1996, see art. 69, doc. COM (95) 341final. The Interim Agreement on trade and trade-related matters entered into force on 1 July 1997 although it had been applied provisionally since 1 January 1997 (see OJ L 344/1 of 31 December 1996 and OJ L 151/38 of 10 June 1997). However, the Interim Agreement does not contain any public procurement clause.

68. As for Slovenia, the transitional period lasts 6 years after the entry into force of the Agreement. It does not apply to Community companies established in Slovenia in the forms provided for in the agreement.

3. OECD: CONVENTION ON COMBATING BRIBERY.

69. On 20 November 1997, OECD Member Countries with the exception of Australia and five non-member countries (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic) adopted a convention on combating bribery of foreign public officials in international business transactions. [Signature subsequently took place on 17 December 1997.] This convention is the culmination of two years of work in the OECD on the problem of making bribery of foreign officials a crime⁴³. This convention should facilitate access to public procurement contracts in third countries which have signed the convention, since in most cases international business transactions involving public officials will include public procurement contracts.

⁴³ See <http://www.oecd.org> for more information.

E. INFORMATION ON BARRIERS IN THE FIELD OF PUBLIC PROCUREMENT AND PROPOSED LINES OF ACTION.

70. Although the Community has negotiated a number of international agreements aiming at opening up procurement markets, not all barriers at the international level have been removed. The Commission is concerned by the effective difficulties that the EC industry is facing in major markets.
71. In this regard, an important initiative was launched in 1996: the Market Access Strategy⁴⁴, with the objective to identify obstacles and to choose priorities for appropriate action. In order to implement this Strategy, the Commission, with the help of Member States and European trade associations and businesses, began the laborious process of assembling all the information available on the barriers affecting European exports. The objective was to establish a comprehensive data base which is constantly up-dated and which should help to identify priorities in market access. The Market Access Database is accessible on-line via the INTERNET at the following URL address: <http://mkaccdb.eu.int/> or at the EUROPA web-site (<http://europa.eu.int>).
72. Public procurement is one of the sectors covered by the data base. So far, it contains information concerning public procurement on the following countries: Australia; Bangladesh, Belarus; Brazil; Bulgaria; Canada; Chile; China; Czech Republic; Egypt; Hong Kong, China; Hungary; India; Indonesia; Japan; Korea; Malaysia; Mexico; Morocco; New Zealand; Pakistan; Philippines; Poland; Russia; Singapore; Slovenia; South Africa; Chinese Taipei (Taiwan); Thailand and the United States. The Commission is aware that the information on barriers regarding public procurement contained in the data base can be improved. To this end, it welcomes any contributions, in particular from suppliers who have concrete experiences with certain barriers. On this basis, the Commission has the intention to complete the information contained and to continuously up-date the data base in this field. A study has been completed during 1996 on public procurement market opportunities and obstacles in specified third countries⁴⁵. The aim of this study is to assist the Commission in setting its priorities and to provide the necessary background data for negotiations.

⁴⁴ Communication on the Global Challenge of International Trade: A Market Access Strategy for the European Union; COM (96) 53, of 14 February 1996.

⁴⁵ See OJ C 158/10, of 24 June 95.

73. In the field of public procurement, most of the barriers identified relate to the discriminatory legislation still existing in most of our trading partners for procurement outside the scope of the agreements (e.g. "Buy American" provisions in the United States; set asides for SMEs in Korea and other countries); to the lack of appropriate information on procurement (e.g. multiplicity of publications, absence of contact or information points etc.) or to the absence of appropriate enforcement mechanisms (e.g. lack of available remedies etc) among others.
74. As regards the dismantling of barriers, the Commission proposes some lines of action. Further negotiations, both at the multilateral and bilateral levels, are envisaged in order to eliminate discriminatory legislation in third countries (see section F below). In addition, it has the intention to facilitate access to public procurement information in third countries and to help European suppliers to enforce their rights abroad (see section G below).
75. In this context, it is to be noted that on 27 November 1996, the Commission adopted a Green Paper on public procurement in the European Union⁴⁶. Chapter 6 of this Green Paper is devoted to procurement outside the Union. After a reflection and debate period, it is the Commission's intention to adopt at an early date a Communication setting out the lines of its future policy in this field^{46bis}.

⁴⁶ See document COM (96) 583 final, of 27 November 1996.

^{46bis} The Commission Communication on public procurement in the European Union has been adopted on 11 March 1998, see document COM (98) 143 final.

F. FURTHER NEGOTIATIONS

1. WTO FRAMEWORK

76. At present, there are three parallel processes of negotiations on public procurement within the framework of the WTO: the review of the GPA, the negotiations on GATS rules and the discussions on transparency rules pursuant to the mandate of the Singapore Ministerial Conference.

1.1. The GPA: implementation and review.

- Implementation.

77. Parties to the GPA are currently completing a procedure for the notification of national implementing legislation, so as to ensure that the commitments made are effectively enforced. In this context, the Commission has also launched a study in order to monitor the application of the GPA by some signatories and to identify the remaining obstacles in the public procurement markets of these countries⁴⁷.

- Review.

78. The GPA requires countries to adhere to relatively detailed rules and does not always guarantee effective non-discrimination between domestic and imported goods and services in government procurement. As a result, coverage is rather reduced in a number of countries (v. supra subsection B.1.1).

79. Negotiations with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices are foreseen in its Article XXIV §7(b) and (c), which calls on the Parties to undertake further negotiations not later than the end of the third year from the date of its entry into force. With these considerations in mind, the GPA Committee decided at its meeting of 4 June 1996 to commence a review of the GPA, with a view to making the agreement more accessible and attractive to non-members and to adjusting the Agreement to newly-emerging technologies.

⁴⁷ See OJ C 192/16, of 3 July 96.

80. Such negotiations have been initiated in 1997 and include, among others, the following main elements: (i) expansion of the coverage of the Agreement, notably by extending it to sectors not presently covered; (ii) elimination of discriminatory measures and practices; and (iii) simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology. The aim of these negotiations is the expansion of membership of the Agreement by making it more accessible to non-Parties.

1.2. The General Agreement on Trade and Services (GATS)

81. The General Agreement on Trade in Services (GATS) applies to all measures affecting the supply of services in all sectors covered by the GATS. For the time being, procurement rules are exempted from the Article II (Most Favoured Nation) and Article XVII (National Treatment) obligations but there is a mandate to start multilateral negotiations on government procurement in services (GATS Article XIII§2). This mandate is a recognition of the fact that effective liberalisation of trade in services is also dependent on multilateral rules on procurement.
82. This mandate was taken up by WTO Members upon entry into force of the GATS in 1995, with substantive work commencing in 1997. Work is progressing on the basis of discussions on a number of key concepts, in particular what constitutes a services' transaction (definition) and on transparency. The result of the negotiations should lead to the creation of specific rules for procurement of services in addition to the application of the existing GATS rules and in particular the National Treatment and Most Favoured Nation obligations.

1.3. The Singapore Ministerial Conference: mandate on transparency rules related to government procurement.

83. During the Singapore Ministerial Conference in Early December 1996, the Ministers agreed to launch discussions on transparency rules related to government procurement. The original proposition of the European Community was to launch a process of negotiations on an interim agreement on procurement of goods based on the principles of transparency and due process, bearing in mind that the Community's final objective was to achieve National Treatment and Most Favoured Nation effectively for all government procurement in all WTO member countries.

84. The mandate finally decided in the Singapore Ministerial Conference in early December 1996 provides for the establishment of a working group to conduct a study on transparency in government procurement practices, taking into account national policies and, based on this study, to develop elements for inclusion in an appropriate agreement.
85. Work on this basis is already underway in a newly created WTO Working Group on Transparency in Government Procurement Practices.

2. BILATERAL NEGOTIATIONS.

2.1. Customs Union Agreements: Turkey, Andorra and San Marino.

- Turkey

86. The decision of 6 March 1995 by the EC-Turkey Association Council to move to the final phase of the customs union received Parliamentary assent on 13 December 1995, enabling it to come into force on 31 December 1995⁴⁸.
87. The decision on customs union sets out in detail the actions to be taken in the final phase, following the pattern set out in the 1960 Ankara Agreement and the additional Protocol of 1970, which, among others, provide for the following measures: the immediate reciprocal abolition of customs duties and equivalent levies on manufactured goods, the immediate reciprocal abolition of quantitative restrictions or equivalent measures of imports and exports on industrial goods, and immediate adoption by Turkey of the common customs tariff and of the common commercial policy (there are some exceptions).
88. EC industrial products are therefore granted access to the Turkish market. Discrimination against such industrial products in Turkey (or viceversa) could be considered contrary to the prohibition of measures equivalent to quantitative restrictions.
89. However, as regards access of European suppliers to Turkish tender procedures, the Decision on Customs Union only provides for the possible initiation of negotiations aiming at the mutual opening of the Parties' respective government procurement markets after the date of its entry into force. To this end, the Association Council will set a date for the initiation of negotiations and will review progress in this area annually⁴⁹. In its

⁴⁸ Decision n° 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union; OJ L 35, of 13 February 1996.

⁴⁹ See article 48 of the Decision, loc.cit.

Communication of 15 July 1997 on the future of relations with Turkey⁵⁰, the Commission identified progress in this area as a priority objective.

- Andorra and San Marino.

90. The customs union agreement with the Principality of **Andorra** does not contain any specific provision on public procurement⁵¹. As regards free movement of goods, the agreement provides for the reciprocal abolition of customs duties and equivalent import levies, the reciprocal abolition of quantitative restrictions or equivalent measures on imports and the adoption by Andorra of the common customs tariff and of the common commercial policy.
91. EC products are therefore granted access to Andorra's market. Discrimination against such products in Andorra (or viceversa) could be considered contrary to the prohibition of measures equivalent to quantitative restrictions⁵².
92. As regards **San Marino**, the customs union agreement signed on 16 December 1991 does not contain any specific provision on public procurement⁵³. This agreement, however, has not yet been ratified. Pending its entry into force, an Interim Agreement was approved⁵⁴, which does not refer to public procurement either.

2.2. Trade Agreements: Switzerland

93. **Switzerland** is also in EFTA but on 6 December 1992, decided not to join the European Economic Area. In January 1993, it requested the opening of bilateral negotiations on a wide range of topics, including public procurement, with the view to replacing the trade agreement of 1972 (in which there were no rules on public procurement).

⁵⁰ Communication from the Commission to the Council and the European Parliament on the further development of relations with Turkey, see document COM (97) 394final, of 15 July 1997.

⁵¹ See Council Decision of 26 November 1990 on the conclusion of the Agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra, OJ L374/13, 31 December 1990.

⁵² In a joint statement, the parties agreed that the Joint Committee will interpret the provisions governing measures having equivalent effect to quantitative restrictions in the same way as they are interpreted in trade within the European Community. See OJ L 374/22, of 31 December 1990.

⁵³ See draft Agreement on customs union and co-operation between the European Economic Community and the Republic of San Marino, OJ C302/10, of 22 November 1991.

⁵⁴ See Council Decision of 27 November 1992 on the conclusion of an interim Agreement on trade and customs union between the European Economic Community and the Republic of San Marino, OJ L359/13, of 9 December 1992.

94. The negotiating objective of the European Community is the bilateral expansion of the coverage beyond the commitments of the GPA, to which Switzerland is a signatory party. In that sense, the intention is to obtain an opening of the Swiss procurement market equivalent to that existing in the Community, covering therefore all the utilities sectors for both public and private (operating under special or exclusive rights) entities. As a result, the scope of this agreement would be similar to the EEA.
95. Negotiations began on 12 December 1994 and they are at the closing stage.

2.3. Association Agreements: Cyprus and Malta.

96. In the Association Agreements with Cyprus⁵⁵ and Malta⁵⁶ there are no relevant provisions on public procurement.

2.4. Euro-Mediterranean Association Agreements: Israel, Jordan, Morocco, the Palestinian Authority, Tunisia and other Mediterranean Countries.

- Israel.

97. The Euro-Mediterranean Agreement establishing an association with Israel provides in its Article 35 that the parties shall take measures with a view to a mutual opening of their respective government procurement markets and the procurement markets of undertakings operating in the utilities sectors for the purchase of goods, works and services, beyond the scope of what has been mutually and reciprocally covered under the Government Procurement Agreement concluded in the framework of the WTO⁵⁷. This article was completed by a joint declaration on public procurement whereby the parties committed themselves to open formal negotiations with the view to reaching an agreement.

⁵⁵ Agreement establishing an Association between the European Economic Community and the Republic of Cyprus, OJ L133, of 21 May 1973, as amended.

⁵⁶ Agreement establishing an Association between the European Economic Community and Malta, OJ L 61, 14 March 1971, as amended.

⁵⁷ See Proposal for a Decision of the Council and the Commission on the conclusion of a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part and the State of Israel, of the other part. Document SEC(95) 1719final, page 17.

98. The Euro-Mediterranean agreement was initialled on 28 September 1995, but it has not been ratified yet⁵⁸. Nonetheless, the parties gave effect to this joint declaration, and two agreements on government procurement were reached and signed on 22.12.1995 (v. supra).
99. In any case, Article 35 of the Euro-Mediterranean Agreement is still a basis for further negotiations, if needed.

- Jordan, Morocco, the Palestinian Authority and Tunisia .

100. Four other Euro-Mediterranean Agreements (Jordan⁵⁹, Morocco⁶⁰, the PLO for the benefit of the Palestinian Authority of the West Bank and the Gaza strip and Tunisia⁶¹) have been signed of which so far only the Interim Association Agreement with the PLO has entered into force⁶². The Agreement with Tunisia is likely to enter into force shortly. The public procurement provisions of these agreements are more limited than in the case of the Israeli agreement, as it is simply state that the objective is a reciprocal and gradual liberalisation of the public procurement contracts. To that end, the Association Council shall take the necessary steps. Public procurement could therefore be the object of negotiations in the future.

⁵⁸ In the meantime, an interim agreement on trade was approved. See Decision of the Council and the Commission of 22 December 1995 on the conclusion by the European Community of an Interim Agreement on trade and trade-related matters between the European Community and the European Coal and Steel Community, on the one part and the State of Israel on the other part, OJ L 71/1, of 20 March 1996.

⁵⁹ See Proposal for a Council and Commission Decision on the signature and on the conclusion of a Euro-Mediterranean Agreement with Jordan. See document COM (97) 554 final.

⁶⁰ See Proposal for a Decision of the Council and the Commission on the conclusion of a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States on the one part and the Kingdom of Morocco, on the other part. This agreement was initialled on 10 November 1995. See document COM(95) 740final.

⁶¹ See Proposal for a Decision of the Council and the Commission on the conclusion of a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States on the one part and the Republic of Tunisia, on the other part. This agreement was signed on 17 July 1995, and it was the first of the so-called Euro-Mediterranean Agreements. See document COM(95) 235final.

⁶² See Council Decision of 2 June 1997 concerning the conclusion of the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, OJ L 187, of 16 July 1997.

- Other Mediterranean Countries.

101. At present, the Commission is negotiating as well the conclusion of Euro-Mediterranean Agreements with Algeria, Egypt and Lebanon, while negotiations with Syria will commence shortly. Moreover, the Barcelona Declaration of 28 November 1995 has set 2010 as the target date for the gradual establishment of a free-trade area within a new Euro-Mediterranean Partnership. The participants in the Euro-Mediterranean Conference of Barcelona on 27/28 November 1997 were, in addition to the European Community and its Member States: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey and the Palestinian Authority.

2.5. Co-operation agreements providing for future negotiations.

102. The co-operation agreement with **Mexico** provides for the gradual and mutual opening of agreed government procurement markets on a reciprocal basis. A decision of the Joint Council established by the Agreement will be adopted in the future deciding on the appropriate arrangements and timetables⁶³.

103. The EC has concluded a bilateral agreement with **Chile** in which a public procurement co-operation clause has been included⁶⁴. Under such clause, parties agree to co-operate to ensure, on a reciprocal basis, open, non-discriminatory and transparent procedures for procurement by government agencies and entities having special and exclusive rights at a central, federal, regional, provincial and local level. In order to attain this objective, the parties agree to consider the possibility of concluding an agreement on access to contracts in these sectors of procurement, generating transparent, fair conditions in the award of contracts, subject to clear complaint procedures.

⁶³ See the Economic Partnership, Political Co-ordination and Co-operation Agreement between the European Community and its Member States of the one part, and the United Mexican States of the other part, in particular art 10. The Agreement is not yet in force. It was initialised on 23 July 1997 and has been signed on 8 December 1997. The Commission's proposal for a Council Decision has been published in the OJ C 350/6 of 19 November 1997. An Interim Agreement on Trade and Trade-related matters has also been signed (see Commission's proposal, OJ C 356/28, of 22 November 1997, in particular art. 4).

⁶⁴ See the Framework Co-operation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, on the one part, and the Republic of Chile, on the other part, in particular article 11; OJ L 209, of 19 August 1996. This Agreement is not yet in force, as ratification procedures have not been finalised.

104. Similar clauses are likely to be found as well in future trade agreements modelled under the Mexican or Chilean one. At present, the Commission has initiated negotiations with **South Africa**⁶⁵ with the view to conclude a trade agreement.

2.6. Co-operation agreements providing for simple co-operation.

105. A similar clause, although more reduced in scope, can be found in the draft Partnership and Co-operation Agreements with the New Independent States. These agreements provide for co-operation between the Parties to develop conditions for open and competitive award of contracts for goods and services in particular through calls for tenders. However, the question for future negotiations is not addressed. Partnership and Co-operation Agreements have been negotiated with the following countries: **Ukraine**⁶⁶, **Russia**⁶⁷, **Kazakhstan**⁶⁸, **Kyrgyz Republic**⁶⁹, **Moldova**⁷⁰, **Belarus**⁷¹, **Georgia**⁷², **Armenia**⁷³, **Azerbaijan**⁷⁴ and **Uzbekistan**⁷⁵. However, only the agreement with Russia is in force.⁷⁶ Therefore, in the future, public procurement could be the subject of specific agreements, although this is not necessarily aimed by the above-mentioned clauses.

106. Similarly, the Co-operation Agreement with the **Former Yugoslav Republic of Macedonia** establishes that the parties will encourage and promote co-operation in the field of public procurement⁷⁷.

⁶⁵ See Commission Press Release IP/96/258.

⁶⁶ See document COM (94) 226final, in particular article 47.

⁶⁷ See Council and Commission Decision of 30 October 1997 on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, OJ L327 of 28 November 1997. This agreement entered into force on 1 December 1997.

⁶⁸ See document COM (94) 411final, in particular article 48.

⁶⁹ See document COM (94) 412final, in particular article 48.

⁷⁰ See document COM (94) 477final, in particular article 44.

⁷¹ See document COM (95) 44final, in particular article 39.

⁷² See document COM (96) 135final, in particular article 48.

⁷³ See document COM (96) 136final, in particular article 48.

⁷⁴ See document COM (96) 137final, in particular article 48.

⁷⁵ See document COM (96) 254final, in particular article 47.

⁷⁶ In the Interim Agreements with the rest of the New Independent States, there are no provisions on public procurement.

⁷⁷ See Council Decision of 27 November 1997 concerning the conclusion of a co-operation agreement between the European Community and the Former Yugoslav Republic of Macedonia, OJ L 348, of 18 December 1997. This agreement will enter into force on 1 January 1998.

107. In the Agreement with **Mercosur**, no such a clause on public procurement exists. However, in accordance with articles 4 and 5 of the Agreement, Parties agree to co-operate in trade matters, without excluding any sector. Under the provisions of these articles, public procurement could therefore ultimately be the subject of negotiations in the future⁷⁸. The trade and co-operation agreement with **Albania** does not provide for specific co-operation in the field of public procurement outside the general co-operation in trade and commercial issues⁷⁹.

3. THE TELECOMMUNICATIONS SECTOR.

108. During the negotiations of the GPA, the Community held bilateral negotiations on telecommunications procurement with the US with a view to obtaining appropriate guarantees of access for its suppliers. In these negotiations, it emphasised the importance of the application of certain disciplines with a view to ensuring transparent and open tendering, in particular, by privately-owned US telecommunications operators. The US was, however, not able to make firm commitments in this regard.

109. In this context, it has to be remembered that in May 1993, following the absence of an agreement covering this sector, the United States decided to impose sanctions on Community bidders participating in certain Federal Government tender competitions, particularly those for contracts below the threshold. These included sub-threshold contracts awarded by the federally-owned electrical utilities. The Community responded in a measured and controlled way by imposing counter-sanctions against US bidders⁸⁰. However, the US has expressed its intention to try to reach an agreement with the EU in this area in the future.

110. In any case, there has been no fundamental progress on this issue, so the US sanctions against European suppliers and the EC counter-measures still apply.

⁷⁸ See Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part; OJ L 69, of 19 March 1996.

⁷⁹ See Council Decision of 26 October 1992 on the conclusion of an Agreement between the European Economic Community and the Republic of Albania on trade and commercial and economic co-operation, OJ L 343 of 25 November 1992. This agreement entered into force on 1 December 1992.

⁸⁰ Council Regulation n° 1461/93 of 8 June 1993 concerning access to public contracts for tenderers from the United States of America, OJ L 146/1, of 17 June 1993; and Council Regulation n°1836/95 of 24 July 1995 completing the Annex to Regulation n° 1461/93 concerning access to public contracts for tenderers from the United States of America, OJ L 183/4, of 2 August 1995.

G. HOW TO FIND OPPORTUNITIES ABROAD AND ENFORCE ONE'S RIGHTS.

1. INFORMATION ON OPPORTUNITIES IN PUBLIC PROCUREMENT.

111. Contracting entities from the countries parties to the EEA publish their procurement notices in the EC Official Journal, S series and the TED database⁸¹.
112. Central and Eastern European Countries' contracting authorities publish their procurement notices according to their relevant legislation.
113. GPA members publish their notices in the media listed in Appendix II to IV of the GPA:
 - Aruba: Landscourant (Aruba's Official Journal) and local press.
 - Canada: Government Business Opportunities (GBO) and MERX (<http://www.merx.cebra.com>)
 - Hong Kong China: The Government of Hong Kong Special Administrative Region Gazette, daily press, Kowloon-Canton Railway Corporation web page (<http://www.kcrc.com>).
 - Israel: The Jerusalem Post.
 - Japan: Kanpō (Annex 1), Kenpō, Shihō or their equivalents (Annex 2), and Kanpō (Annex 3).
 - Korea: Kwanbo (The Korean Government's Official Gazette) and The Seoul Shinmun.
 - Liechtenstein: member of the EEA, see above.
 - Norway: member of the EEA, see above.
 - Singapore: the Republic of Singapore Government Gazette.
 - Switzerland: Swiss Official Trade Gazette/Feuille officielle suisse du commerce (Annex 1 and Annex 3), Official publications of every Swiss Canton (26) (Annex 2 and Annex 3).
 - United States: The Commerce Business Daily (<http://cbdnet.access.gpo.gov>). Additional information for entities listed in Annex 2 of Appendix I may be available in state journals, such as the New York Contract Reporter.

⁸¹ See the Agreement on the European Economic Area as amended, in particular annex XVI, and the Arrangement regarding the publication of EFTA notices on procurement annexed to the Final Act of the EEA Agreement; OJ L 1, of 3 January 1994, pages 461 and 552 respectively.

114. As regards information technology applied to public procurement, the Commission services have found a number of internet sites giving access to official and unofficial databases in third countries. The location of these databases can be obtained through a visit to the SIMAP www homepage at the following URL address: <http://simap.eu.int/>.

115. With the aim to facilitating access to the markets covered by the GPA, Directorate General XV has commissioned a study to provide information setting out opportunities for EU companies arising from the GPA⁸². This study should provide explanatory information on the GPA that will help EU companies to learn about and benefit from new export opportunities. The results of this study will be made publicly available in a user-friendly and practical format. The study has been completed in late 1997. Publication is expected for 1998, inter alia electronically on the SIMAP homepage (<http://simap.eu.int>).

2. THE RIGHTS OF EUROPEAN SUPPLIERS ABROAD.

116. European suppliers and service providers willing to enter the procurement markets in the EEA enjoy full rights and they benefit from challenge procedures identical to those within the EC.

117. As regards the GPA, this agreement also contains detailed rules on challenge procedures for aggrieved suppliers. Although amicable consultation is encouraged, Article XX obliges each party to put in place non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge contract awards. Challenges must be heard by a court, or an impartial and independent review body with no interest in the outcome of the procurement (which must meet a minimum of procedural requirements). Challenge procedures shall provide for at least interim measures, and correction of the breach of the Agreement or compensation for the loss or damages suffered (which may be limited to the cost of tender preparation or action).

118. An action can be brought to the WTO Dispute Settlement Body by the EU if it considers that a party to the GPA has failed to comply with its obligations under this article XX⁸³. In this context, an action by the EU would strongly rely on the information provided by EU aggrieved suppliers. The Commission therefore encourages suppliers and service providers to inform the Commission's services on public procurement related issues arising abroad.

⁸² See OJ C 192/14, of 3 July 96.

⁸³ See article XXII of the GPA. Obviously, Dispute Settlement rules cover the whole GPA, not only article XX.

119. In two individual cases the Community has made use of the possibility to request formal consultations under the Dispute Settlement Mechanism. The first concerned a procurement tender published by the Ministry of Transport of Japan to purchase MTSAT Satellite-based Augmentation System (MSAS)⁸⁴. After a period of consultations, a mutually agreed solution was found and the dispute was settled⁸⁵. The second case concerns the application of the GPA by US sub-federal entities, and more particularly, the Act Regulating State Contracts with Companies doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (Chapter 130 of the Acts of 1996)⁸⁶. In essence, the contested provision establishes a 10% price preference in favour of those companies not doing business in Burma. The Japanese also asked for consultations in this case⁸⁷. Consultations are still pending by the time of writing this report.
120. The Israeli and Korean agreements on telecommunications procurement also provide for the establishment of challenge procedures. Requirements are similar to those of the GPA, to which Israel, Korea and the EC are signatories.

⁸⁴ See Request of consultations of 26 March 1997, document GPA/D1/1 of 1 April 1997.

⁸⁵ See Notification of 31 July 1997, document GPA/D1/2/Rev.1 of 14 August 1997.

⁸⁶ See Request of consultations of 20 June 1997, document GPA/D2/1 of 26 June 1997.

⁸⁷ See Request of consultations of 18 July 1997, document GPA/D3/1 of 21 July 1997.

H. LIST OF AGREEMENTS CONCLUDED IN THE FIELD OF PUBLIC PROCUREMENT WHICH ARE IN FORCE AS OF 31 DECEMBER 1997

1. LIST OF AGREEMENTS

MULTILATERAL AGREEMENTS	SIGNATURE	PUBLICATION REFERENCES	ENTRY INTO FORCE (end of transitional period)
WTO Agreement on government procurement (GPA).	15.04.1994	OJ L336,23.12.1994 OJ C332, 09.12.1995 OJ C256,03.09.1996	
- As for Canada, EC, Israel, Japan, Norway, Switzerland and the US		OJ L134, 20.06.1995 (US bilateral)	01.01.1996
- As for Aruba			25.10.1996
- As for Korea			01.01.1997
- As for Hong Kong, China			19.06.1997
- As for Liechtenstein			18.09.1997
- As for Singapore			20.10.1997
Agreement on the European Economic Area (EEA).	02.05.1992	OJ L1, 03.01.1994	
- As for Iceland			01.01.1994
- As for Norway			01.01.1994 (31.12.1994)
- As for Liechtenstein		OJ L86/58, 20.04.1995	01.01.1996

BILATERAL AGREEMENTS	SIGNATURE	PUBLICATION REFERENCES	ENTRY INTO FORCE (end of transitional period)
Association Agreements with the Countries of Central and Eastern Europe.			
- Bulgaria	08.03.1993	OJ L358, 31.12.1994	01.02.1995 (31.01.2005)
- Czech Republic	04.10.1993	OJ L360, 31.12.1994	01.02.1995 (31.01.2005)
- Hungary	16.12.1991	OJ L347, 31.12.1993	01.02.1994 (31.01.2004)
- Poland	16.12.1991	OJ L348, 31.12.1993	01.02.1994 (31.01.2004)
- Romania	01.02.1994	OJ L357, 31.12.1994	01.02.1995 (31.01.2005)
- Slovak Republic	04.10.1993	OJ L359, 31.12.1994	01.02.1995 (31.01.2005)
Agreement in the form of exchange of letters between the European Community and the United States of America on government procurement.	30.05.1995	OJ L134, 20.08.1995	01.01.1996
Agreement between the European Community and the State of Israel on procurement by government	10.07.1997	OJ L202, 30.07.1997	01.08.1997

SECTORAL AGREEMENTS (TELECOMMUNICATIONS)	SIGNATURE	PUBLICATION REFERENCES	ENTRY INTO FORCE
Agreement between the European Community and the State of Israel on procurement by telecommunications operators	10.07.1997	OJ L202, 30.07.1997	01.08.1997
Agreement on telecommunications procurement between the European Community and the Republic of Korea	29.10.1997	OJ L321, 22.11.1997	01.11.1997

2. CONSEQUENCES OF THE ENTRY INTO FORCE OF THESE AGREEMENTS WITH RESPECT TO ARTICLE 36 OF DIRECTIVE 93/38/EEC.

121. Article 36 of Directive 93/38/EEC of 14 June 1993 allows for a Community preference. But it provides that this shall apply only to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries.

122. Under Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community as regards matters within its competence, of the agreement reached in the Uruguay Round multilateral negotiations (1986-1994)⁸⁸; and Council Decision 95/215/EC of 29 May 1995 concerning the conclusion of an Agreement in the form of an exchange of letters between the European Community and the United States of America on government procurement⁸⁹, Article 36 of Directive 93/38/EEC no longer applies, in the fields listed below, to tenders comprising products originating in the countries indicated:

- production, transport or distribution of drinking water - products originating in Aruba; Hong Kong, China; Israel; Japan; Korea; Singapore and Switzerland;
- urban railway, automatic systems, tramway, trolleybus, bus or cable services - products originating in Aruba; Hong Kong, China; Israel (except bus services), Singapore and Switzerland;
- airport facilities and other air transport terminal facilities - products originating in Aruba; Hong Kong, China; Israel; Japan; Singapore and Switzerland;
- maritime or inland port or other terminal facilities - tenders originating in Aruba; Hong Kong, China; Israel; Japan; Korea; Singapore; Switzerland and the United States of America;
- production, transport or distribution of electricity - products originating in Aruba; Hong Kong, China; Israel; Korea; Switzerland and the United States of America;
- telecommunications - products originating in Aruba; Israel and Korea.

123. It should also be noted that, because Iceland, Liechtenstein and Norway have acceded to the Agreement on the European Economic Area⁹⁰,

⁸⁸ See OJ L 336/273, of 23 December 1994.

⁸⁹ See OJ L 134/25, of 20 May 1995.

⁹⁰ See Council and Commission Decision 94/1/ECSC, EC of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway, OJ L1/1, 03.01.1994. This Decision has been amended, in particular, by Council and Commission Decision 94/2/ECSC, EC of 13 December on the conclusion of the Protocol adjusting the Agreement on the European

independently of the accession of Norway and of Liechtenstein to the Agreement on Government Procurement, Article 36 of Directive 93/38/EEC is no longer applicable to tenders in any of the areas covered by the Directive comprising products originating in Iceland, Liechtenstein and Norway.

Economic Area, OJ L1/571, 03.01.1994 and by the Treaty concerning the accession of Austria, Finland and Sweden, OJ C241/9, 29.08.1994. See also EEA Council Decision n° 1/95 of 10 March 1995 on the entry into force of the Agreement on the EEA for the Principality of Liechtenstein, OJ L86/58, 20.04.1995.

I. LIST OF AGREEMENT CONCLUDED IN THE FIELD OF PUBLIC PROCUREMENT WHICH ARE NOT YET IN FORCE AS OF 31 DECEMBER 1997.

BILATERAL AGREEMENTS	SIGNATURE	PUBLICATION REFERENCE	ENTRY INTO FORCE
Association Agreements with the Countries of Central and Eastern Europe.			
- Estonia	12.06.1995	prop., COM(95)207	01.02.1998
- Latvia	12.06.1995	prop., COM(95)207	01.02.1998
- Lithuania	12.06.1995	prop., COM(95)207	01.02.1998
- Slovenia	10.06.1996	prop., COM(95)341	unknown

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