

# MULTILATERAL TRADE AGREEMENTS

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HEARING  
BEFORE THE  
COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
NINETY-SIXTH CONGRESS  
FIRST SESSION

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APRIL 26, 1979

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# MULTILATERAL TRADE AGREEMENTS

THURSDAY, APRIL 26, 1979

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, D.C.*

The committee met at 3 p.m., pursuant to call, in room 3302, Dirksen Senate Office Building, Hon. Lawton Chiles presiding.

Present: Senator Chiles.

Senator CHILES. The committee will come to order.

## OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. We are meeting here today to discuss the Code on Government Procurement, and to examine the legislative proposals necessary to implement the code.

What we do here today is important, for once the package is formally submitted to Congress, we will be unable to make any changes in it.

The Trade Act of 1974 provided a fresh statement by the Congress of American purposes and policies for world trade. Prior to the enactment of the Trade Act, 6 years had gone by without any international trade negotiations.

This was a period of worldwide economic instability and a growing trend to protectionism. The Trade Act provided a clear statement by Congress of its desire to reverse that trend by eliminating and reducing nontariff barriers to trade and amending the international trade structure to establish equity and fairness.

The International Procurement Code was negotiated under that mandate.

I want to congratulate Ambassador Strauss and his colleagues for their achievements in negotiating this code. It is a good first step.<sup>1</sup>

It requires all nations to publish their procurement regulations, to advertise bidding opportunities, and to treat all bidders equally—foreign or domestic.

These are the fundamental principles of our procurement system. Other nations, however, have operated their systems in the dark.

Those who sign the Procurement Code are now making a commitment to conduct their government purchasing in the open.

A key to these negotiations was a congressional directive to seek open access to foreign markets for U.S. products. Congress believed that a number of industries would benefit if foreign markets opened up. Congress wanted to provide the same competitive opportunities for U.S. exports overseas that we give to imports here.

<sup>1</sup> Ambassador Strauss, at his request, testified earlier in a closed session approved by the Committee. Thereafter, he submitted a statement for the record which is set forth on pp. 116-119.

Section 104 of the Trade Act makes that equivalent access a principal objective of the negotiations.

One of the issues we need to examine this afternoon is whether our negotiators were able to achieve this objective of the Code on Government Procurement. Are we going to have the same opportunities to bid on foreign contracts that foreign companies now have to bid on our contracts?

Beyond examining the provisions in the code itself and the proposals for its implementation, I think our committee needs to focus on the ability of the United States and the international community to enforce the code.

Everybody thinks these agreements are an important first step. But unless they are properly enforced, they are meaningless.

"Free trade" often means something different to our trading partners than it does to us. We need to make sure that the United States has the people and the machinery to enforce these codes.

More importantly, we need to make sure that we have the will to enforce these codes.

Finally, I would point out that the Trade Act did not make a wholesale transfer of authority on trade matters from Congress to the executive branch. It did not mark a retreat from our constitutional ability to regulate foreign commerce.

Our meeting here today is evidence of that.

The Trade Act was not a giveaway of our markets or of the interests of our businesses and farmers.

Section 301 of the act requires the President to take action to suspend or withdraw the benefits of the agreements if it has been determined that another major industrial country has not lived up to its obligations.

The message to our trading partners must be clear. The United States will set an example in living up to its obligations. It will urge all the other treaty members to do the same thing.

But we must be prepared to go beyond persuasion. We must be prepared to vigorously enforce the code and its sanctions whenever our trading partners don't live up to their obligations.

**We owe this to our businesses, our workers, and our taxpayers.**

So, I hope that what we do here this afternoon will prove useful to each of us on the committee in making recommendations necessary for implementing legislation and in making a judgment on the overall merits of the Procurement Code.

I just might say that the committee had the opportunity to hear from Ambassador Strauss and Ambassador McDonald in a closed session. They told us where they think we stand now in regard to the code and to the present round.

We, of course, will see further movement as the actions are completed, and as these matters go through the Congress.

I think that one of the things that came out of that meeting—especially in discussing the provisions of what appears to be the breakdown in the present negotiations in regard to Japan becoming a signatory on the code was that our negotiators, including Ambassador Strauss and Ambassador McDonald, did not feel that the Japanese were going an equal mile in meeting the same open provisions that

we were giving to the Japanese traders to be able to compete within our government economy. Therefore, we did not accept their latest offer.

I think the feeling of the members of the committee—and we did have some eight members of the committee there—was that we did not want to see any code provisions or signatories of that code if there was not a quid pro quo, that is, if we did not have equal access to their markets.

In fact, the feeling was even stronger that foreign countries only face the Buy American provisions which are, in some instances, the penalties of 6 percent. And in some, they go even higher than that.

And now that we are studying the Procurement Code itself, many of us have expressed the feeling that Congress might want to look at the need for determining, if we are shut out of the government markets in another country, whether we should shut them out of our markets or change our Buy American provisions, which now may only penalize them with respect to the part on the 6 percent.

I make those statements because I think those were the expressions of the members of the committee.

I think Ambassador Strauss did not seek any legislative action on our part. In fact, he seemed to feel that their negotiating posture is where it should be at this point.

But I think the members of this committee who were expressing themselves were saying that for those countries that do not become signatories of the code, we might well want to look at our other statutory provisions, determine if we are shut out of their markets in regard to the buying of their government's products, and determine whether or not we should apply that same kind of treatment.

We are delighted to have Senator Heinz here today, who will be our first witness.

I know he has some interest in the Buy American provisions that we talked about.

Senator Heinz, we are glad to hear your statement.

### **TESTIMONY OF HON. R. JOHN HEINZ III, A U.S. SENATOR, FROM THE STATE OF PENNSYLVANIA**

Senator HEINZ. Mr. Chairman, first, thank you very much for this opportunity to appear before you and the Governmental Affairs Committee.

At the outset, let me say that I am really here to talk about the subject that you just mentioned, which is how we might strengthen the Buy American Act, either to get more people to sign the code or to make sure that our domestic preferences are somewhat closer to the preferences afforded by nonsignatories or to signatories an item covered by the code so that we are on more of an equal basis.

I am delighted to hear that the members of the committee are actively thinking about how this might be done. And I hope that as a result of this testimony I am about to give that my contribution will be of some help.

I particularly want to commend you, Mr. Chairman, on your statement regarding proper enforcement.

Again, I trust that some of the suggestions that I will be making are relevant to that, as well.

I offer one other observation, with respect to Japan, which goes to the heart of this very issue.

I suspect the reason that the Japanese are not willing to be more forthcoming with respect to the Procurement Code is that they can have it both ways right now. They can keep American products out. And our Buy American laws are so weak that they can do pretty much anything they want to do. And there is everything to gain and nothing to lose through the status quo.

Mr. Chairman, as you well know, last year I chaired 4 days of hearings on the Buy American Act, as a member of this very committee.

I am deeply appreciative to you for having had the opportunity to do that.

The 1933 law, the Buy American Act on the books, is a clear mandate that the U.S. Government use its procurement dollars to purchase from American producers rather than from foreign firms.

From testimony presented at those hearings, we learned, however, that most nations impose restrictive bilateral policies and other non-tariff barriers to discriminate against foreign competition for a national government's procurement.

I also think we found the reasons for such discrimination.

Governments use their procurement dollars not only to purchase the goods and services they need to govern but, also, to serve economic and social-policy purposes.

For example, a study I commissioned from the Congressional Research Service concluded that a \$1,000 procurement placed with an American rather than a foreign firm yields \$1,700 in gross economic activity and \$522 in new tax receipts for Federal, State, and local treasuries.

Based on the record of these hearings, then, it is clear that a preference in procurement for domestic goods is an important element of fiscal policy. Such a preference stimulates economic activity and employment. That is the nature and the purpose of the Buy American Act passed in 1933.

But that law has not been completely effective. It allows significant purchases of foreign goods with Federal funds.

Witnesses at our hearings told us, for example, that foreign manufacturers won 15 out of 19 turbine contracts awarded by the Interior Department's Bureau of Reclamation between 1964 and 1976.

Of all steel used in 90 percent federally funded highway projects, 25 percent is foreign.

And, in another instance, while foreign firms were capturing over two-thirds of the domestic railcar market, a French manufacturer boasted of selling to the U.S. Government below its cost of production.

That, of course, is dumping.

Other nations' practices, on the other hand, tend to completely exclude American bidders. Their practices include closed bidding systems, bureaucratic prejudice, and outright exclusion.

A witness at our hearings told us how one Italian Government-owned company told him, if they ever needed to go outside Italy for their needs, they would let him know.

Another company, trying to break into the Japanese market, was completely rebuffed.

These exclusionary laws and practices have been debated for years.

Now the committee has before it the International Government Procurement Code, whose express purpose is to strike down buy national domestic preferences and practices in Government procurement.

What this code does is prescribe procedures, not unlike our own procurement regulations, which signatory countries must see to purchase the goods they buy. In that respect, it is designed to provide maximum opportunities to all firms, regardless of nationality, to compete for a nation's procurement.

**But what it does not do is equally significant.**

First: It is very limited in scope. Procurement is not subject to the code's provisions. Procurement not subject to the code's provisions far exceeds that which is covered.

Second: While the code is supposed to result in equal treatment for all firms from signatory countries, it actually will have the opposite effect.

Our hearings found that the Buy American Act is much less effective than other nations' practices in excluding foreign competitors from Government procurement.

The result is that while American firms tend to be completely excluded from other markets, foreign firms have considerable opportunity to compete for U.S. procurement at this time.

Concerning procurement not covered by the code, then, U.S. firms will continue to receive unequal treatment in international Government procurement.

Mr. Chairman, I am very skeptical that this International Government Procurement Code will have its desired effect. I am skeptical that U.S. firms will be treated equally with foreign competitors.

I am also skeptical because, while the U.S. negotiated a law, other nations negotiated behavior. It will be very easy for the United States to conform its laws to the code. But how can we be sure that other countries will, in fact, conform their behavior and prejudices to the code?

We, in a sense, have negotiated from a position of weakness, because we have negotiated away clear rules, while other nations have negotiated away behavior, customs, or cultural biases.

The Buy American Act is a law, a rule of the game. And that is known by all prospective bidders. And it is uniformly administered without prejudice. Other countries' financial practices are, by their very nature, prejudiced and covertly discriminatory. They are rooted, for the most part, in intangibles.

As with the old adage, our Buy American Act is a rule of law. Other nations' practices are rules of men.

I am skeptical that we can change the latter to our economic benefit.

Mr. Chairman, I am concerned, too, that there are serious flaws in the International Government Procurement Code. But I think they can be corrected through appropriate domestic legislation.

Specifically, we need to insure that at least the economic benefits the United States derives from a domestic preference are finally recognized.

The Buy American Act of 1979, introduced by Senator Bayh and myself and presently before this committee, will do just that. It will

require that when the economics justify it, Federal funds must be used to purchase goods only from American sources.

That bill—S. 533—would require that a percentage preference for American manufacturers be established, just like under today's Buy American Act. But, instead of using an arbitrary percentage—like the 6 and 12 percent—preferences that are now used, the preferences must be based on the economic and tax benefits that come with a prudent Buy American policy.

If the Congress accepts the International Government Procurement Code, this measure must be an essential supplement to the code. By recognizing the economic—and particularly the tax benefits—of a domestic preference, this supplemental legislation will help us achieve the following important effects:

First: It will insure that for noncovered procurement, the effects of our fiscal policy will be felt in the U.S. economy. And stimulative economic and employment policies can be pursued with confidence that they will have their desired effects rather than simply stimulating the economy of a foreign country.

Second: We will strengthen our negotiating position for any future or next round in procurement negotiations.

By insuring that noncovered procurement is restricted by rational economic preferences for U.S. firms, our domestic preferences will be comparable to those of other nations.

This will further insure that the United States can negotiate in the future from strength rather than from what, as has been in the past, a position of weakness.

Finally: I believe we will insure maximum compliance by other nations with the principles of the code.

As our hearings on the Buy American Act clearly reveal, foreign firms already have access to U.S. Government markets. If the code, with its limited scope, is accepted and if the present relatively ineffective Buy American Act remains unchanged, much noncovered procurement will continue to be open to foreign competition.

In effect, other governments would have, in fact, little to lose in continuing their restrictive Buy National policies to exclude competition by American companies through their procurement.

By strengthening U.S. domestic preferences, as proposed in S. 533, for nonsignatories and noncovered entities, we will be sending a strong message to signatory countries. That message is that there are no more freebies. "What we have negotiated is what you get—and no more."

I can't stress strongly enough the need to incorporate the substance of S. 533 or similar legislation in the implementing legislation now under consultation with Ambassador Strauss and the committee or alternatively enacting it as accompanying legislation.

Frankly, I think the United States has been the patsy far too long on this issue.

If the International Government Procurement Code and the President's recommendations for implementing legislation are accepted without change in our Buy American laws, I can only say: Hold on to your wallet. Your tax dollars will be going to finance the economies of Japan and Western Europe.

At this point in the record, Mr. Chairman, I would like to insert some material, including a case study of the Buy American Act and a

study from the Congressional Research Service and other accompanying materials.

Senator CHILES. That will be inserted in the record.

[The documents referred to follow:]

THE LIBRARY OF CONGRESS,  
CONGRESSIONAL RESEARCH SERVICE,  
Washington, D.C., February 28, 1978.

To: Hon. John Heinz III.

Attention: Mr. Joe Robinson.

From: Economics division.

Subject: Analysis of S. 2318, the Buy American Act.

In reference to your letter of January 24, 1978, we have carefully examined the data regarding the effects of the Buy American Act. Regarding your first question, "What is the tax effect of purchasing goods from American suppliers rather than foreign suppliers," we have roughly estimated the ultimate tax effect using the following assumptions:

1. \$1,000 equals the amount of the original domestic procurement;
2. 1.7 equals the multiplier (how many times the original expenditure increases the GNP). Estimates of the GNP multiplier vary from 1.5 to 1.7; we used the high estimate for this analysis;
3. 10 percent equals non-farm business profits before tax as a percent of sales;
4. 48 percent equals the marginal corporate federal income tax rate;
5. 20 percent equals the average federal personal income tax rate;
6. 65 percent of non-farm business profits are taxed at the corporate rate and 35% at the personal income tax rate (about the percentages that corporate profits and non-farm proprietors' income represent);
7. About 90 percent of the total procurement minus corporate profits represents wage and salary payments (the remainder is rental and net interest);
8. 11.7 percent equals social security tax on both employers and employees;
9. 4 percent equals average state sales tax; and
10. Since states and localities do not collect sales taxes on their own procurements, state sales taxes apply only to the multiplied effects of the procurement (\$700 in our example). Also, only about 70 percent of expenditures bring in sales tax revenues (due to exemptions by many states and localities on food purchases, certain services, etc.).

Calculating the tax revenues for a \$1,000 procurement:

- \$1,000 times 1.7 (the multiplier) equals \$1,700;
- \$1,700 times 10 percent equals \$170 non-farm business profits before taxes;
- \$170 times 65 percent times 48 percent equals \$53 corporate profits taxes;
- \$170 times 35 percent times 20 percent equals \$12 taxes on unincorporated non-farm business income;
- \$1,700 minus \$170 equals \$1,530;
- \$1,530 times 90 percent times 11.7 percent equals \$161 social security tax payments;
- \$1,530 times 20 percent equals \$306 personal income tax payments on wages, salaries, rent and interest;
- \$700 times 70 percent times 4 percent equals \$20 state sales tax.

Summarizing:

\$53	Corporate profits taxes
12	Taxes on unincorporated non-farm business income
161	Social security tax payments
306	Personal income taxes on wages, salaries, rent and interest
20	State sales taxes

552 Total taxes per \$1,000 domestic procurement

The \$552 in tax revenue added per domestic procurement of \$1,000 is probably an overestimate because the foreign procurement it replaces often contains many American-made components, which are currently being taxed. For example, a Portuguese firm recently was awarded a contract for railroad cars, but only the shell was made abroad—all the components were U.S.-produced.

Your second question was, "How much would be paid in primary (i.e., unemployment compensation) and secondary (medical, welfare, etc.) benefits by federal, state and local sources if a foreign purchase resulted in the loss of American

jobs?" The variation in unemployment compensation, medicaid and welfare payments among states, as well as the virtual impossibility of knowing how many of the unemployed qualify for these benefits, made it impossible to estimate the amount of government payments made to the unemployed if a foreign purchase resulted in the loss of American jobs.

Regarding your third question, "What is the effect of a domestic versus foreign procurement on the Gross National Product," the effect would depend on whether or not the economy is at full employment. If the economy were at full employment, a domestic purchase would only increase price levels, leaving the real GNP (the GNP in constant-dollar terms) unchanged. If, however, unemployment and idle capacity were widespread, the real GNP would increase by \$1.700 for a \$1,000 domestic procurement (\$1,000 times the multiplier of 1.7 discussed previously). In reality, the change in GNP would probably be somewhere between these two extremes.

In answer to your fourth question, "What additional cost would be incurred by federal, state and local governments if the bill were enacted," we have no data on which to base an estimate, nor have we been able to discover any aggregate data in any other government agencies.

ARLENE WILSON,  
*Analyst in International Trade and Finance.*

BUY AMERICAN ACT

CASE STUDY

From the records of the NATIONAL FORGE COMPANY

to demonstrate the

39% DIFFERENTIAL

in revenues to federal, state and local governments

resulting from United States manufacture versus foreign supply

of Ingalls RFP-IIN/DD993-N7085 for the U. S. Navy

FACTORS:

1.	Wages Hourly 106,319 hours @ 6.390/hour Salary (1 for every 3 hourly)	\$ 679,378 <u>226,459</u> \$ 905,837
2.	Revenue to outside suppliers including raw materials, purchased components, boxing and freight	\$1,108,900
3.	Overhead cost to National Forge Company absorbed by order	\$2,110,741
4.	Selling price of contract Cost of project	\$6,990,072 <u>5,945,835</u>
	Profit on project	\$ 644,237

COMPUTATION OF DIFFERENTIAL:

	<u>Employees</u>	<u>Company</u>	<u>Sub- Contractors</u>	<u>TOTAL</u>
I <u>Primary Benefits</u> resulting from U. S. Supply				
Federal income tax (a) 15% x \$905,837 (b) 48% x 644,237	\$135,876	\$ 309,234		
Penna. income tax (a) 2% x \$905,837 (b) 9.5% x \$644,237	18,117	61,203		
Local income tax (a) 1% x \$905,837	9,058			
F.I.C.A. (c) 5.85% x \$905,837	52,991	52,991		
Federal Unemployment Contribution (d) .2% x \$905,837		1,812		
State Unemployment (d) 1.3% x \$905,837		11,776		
Penna. Sales tax (a)	7,526			
Multiplier (f) 27% x \$1,108,900			\$309,183	
TOTAL PRIMARY BENEFITS	<u>223,568</u>	<u>437,016</u>	<u>299,183</u>	<u>959,767</u>

II Additional Costs  
resulting from  
foreign supply

Continuing Overhead			
(g) Federal	\$ 916,906		
State	200,520		1,117,426
Government			
(h) (Unemployment Paid)			491,036
			<u>1,609,462</u>
	<u>\$223,508</u>	<u>\$1,554,442</u>	<u>\$2,568,229</u>

III Total Differential comparing U. S. vs. foreign supply  
\$2,568,229 divided by \$6,590,072 equals 39.0%

NOTE: This computation is not intended to be all inclusive as we are not economists and have not included all factors which could have a bearing on the total economy but rather quantifies what we can present from our own records.

EXPLANATION OF COMPUTATION OF DIFFERENTIAL

I. PRIMARY BENEFITS

The calculations under the sub-heading "Primary Benefits" can be considered lost if this order were produced abroad.

- (a) local, state and federal income tax revenues lost due to the loss of wages,
- (b) corporate federal and state income taxes lost on the company profit on the contract,
- (c) F.I.C.A. taxes lost due to the loss of wages,
- (d) federal and state unemployment taxes lost due to loss of wages,
- (e) Pennsylvania sales tax, and,

## I. (continued)

- (f) the multiplier effects on suppliers of 27% is calculated by adding the total primary benefit effect of \$660,384 to the continuing overhead effect of \$1,117,426 and dividing by the selling price of the contract ( $\$1,778,010 + \$6,590,072 = 27\%$ ). This percentage was then multiplied times the revenues lost by outside suppliers (\$1,088,900) on the assumption that the effect on those revenues would equate to our.

## II. ADDITIONAL COSTS

The calculations under the sub-heading "Additional Costs" represent:

(i) extra loss of tax revenues if order had been placed with foreign supplier, and (ii) unemployment payments made necessary by layoff of hourly and salary employees if order had not been obtained. (i and ii refer to (g) and (h) respectively).

- (g) Continuing overhead - the federal and state income taxes lost due to reduction of company pretax earnings resulting from the loss of production volume. Overall profit would be reduced by the \$2,110,741. The calculation give effect to the deduction of the state taxes for federal tax purposes.
- (h) Government (Unemployment Paid) - the hours in Factor 1 of \$106,319 were divided by 2,000 (50 weeks @ 40 hours per week) to arrive at the number of full-time equivalent of hourly employees (53) to which was added the full-time equivalent of salary employees ( $1/3 \times 53$ ), to reach a total of 71 employees who would receive unemployment compensation. We assumed the 71 employees would obtain 52 weeks of benefits at \$133 per week.

## III. TOTAL DIFFERENTIAL

The differential is calculated by dividing the total loss of revenue of \$2,568,229 by the contract price of \$6,590,072.



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G. E. PFAFFLIN  
 GENERAL MANAGER  
 HYDRO-TURBINE DIVISION

May 15, 1979

TO: Senate Committee on Governmental Affairs  
 United States Senate  
 Washington, D.C. 20510

SUBJECT: MTN - International Government Procurement  
 Code

Gentlemen:

Please note enclosures with this letter as follows:

1. April 23, 1979 letter to Commerce Department Assistant Secretary Frank A. Weil by Mr. David C. Scott, Chairman of the Board and Chief Executive Officer of Allis-Chalmers.
2. Allis-Chalmers' February 5, 1979 paper titled, "The United States Hydraulic Turbine Market, A Summary of Foreign Competition". (Enclosure with Mr. Scott's April 23, 1979 letter)
3. An Allis-Chalmers statement of position titled, "Statement of Allis-Chalmers Corporation, Hydro-Turbine Division, Concerning the Federal Government's 'Buy American' Policy and Regulations". (Referenced in Mr. Scott's April 23, 1979 letter)

The hydraulic turbine manufacturing industry in the United States has one major supplier, the Allis-Chalmers Hydro-Turbine Division located in York, Pennsylvania, which represents approximately 1,000 employees and \$60 million in annual sales. Because the results of this Committee's deliberations relative to an International Procurement Code could have a drastic impact on our business environment, it is asked that this letter and its enclosures be considered and entered as part of the record.

While Mr. Scott's letter is primarily concerned with the advantageous situation enjoyed by our Japanese competitors, all our foreign competitors enjoy similar advantages, a point addressed in enclosures 2 and 3. It is recommended that each hydraulic turbine manufacturing nation be confronted with the same terms proposed by Mr. Scott for Japan.

  
 G. E. Pfafflin

GEP/RT/je  
 Enclosures

MAY 24 1979

STATEMENT OF ALLIS-CHALMERS CORPORATION,  
HYDRO-TURBINE DIVISION,  
CONCERNING THE FEDERAL GOVERNMENT'S  
"BUY AMERICAN" POLICY AND REGULATIONS

Allis-Chalmers Corporation, Hydro-Turbine Division, York, Pennsylvania, has become increasingly concerned over the United States Government's implementation of the Buy American Act (41 U.S.C. 10a-d) and proposed modifications to existing Buy American policies of certain federal agencies. In keeping with the Company's position favoring international free trade, yet recognizing the current trade practices of this country's major trading partners, Allis-Chalmers makes the following statement supporting the retention and extension of existing Buy American policies by the United States Government to insure effective world-wide competition and maintenance of a viable hydro-turbine industry within this country.<sup>1/</sup> It is the firm belief of Allis-Chalmers that the retention of the existing 50% differential factor policy of the Department of Defense (ASPR 6-102.2, 6-104.4) is in the best interests not only of the hydro-turbine industry, but of the United States Government, the major purchaser of such equipment.

GENERAL BACKGROUND AND NATURE OF THE MARKET

Efficient conversion of the potential energy existing in water moving from a higher to a lower level into electrical

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<sup>1/</sup> See the Statement of the Allis-Chalmers Corporation, before the Subcommittee on Federal Spending Practices and Open Government, U.S. Senate Committee on Governmental Affairs, April 5, 1978, reproduced as Supplement A hereto.

power began approximately at the turn of the century. This conversion requires a hydraulic turbine to drive an electric generator. Allis-Chalmers has been associated with the hydraulic turbine industry since its inception and through its Hydro-Turbine Division at York, Pennsylvania, has grown to become a world leader in hydraulic turbine technology.

While Fossil and Nuclear Fueled Thermal Power Stations provide the bulk of the nation's energy, hydro power continues to be a major source nation-wide, and a primary source in some areas. Federal Power Commission figures for the year 1975 (Exhibit 1) indicate that over 15% of the total electrical energy generated by utilities in the United States was produced by hydraulic power. This is particularly noteworthy in terms of utilization and efficiency since Federal Power Commission statistics (Exhibit 2) indicated that only 13% of the installed capacity is hydro power. It is also seen (Exhibit 1) that the Pacific Division, consisting of the States of Washington, Oregon, California, Alaska, and Hawaii, has over 60% of its electricity generated by hydro plants, with the State of Oregon approaching 100%. Also of interest is the fact that the largest power plant in the United States in terms of generating capacity is the U.S. Bureau of Reclamation's Grand Coulee Hydro Plant (Exhibit 3).

The hydraulic turbine market for the United States for the past 15 years, calendar years 1962 through 1976 inclusive,

has totalled approximately 1 billion dollars in 1976 equivalent dollars or an average of 67 million dollars annually (Exhibit 4). Of this total, Federal Government agencies have purchased 43.4% for an annual average of approximately 29 million dollars. The Federal Government is by far the largest purchaser of hydro power equipment, and therefore the major factor in this market. Also evident is the fact that Allis-Chalmers is a major supplier to this market, having furnished an average of 49.5% of the hydro-turbine equipment supplied over the same period.

Unfortunately, during this same period the competitive situation created by foreign suppliers reduced the hydraulic turbine manufacturing industry in the United States from several competent suppliers to essentially one supplier with full capabilities of development, design and manufacture. (Exhibit 5). In addition, National Forge, the major domestic supplier of precision castings to the industry, announced in April of 1977 that it is closing its foundry operation. Cited as cause for this decision is the reduction in business resulting from the withdrawal of Baldwin-Lima-Hamilton from the domestic hydro-turbine business and severe competition from Japanese foundries.

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THE BUY AMERICAN POLICIES OF THE UNITED STATES  
GOVERNMENT AND FOREIGN COUNTRIES

Since 1964, the Department of Defense has followed a modified Buy American policy, using a 50% differential factor, exclusive of import duties (ASPR 6-102.2, 6-104.4), instead of the standard 6%, as the cost savings that would justify foreign purchase. The 50% factor had its origin in the 1963 effort to stem the outflow of gold. In fact, the 50% factor has never been used as a basis for foreign purchase of hydro-turbine equipment because the differential has been impossible for foreign suppliers to meet. It has, however, had the very salutary effect of causing foreign suppliers to qualify their bids under the Buy American Act by having a minimum of 50% of the manufactured content produced in the U.S. This, in turn, has had very important benefits for the Defense Department in that it encourages foreign suppliers to develop a broad base of U.S. vendors to meet the 50% domestic content requirement; and it forces the only U.S. supplier, Allis-Chalmers Corporation, to develop a broad base of foreign vendors in order to meet price competition. Thus, the Defense Department receives the benefits of intense, world-wide competition, yet retains a viable domestic base of component suppliers, as a result of the 50% differential factor, regardless of prime contractor selection.

Elimination of the 50% factor, and retreat to a uniform 6% factor, will also have the likely effect of eliminating the only remaining manufacturer in the U.S. of large hydro-turbines, Allis-Chalmers. This possibility has been recognized by Allis-Chalmers' principal U.S. Government customer, the Army Corps of Engineers, which noted recently that if Allis-Chalmers "were to cease operations, for all practical purposes there would be no domestic source of hydraulic turbines. We would have to rely entirely on foreign suppliers." (Exhibit 5).

Without competition from a domestic prime contractor, or utilization of the domestic component supplier network to meet the 50% domestic content requirement, there is no assurance that foreign suppliers bidding 100% foreign content would not engage in trade practices regarded as unlawful under U.S. antitrust legislation. Difficulties of enforcement in such an event are obvious.

As recent U.S. Bureau of Reclamation experience has shown, the use of the 6% differential factor has resulted in U.S. bidders having little chance against foreign bidders employing 100% foreign content. See Exhibit 6, which demonstrates that 12 out of the last 15 USBR procurements went foreign on this basis, and the two that did go domestic went to companies which do not manufacture hydraulic turbines as part

of their normal business. (Exhibit 7). In the case of the Grand Coulee Dam, awarded to Willamette, the turbines were designed by Dominion Engineering Works, a Canadian firm (Exhibit 6), with substantial manufacturing by Japanese and Swiss suppliers.

It should also be noted that, except for Canada, no other nation which has a domestic hydraulic turbine industry customarily permits imports of hydraulic turbines. At the same time many foreign countries subsidize their industry and support exports.

In an effort to confirm whether the competitive situation for hydro-turbine sales in Japan is as we have suspected it to be, i.e., that no foreign competition is permitted, Allis-Chalmers wrote to several Japanese utilities, including one Government utility, requesting the opportunity to bid to them. A copy of the January 21, 1977 letter to the Japanese utilities and the list of utilities to which it was sent comprise Exhibit 8. At the end of March, 1977, Allis-Chalmers had received only one response to this request: a February 4, 1977 letter from Fuji Electric (Exhibit 9), a Japanese manufacturer of hydraulic turbines and Allis-Chalmers' licensee for pump/turbines. Subsequent thereto, Allis-Chalmers received another letter from Fuji, dated July 1, 1977 (Exhibit 10), which states "the Japanese utilities have no intention at

all to directly import from abroad pump-turbines or conventional hydraulic turbines. We can assure you of this definitely, since we are well versed to their buying behaviors, and that is why they have not replied to you to date." It is clear to Allis-Chalmers from this admission that no suppliers other than Japanese will be given the opportunity to compete in Japan on hydro-turbine projects, despite the heavy reliance on hydro power in the Japanese electrical power system, and notwithstanding that Japanese hydro-turbine manufacturers are encouraged to bid on similar projects in the United States.

See also, Governmental Buy-National Practices of the United States and Other Countries -- An Assessment, Report to the Congress by the Comptroller General of the United States, September 30, 1976, pp. 49-52, which finds, "Despite these formal declarations of nondiscrimination [by the Japanese], U.S. businesses and their representatives in Japan suggest that the rescission of the 1963 order [favoring Japanese suppliers] has not altered the discriminatory procurement practices of the Government and its public corporations."

While Canada has permitted the importation of hydraulic turbines in the past, there is evidence that the situation has changed. The Province of Quebec has limited its procurements almost exclusively to companies manufacturing turbines within Quebec. Allis-Chalmers, during the period it maintained

a capability for manufacturing hydro-turbines at its facilities in Lachine, Quebec, was successful in obtaining little more than 6% of the approximately 15,400 MW of installed capacity in the Province. Allis-Chalmers has not, however, obtained any orders for hydraulic turbines in Quebec, since the Lachine facility was committed to the manufacture of other lines of equipment in the late 1960's. Confirming this situation, the Province of Quebec (in which Dominion Engineering and the government-owned supplier, Marine Industries, the major Canadian hydraulic turbine manufacturer, are located) recently advised Allis-Chalmers through the James Bay Energy Corporation, an instrument of Hydro Quebec (the provincially owned electrical utility), that it would no longer accept bids from suppliers outside the Province of Quebec. As a result, Allis-Chalmers will be unable to submit bids for the extensive LaGrande Project, which is currently underway. The LaGrande Complex will ultimately contain forty-four (44) units capable of generating over 10,000 MW, all of which will be reserved exclusively for Quebec manufacture. This situation leaves little doubt that Canada's major turbine manufacturers enjoy a protected home market.

#### FUTURE DOMESTIC HYDRO-TURBINE PROCUREMENTS

Historically, Allis-Chalmers has supported vigorously

the U.S. Army Corps of Engineers Hydroelectric Program, having supplied 4,673.7 MW of hydraulic turbines to the Corps out of a total of 9,511.6 MW purchased in the last 15 years. (Exhibit 11). This represents 36.7% of the Allis-Chalmers Hydro-Turbine Division's business for the period. (Exhibit 12). Obviously, the facilities required for this business represent a significant segment of the Division's capital investment, some of which was made in recent facility additions, on the assumption the Corps' procurement policies would be maintained.

Federal Government purchases of hydraulic turbines in the next five years are expected to total approximately 208 million dollars. The Corps' purchases alone are expected to total approximately 167 million dollars, or over 80% of this total. (Exhibit 13). Considering all domestic hydraulic turbine requirements forecast for the next five year period, the Federal Government requirements represent approximately 43% of the total and the Corps of Engineers alone, approximately 34% of the total. (Exhibit 14).

The Allis-Chalmers Hydro-Turbine Division is at an insurmountable disadvantage when bids are evaluated on a low price basis only as required by ASPR, particularly against Japanese manufacturers who currently have considerable excess manufacturing capacity. Allis-Chalmers is normally competitive in world bidding situations under which conditions of technical expertise and previous reliable experience are permitted as bid evaluation

factors. These latter factors may not be evaluated under current Defense Department bid procedures.

All recent successful bids to the Corps of Engineers by foreign suppliers for hydraulic turbines have been on the basis of more than 50% subcontracted domestic content in order to qualify as domestic bids, with the exception of the recent award of an order for fish-attraction turbines for the Bonneville Second Powerhouse to a Swiss manufacturer where the Buy American Act requirements were waived purportedly pursuant to a Memorandum of Understanding between the Department of Defense and the Swiss Government associated with the purchase of military aircraft by the Swiss from American manufacturers. (Exhibit 15). Allis-Chalmers is currently challenging this interpretation of the Swiss Memorandum of Understanding in the courts. It is the position of Allis-Chalmers that the Memorandum of Understanding, which by its terms is stated to apply to "defense articles and services," is not applicable to procurements for civil works projects such as hydro-turbine equipment. Nevertheless, the Corps, notwithstanding the contested Borneville award, is continuing to include in selected recent Solicitations for civil works projects provision for possible waiver of the Buy American Act for Swiss bidders. If this practice persists, the ability of Allis-Chalmers to continue as the sole remaining domestic manufacturer of large hydro-turbines will be further jeopardized.

If the United States Government initiates a uniform 6% evaluation differential, Japanese and other foreign bidders could easily and consistently lower their prices by quoting 100% foreign content, absorb the normal 6% add-on and still bid below American manufacturers in a price-only competition. This would be doubly advantageous to Japanese suppliers, considering the current excess capacity they are experiencing, as evidenced by their recent bids to the Bureau of Reclamation. The Corps' 34% of the total domestic business forecast for the next five years represents approximately 3.0 million manufacturing manhours. However, the negative impact if this business is lost to domestic industry will extend far beyond those manhours. Domestic industry's return on investment will certainly drop as a result of reduced employment and utilization of facilities. Unacceptable returns will dictate reduction or elimination of research and development efforts, which in turn will mean technological decay. The obvious result would be the disappearance of the last U.S. hydro-turbine manufacturer, along with the thousands of jobs provided.

#### PUBLIC INTEREST CONSIDERATIONS

There is a substantial reason to retain the 50% evaluation factor for the hydro-turbine industry on the basis of national and security interests, which might be addressed as

"public interest." In this regard the hydro-turbine industry is unique in both manufacturing facilities and personnel.

The Allis-Chalmers facility is unique in the size of the material it is capable of handling with its sophisticated fabricating and welding equipment, heavy machine tools (including a 42 ft. boring mill, the largest in the U.S.) and its associated crane capacity (single cranes up to 200 tons). (Exhibit 16) [A-C Bulletin 54B4501]. It should be noted that this equipment is not only applicable to hydraulic turbines, but other large manufactured goods as well. Examples are large propellers and shafts for the Navy, Coast Guard and commercial vessels. In addition, Allis-Chalmers' capacity in this area could be expanded as needed in the time of national emergency.

The Hydro-Turbine Division team of engineers and technicians has expertise not only in the field of fluid dynamics, but in others as well, e.g., development and innovation of welding techniques, application of hydraulic model results to full size prototype equipment and application of sophisticated computer technology to large, complex, highly stressed components or component segments. This background and capability is frequently made available to consulting engineers and customers' engineers in the preliminary phases of planning future projects containing hydraulic turbines and in the case of rehabilitation of defective hydrogenerating equipment when engineering diagnosis and changes in design are

required. Reliable information is particularly significant in the preliminary phases of hydro projects when the multi-million dollar investment and time factors (typically 5 years from date of order to equipment on line) are considered.

With 15% of the nation's electrical generation provided by hydro equipment (Exhibit 1), a domestic capability to provide maintenance, repair, and replacement services becomes a high priority matter, and it is obvious that this capability depends as much on experienced personnel as on the facilities. The ability and experience of Allis-Chalmers' team permits service and repair of other manufacturers' equipment as well as its own.

#### RECOMMENDATIONS

1. The 50% differential factor currently being used by the Corps of Engineers under Defense Department procurement policy is vital to domestic suppliers of hydrogeneration equipment and to the United States Government. It assures effective world-wide price competition among all bidders, as well as maintenance of a viable American industrial base for national and security interests. Rather than eliminating the 50% evaluation factor, it should be extended to all Government agencies for procurement of hydraulic turbines. State and Municipal Government Agencies should also

be required to use the same factor when such agencies employ Federal Government funds or facilities in developing their projects.

2. Consistent with the recent recommendations to Congress by the General Accounting Office, Allis-Chalmers believes that the United States should not unilaterally make a major concession by eliminating U.S. "buy-national" practices. Arrangements with U.S. trading partners to work toward freer trade, with due regard for national interests and safety, should "[b]e contingent on reciprocal actions by U.S. trading partners that will clearly result in opportunities for U.S. industry and labor to benefit from increased exports."
3. If the 50% differential factor were to be eliminated, guidelines, promulgated by all Federal procuring agencies, should then require that whenever a U.S. bidder alleges that a procurement from a foreign source located in a country which has an agreement for waiver of the provisions of the Buy American Act (such as under Certain Memoranda of Understanding between the United States and foreign countries concerning the purchase of military equipment), such waiver shall be granted only after a published Determination and Finding by the head of the agency involved that it will not jeopardize an essential U.S. national industrial base. Further, the guidelines should encourage class determinations wherever appropriate.

(Note: The documents referred to in this statement are not printed here.)

THE UNITED STATES HYDRAULIC TURBINE MARKET  
A SUMMARY OF FOREIGN COMPETITION

ALLIS-CHALMERS  
HYDRO-TURBINE DIVISION

February 5, 1979

A-C HYDRO-TURBINE DIVISION  
SITUATION RELATIVE TO FOREIGN COMPETITION  
AND FEDERAL GOVERNMENT PROCUREMENT AND IMPORT POLICIES

Statement of Problem

Non-tariff trade barriers have existed in the Hydraulic Turbine Industry for at least the last 15 years. Except for the U.S. and Canada (except Quebec), no other nation which has its own domestic hydraulic turbine industry customarily permits imports of hydraulic turbines. Typifying this situation are the nations of Japan, France, Switzerland and the Province of Quebec in Canada.

Japan has a network of electric utilities, only one of which, the Electric Power Development Corporation (EPDC), has direct government affiliation. The Japanese Hydraulic Turbine Industry consists of four (4) principal manufacturers: Hitachi, Toshiba, Mitsubishi and Fuji. Export marketing activities by these manufacturers are reported to be closely coordinated by the Ministry of International Trade and Industry (MITI). Reference to this coordination was made in the December 9, 1977 issue of Electrical Review International which noted that: "A trio of Japan's leading heavy electrical machinery enterprises has elected to band together to make bids for export contracts. ...

They have consented to divide up a contract on equal thirds basis, rather than vie with each other in independent, competitive bidding. . . . [T]he Japanese home market for heavy electrical machinery is no longer able to accommodate what they call 'unnecessarily excessive competition that works to the good of no firm at all.' " A September 30, 1976 report to the Congress by the Comptroller General of the United States entitled, Governmental Buy-National Practices of the United States and Other Countries--An Assessment, states that, "Despite these formal declarations of non-discrimination (by the Japanese), U.S. businesses and their representatives in Japan suggest that the rescission of the 1963 Order (favoring Japanese suppliers) has not altered the discriminatory procurement practices of the government and its public corporations."

The Power Generation and Transmission Systems in France are nationalized as Electricite de France. The System, as a matter of practice, purchases equipment exclusively from French suppliers.

The Power Generation and Transmission System in Switzerland consists of a number of private utilities. These utilities deal exclusively with domestic suppliers through private bidding and negotiations.

Canada continues to permit the importation of hydraulic turbine equipment. Quebec, however, (the province with by far the most undeveloped hydro-electric potential) has limited its procurement to companies manufacturing turbines within the province. This includes the two major Canadian manufacturers, Dominion Engineering Works and Marine Industries. Allis-Chalmers has not had the opportunity to participate in the very significant hydro-electric program in Quebec since 1965. In fact, in 1977, Quebec advised Allis-Chalmers through the James Bay Energy Corporation, an instrument of the Province of Quebec, that it would no longer accept bids from suppliers outside the Province. As a result, Allis-Chalmers is unable to submit bids for the extensive LaGrande Project which is currently underway. As a matter of interest, the LaGrande complex will ultimately contain 44 units capable of generating over 10,000 MW. This situation leaves little doubt that Canada's major turbine manufacturers also enjoy a protected home market.

Because of this protection afforded by the various types of non-tariff barriers, hydraulic turbine manufacturers of other nations have a controlled situation in their home markets resulting in favorable prices and assured business.

These same manufacturers are, therefore, able to exercise substantial latitude in export pricing (a two price level system) in order to fill open capacity and assure employment as needed.

As a result of the foregoing, hydraulic turbine bid prices received in the U.S. from foreign manufacturers, particularly Japan, have been at levels consistently below those of domestic suppliers for the last several years. Since mid-1975 in fact, on those projects open to competitive bidding (and without substantial "Buy-American" protection as currently provided by the Department of Defense) the low foreign bid price has averaged 35% below that of the low domestic bidder.

Because the Federal Government allows suppliers from these countries to continue to compete in the U.S. despite these conditions, forcing domestic suppliers to attempt to quote at severely depressed price levels, the Federal Government and private U.S. utilities are effectively supporting research and development overseas at the expense of domestic suppliers. They are, in other words, exporting research and development and importing foreign unemployment.

The result of all these circumstances has been a declining participation by domestic suppliers in the U.S. market

(see Exhibit 1), from 70% of all units bid in 1974 to only 20% in 1978.

As a result of the limited size of this market and its associated uncertainties, some of which have been outlined above, the U.S. Hydraulic Turbine Manufacturing Industry has been reduced from six (6) active participants in 1950 to only one (1) major supplier at the present time.

(See Exhibit 2) This decline in the number of U.S. manufacturers has resulted in a reduction of the U.S. annual capacity to engineer and manufacture hydraulic turbine equipment to approximately 1,700 MW annually. This means that U.S. manufacturing capability is becoming a lower percentage of projected annual domestic MW requirements. According to FERC statistics, an average of 4,700 MW per year in additional hydro-electric capacity will be required through 1984. If the trend of increasing foreign penetration in the domestic market is allowed to continue, the United States will shortly lose its last supplier fully capable and competent in hydraulic turbine development, design and manufacture (as well as service, maintenance and repairs).

U.S. Hydraulic Turbine Manufacturing Industries' Objectives:

1. Achievement by the U.S. Government of fully reciprocal trade agreements with each of the nations having suppliers competing in the hydraulic turbine field. A list of these nations is included in Exhibit 3.

The best example of the situation which exists with the other hydraulic turbine supplier nations is that of Japan. While we have been aware of the continuing Japanese situation, i.e., that no foreign competition is permitted, our first effort to clearly define that situation was a January 21, 1977 letter addressed to the presidents of ten Japanese utilities. A copy of that letter and list of utilities to which it was sent comprise Exhibit 4. After follow-up letters dated March 31 and May 31, 1977 were sent, two polite but non-committal responses were received from Japanese utilities on June 10, 1977, and a third following later on July 19, 1977. The only substantive response received came from A-C's licensee, Fuji Electric (who had not been copied on our original letter). Exhibit 5 consists of copies of Fuji's letters dated February 4, 1977 and July 1, 1977, the second of which states, "The Japanese utilities have no intention at all to directly import from abroad pump/turbines or conventional hydraulic turbines. We can assure you of

this definitely, since we are well versed to their buying behaviors, and that is why they have not replied to you to date." This position was further confirmed in a meeting with a Japanese trade delegation at the Department of Commerce on Monday, March 13, 1978. This meeting closely followed the conclusion of Ambassador Strauss' trade negotiations with Japan which had reportedly resulted in a relaxing of Japanese trade restrictions. As indicated in our letter of confirmation of that meeting (Exhibit 6), A-C was told by the Japanese trade delegation that Japan has no intention now or in the future to purchase hydraulic turbines from other than Japanese suppliers. The situation has subsequently been pursued through the Department of Commerce, Trade Facilitation Committee, with little hope of any success offered.

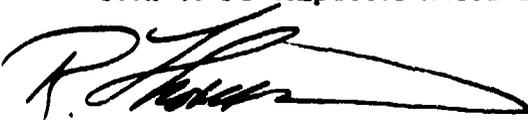
2. Establish the domestic hydraulic turbine industry's importance to the National security and the achievement of energy self-sufficiency. An industry which serves a segment of the Nation's electric power generation industry exceeding 10% of the total in both installed capacity and energy generated, (Exhibit 7) must receive serious consideration to qualify in both categories. Determination of an industry as being critical to

National security opens the possibility of establishing increased tariffs on imports of that equipment.

3. Implement the full and original intent of the Buy American Act. These regulations originally established to encourage domestic purchasing by the U.S. Government could be implemented to establish reciprocal trade restrictions or penalties in response to specific product exclusions from supplier nations. The 50% bid evaluation penalty against foreign bids, as established and currently used by the Department of Defense under the existing laws and regulations could also be adopted by other government agencies for selected categories of equipment. The Department of Energy funding for feasibility studies and construction grants should be limited to U.S. industry. In addition, state and municipal agencies receiving federal funding should be required to exclude suppliers from protected home markets.
  
4. Eliminate civil works equipment from eligibility for favored reciprocal treatment under DOD Memoranda of Understanding. The Division has a case pending in Federal District Court in an effort to stop what is

deemed to be an illegal application of reciprocal purchase Memoranda of Understanding to Civil Procurements. The Department of Defense is attempting to apply M.O.U.'s resulting from the purchase of U.S. military equipment by Switzerland and England to equipment for civil works as well as to military hardware. This action results in an unquestionably inequitable situation for domestic industry since under the M.O.U. the foreign supplier is required to pay no duties at all, whereas the competing domestic supplier must pay duties on any imports contained in the equipment supplied.

5. In order to accomplish the foregoing objectives, Allis-Chalmers must now pursue and support new legislation which would strengthen the position of domestic power generation equipment suppliers, when competing with foreign suppliers, not only for federal government contracts, but also when selling to the nation's investor-owned utilities and other power generation agencies. This area will be particularly important as the Congress begins consideration of the Administration's recommendations resulting from the soon to be completed Multi-Lateral Trade Negotiations.



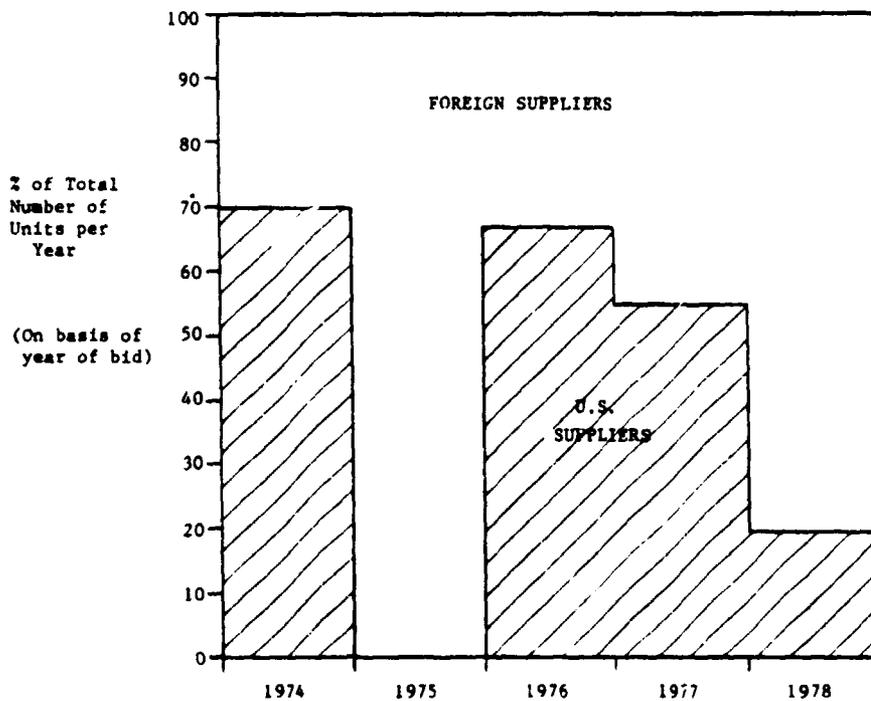
R. Thoresen

ALLIS-CHALMERS HYDRO-TURBINE DIVISION

UNITED STATES

HYDRAULIC TURBINE PROCUREMENT

JANUARY 1974 - JANUARY 1979



## ALLIS-CHALMERS HYDRO-TURBINE DIVISION

HISTORY OF U.S. HYDRAULIC TURBINE  
MANUFACTURING INDUSTRY

1950 - Manufacturers

Allis-Chalmers  
Baldwin-Lima-Hamilton  
Pelton  
Newport News  
S. Morgan Smith  
Leffel

1. Pelton had been a subsidiary of B-L-H since the late 1930's.
2. Allis-Chalmers acquired S. Morgan Smith - January 1959; operations were subsequently consolidated in York, Pennsylvania.

1960 - Manufacturers

Allis-Chalmers  
Baldwin-Lima-Hamilton  
Pelton  
Newport News  
Leffel

1. B-L-H consolidated and closed the West Coast facilities of its subsidiary, Pelton.

1970 - Manufacturers

Allis-Chalmers  
Baldwin-Lima-Hamilton  
Newport News  
Leffel

1. B-L-H was acquired by Armour in 1963 and Greyhound in 1969. The decision to cease participation in the hydraulic turbine business followed rapidly in May of 1970.
2. Newport News was acquired by Tenneco in 1971 and discontinued its hydraulic turbine business shortly thereafter.

1979 - Manufacturers

Allis-Chalmers \*  
Leffel \*\*

All information available to us indicated conclusively that all the departures from the hydraulic turbine manufacturing industry came about due to extremely marginal return on investment resulting from the unrealistically low prices submitted by foreign manufacturers in the 1960's.

\* Allis-Chalmers employment history associated with the manufacturer of hydraulic turbines in York reflects a growth from approximately 600 people in 1950 to approximately 1,000 today.

\*\* Limited to manufacture of very small capacity units representing less than 1% of average annual U. S. capacity commitments; also currently reported to be for sale.

## ALLIS-CHALMERS HYDRO-TURBINE DIVISION

HYDRAULIC TURBINE MANUFACTURING NATIONS

United States  
Canada  
France  
England  
W. Germany  
Austria  
Switzerland  
Spain  
Italy  
Sweden  
Norway  
Finland  
Belgium  
Yugoslavia  
Russia  
Brazil  
China (Peoples Republic)  
India



BOX 717 • YORK, PENNSYLVANIA 17408 / 717-782-6768

YORK PLANT  
HYDRO-TURBINE DIVISIONAIR MAIL  
January 21, 1977

Mr. Toshio Morioka, President  
Kansai Elect. Power Company  
#5, Nakanoshima 3-chome  
Kita-ku  
Osaka 530, Japan

REFERENCE: Kansai Elect. Power Company  
Hydraulic Turbine Requirements

Gentlemen:

It is readily apparent that the Kansai Elect. Power Company is one of the leading organizations in Japan in the utilization of hydraulic power for the generation of electricity. In this regard, we would like to call your attention to the capabilities of the Hydro-Turbine Division of Allis-Chalmers located at York, Pennsylvania.

As you may be aware, Allis-Chalmers is one of the world's leading suppliers of hydraulic turbines, particularly reversible pump/turbines. We have licensed the Fuji Electric Co., Ltd. of Japan for the manufacture of pump/turbines. While Allis-Chalmers has no plans to change this arrangement with Fuji, we would be very interested in quoting to you directly on your future requirements for turbines and pump/turbines. We have the capability for the development, design and manufacture of large Propeller, Kaplan, and Francis turbines, as well as Francis type pump/turbines. For your preliminary consideration, we are enclosing copies of bulletins reviewing our laboratory, manufacturing facilities and pump/turbine technology as well as our reversible pump/turbine installation list.

We would be very much interested in pursuing the possibility of quoting to Kansai Elect. Power Company on future hydraulic turbine business in competition with domestic Japanese suppliers, assuming our bid would be seriously considered and evaluated on a well defined predetermined basis made known to all parties prior to bidding.

We look forward to your reply and the possibility of a mutually profitable relationship.

Very truly yours,

*J. F. Meyers*  
J. F. Meyers  
Manager of Marketing

JFM/KT/sh  
Enclosures

JAPANESE UTILITIES

Chuba Elect. Power Company #1, Toshincho Higashi-ku Nagoya 461-91, Japan	Mr. Otozaburo Kato, President Telephone: (052) 951-8211
Chugoku Elect. Power Company #33, Komachi 4-chome Hiroshima 732, Japan	Mr. Kansaku Yamane, President Telephone: (0822) 41-0211
Dengen Kaihatsu (EPDC) #2 Tekko Building #8-2, Marunouchi 1-chome Chiyoda-ku Tokyo 100, Japan	Mr. Yoshihiko Morozumi, President Telephone: (03) 212-2211
Hokkaido Elect. Power Company #2, Higashi 1-chome Ohdori, Chuo-ku Sapporo 060-91, Japan	Mr. Kohmo Yotsuyanagi, President Telephone: (011) 251-1111
Hokuriki Elect. Power Company #1, Sakurabashidori 3-chome Toyama 930, Japan	Mr. Keigo Haratani, President Telephone: (0764) 41-2511
Kansai Elect. Power Company #5, Nakanoshima 3-chome Kita-ku Osaka 530, Japan	Mr. Toshio Morioka, President Telephone: (06) 441-8821
Kyushu Elect. Power Company #1-82, Watanabedori, 2-chome Chuo-ku Fukuoka 810-91, Japan	Mr. Saburo Nagakura, President Telephone: (092) 761-3031
Shikoku Elect. Power Company #5, Marunouchi 2-chome Takamatsu 760-91, Japan	Mr. Tsunenori Yamaguchi, President Telephone: (0878) 21-5061

Tokyo Elect. Power Company  
#1-3, Uchisaiwaicho 1-chome, Chiyoda-ku  
Tokyo 100, Japan

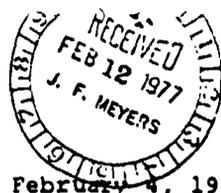
Mr. Hisao Mizuno, President  
Telephone: (03) 501-8111

Tokyo Elect. Power Company  
Denryoku Building  
#7-1, Ichibancho 3-chome  
Sendai 980, Japan

Mr. Tsutomu Wakabayashi, President  
Telephone: (0222) 25-2111



EXHIBIT 5  
Page 1



YOUR REF.

OUR REF. FE/2994/MUR

TOKYO February 4, 1977  
(Mailed on Feb. 7, 1977)

Mr. J.F. Meyers  
Manager of Marketing  
Allis Chalmers  
Box 712  
York, Pennsylvania 17405

U. S. A.

Dear Sir,

1. We came to know you have sent the letters and catalogues to Japanese Power Companies, in which you mentioned your interest for direct quoting for future requirements of turbines and pump-turbines. We are very much embarrassed with the situation produced by the above your letter to the Japanese Power Companies, because the reaction made by Japanese Power Companies are quite reverse to AC-Fuji Group marketing.

We have frequently explained to you the particular situation in Japanese market and we believe that you have understood it.

2. Japanese power authorities have established their policies to procure those foreign origin products, if they decide to purchase them, through Japanese reliable manufacturers who have technical collaboration with those foreign manufacturers of such equipment to be purchased from outside Japan. This policy was established though their past experiences with foreign manufacturers including yourself.

This policy was established not only for Hydro-Power station but for Nuclear power as well as Steam power and therefore they all the time purchase GE, WH or KWU machines through Hitachi, Toshiba, Mitsubishi or Fuji.

Furthermore, they have following three reasons in procurements of machines of foreign manufacture through Japanese reliable manufacturers.



- 2 -

- 1) Various requirements made by Japanese Authorities are sometime far from the understanding of foreign manufacturers, but even such cases, Japanese reliable manufacturers are possible to understand the requirements and to persuade the foreign manufacturers to accept such modifications or requirements, or if the procedure does not work well, the Japanese manufacturer would modify the equipment by themselves under their full responsibility.
  - 2) They wish to receive rapid technical service, at any time, by a telephone call only.
  - 3) In every respects of technical communication they have strong intension to achieve it by Japanese language.  
This means that, even though they decide to import some equipment, they wish to purchase it through Japanese reliable manufacturers who has technical know how on the equipment to avoide any possible misunderstanding or any inconvenience.
3. We have no intension to block you from Japanese market, but we have intension and are performing the efforts to sell our pump-turbines manufactured under your license and/or your own pump-turbines. In other words, if we are successful to sell your pump-turbines to Japanese Power Authorities, it means that they accept AC-technics and we would be better position to sell our machines to those clients.

The action taken by you of this time has given such impression to the Japanese Power Authorities that the relationship between AC and Fuji is not close enough and Fuji is not Authorized to use AC technics. They also got such impression that, even if they order pump-turbines to Fuji, they are afraid of various difficulties which might be produced by the unreliable relationship between AC and Fuji.

Thus, we are facing various noise and difficulties now and we are afraid of such opinions in the client interior would allow the Hitachi and Toshiba to take better position in the particular transactions.



4. In the meantime, for conventional water turbines, we are not in a position to make any comment to your actions taken by you since we have no technical tie up with you. However, if you would make any marketing of conventional turbines, please make clear statement to the clients that you have no relation with Fuji in the field of the conventional turbines.

*\* in Japan*  
As a conclusion of this letter, we would like to mention that we are performing our every efforts to sell AC-technics in Japan in either style of AC-own turbines or Fuji turbines under license of AC.

Would you please be patient enough so that we would be possible to enjoy our achievement in Japan in the field of pump turbines.

Taking this opportunity, we inform you the present situation in Japan for the field of pump-storage as follows. Basing on our achievement in the Chongpyong Project, we are performing far stronger marketing in Japan and results sound much better now. At this moment we are concentrating into Takami (2 x 116MW 125M) for Hokkaido Electric Power and Tokuyama (2 x 230MW, 145m) of EPDC. Those new pump-storages are planned to be placed order in around 1979.

Yours faithfully,  
FUJI ELECTRIC CO., LTD.

M. Tomimura, Manager  
for Hydro Power Plant  
Engineering Div.

EXHIBIT 5  
Page 4

YOUR REF.

OUR REF.

TORYO, July 1, 1977

Mr. J.F. Meyers  
Manager of Marketing  
Allis Chalmers  
Box 712  
York, Pennsylvania 17405  
U.S.A.

cc: B. Sjafflin  
L. Thorsen

Dear Sir,

We thank you for your letter of May 31, 1977.

In our letter of February 4, 1977, we advised you that Allis-Chalmers' way to make the direct contact to the Japanese utilities would cause an adverse effect. You however answered us by your letter of March 8 and 31, 1977 again confirming your intention to keep the direct contact with them.

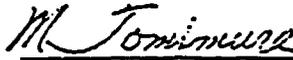
In fact, we have nowadays been informed by some utility companies to whose presidents you are still writing that they wonder what the Allis-Chalmers' real intention is, as expressed by the repeated contacts to their presidents. It seems to us obvious that the utilities are now feeling rather unpleasant to receive such letters from you so often. We are very afraid of the Japanese utilities to whom you have written so persistently, to have a feeling unfavorable to Allis-Chalmers.

As already notified you by our letter of February 4, 1977, the Japanese utilities have no intention at all to directly import from abroad pump-turbines or conventional hydraulic turbines. We can assure you of this definitely, since we

are well versed to their buying behaviors, and that is why they have not replied to you to date. It is quite meaningless and we must avoid that your marketing efforts turn out to give an unpleasant feelings to the utilities. In this respect, as a matter of course, we have no intention at all to dissuade you from marketing your products in Japan.

Your thoughtful consideration on this matter would be highly appreciated to maintain our joint reputation in Japan as excellent as ever.

Yours faithfully,  
FUJI ELECTRIC CO., LTD.



M. Tomimura  
Manager, Hydro-electric  
Power Plant Div.



BOX 712 • YORK, PENNSYLVANIA 17405 / 717 792-3811

YORK PLANT  
HYDRO-TURBINE DIVISION

March 30, 1978

Mr. Yotaro Iida, Director  
Vice General Manager Power Systems Headquarters  
Mitsubishi Heavy Industries, Ltd.  
5-1 Marunouchi 2-Chome Chiyoda-Ku  
Tokyo 100 Japan

Dear Mr. Iida:

The time you made available to me Monday morning, March 12, 1978 at the United States Department of Commerce Offices to discuss Allis-Chalmers' interest in marketing hydraulic and pump turbines in Japan with you, was very much appreciated. In order to assure that there was no misunderstanding relative to our discussion I would like to summarize and confirm the conclusions reached. As stated by Mr. Sumiya, representing your delegation, Japan's future requirements in the hydroelectric generation field will be almost exclusively for high head pump turbines. He stated in addition, that it is the intent of the Japanese Electric Power Generation Organizations, including EPDC, to have all current and future hydraulic turbine and pump/turbine equipment requirements supplied by Japanese manufacturers exclusively. Interest in joint venture export possibilities to other nations by Japanese manufacturers and by Allis-Chalmers was expressed by the parties.

If I have misunderstood our discussion in any way or omitted any significant point, I would appreciate your advising me. Thank you for your interest and courtesy.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'R. Thoresen', written over a horizontal line.

R. Thoresen  
Manager, Marketing Services

RT/jcm

cc: Mr. David S. Climer, United States Dept. of Commerce  
Mr. Fred E. Crosley, Jr., United States Dept. of Commerce  
Ms. Janice Philbrick, United States Dept. of Commerce  
Ms. Janet G. Thomas, United States Dept. of Commerce

## IDENTICAL LETTERS TO:

Mr. Yotaro Iida, Director  
Vice General Manager Power Systems Headquarters  
Mitsubishi Heavy Industries, Ltd.  
5-1 Marunouchi 2-Chome Chiyoda-Ku  
Tokyo 100 Japan

Mr. Ryokichi Ohiwa, Deputy Manager  
Nuclear Power Division  
The Federation of Electric Power Companies  
Keidanren Bldg.  
No. 9-4 1-Chome, Ohtemachi  
Chiyoda-Ku Tokyo, Japan

Mr. Yutaka Sumiya, Deputy Manager  
Nuclear Power Construction Department  
The Tokyo Electric Power Co., Inc.  
No. 1-3 1-Chome, Uchisaiwai-Cho  
Chiyoda, Tokyo, Japan 100

Mr. Shiroo Kawada, Board Director &  
General Manager, Materials Department  
Hitachi, Ltd.  
New Marunouchi Bldg.  
No. 5-1, 1-Chome, Marunouchi  
Chiyoda-Ku, Tokyo 100 Japan

Mr. Jun Kobayashi, Chief Engineer of  
Heavy Apparatus Group  
Tokyo Shibaura Electric Co., Ltd.  
13-12, Mita 3-Chome, Minato-Ku  
Tokyo 108, Japan

Mr. Hirofumi Kawano, Deputy Director  
Electronics Policy Division  
Machinery & Information Industries Bureau  
Ministry of International Trade & Industry  
3 Kasumigaseki 1-Chome  
Chiyoda-Ku, Tokyo, Japan

## ALLIS-CHALMERS HYDRO-TURBINE DIVISION

## UNITED STATES

ELECTRICAL GENERATION BY SOURCE \*

	<u>INSTALLED CAPACITY (MW x 10<sup>6</sup>)</u>	<u>%</u>	<u>ENERGY PRODUCTION (MWH x 10<sup>6</sup>)</u>	<u>%</u>
Fossil	438.9	78.8	1,652.8	77.8
Nuclear	49.8	8.9	250.9	11.8
Hydro	<u>68.3</u>	<u>12.3</u>	<u>220.4</u>	<u>10.4**</u>
Total	557.0	100	2,124.1	100

\*\* Because of Drought Conditions during 1976 and 1977,  
hydro-electric output declined significantly

\* Reference: U.S. Department of Energy  
Energy Data Reports, June 1978  
Data as of December 31, 1977



**ALLIS-CHALMERS**

MILWAUKEE, WISCONSIN 53201

**DAVID C. SCOTT**  
 CHAIRMAN OF THE BOARD  
 AND CHIEF EXECUTIVE OFFICER

April 23, 1979

**Mr. Frank A. Weil**  
 Assistant Secretary for Industry and Trade  
 U.S. Department of Commerce  
 Washington, D. C. 20230

Dear Frank:

**Subject: Japanese Non-tariff Trade Barriers**

Your concern with international trade and its impact on United States industry leads me to follow up on a suggestion made to me by Ambassador Henry Owen relative to the U.S.-Japanese Trade Facilitation Committee.

The continuing trade problem which exists with foreign supplier nations of hydraulic turbine equipment, particularly Japan, was defined in our "Statement of Allis-Chalmers Corporation, Hydro-Turbine Division, Concerning the Federal Government's Buy American Policy and Regulations" of which I understand the Trade Facilitation Committee has several copies. The situation defined in that statement is confirmed and updated by our enclosed February 5, 1979 paper on the subject.

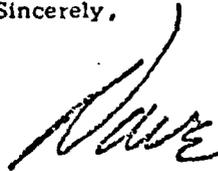
Because this situation continues to exist for hydraulic turbine equipment with no prospect of any change by the Japanese at their own initiative, it is requested that the Trade Facilitation Committee take action as necessary to obtain free access to Japanese markets (access equal to that enjoyed by Japanese suppliers in U.S. markets). It is strongly requested that this effort not be limited to just the Electric Power Development Co., Ltd., in which the Japanese government has a degree of ownership, but the privately owned electric utilities as well, since Japanese suppliers of hydro-turbine equipment have clearly demonstrated access to both government and private market sectors in the United States.

Mr. Frank A. Weil  
April 23, 1979  
Page Two

Because the existing situation in Japan is a flagrant violation of free trade and has existed for an extended period of time and because the well entrenched reluctance to change has been well documented, the required evidence that there has been a change, i.e., that the Japanese have opened their markets, must be substantial and must be concrete. It should be made clear that the evidence must consist of significant contracts to American firms from both the government and the private sectors. Anything less, under the circumstances, would have to be construed as nothing more than continued delaying tactics on the part of the Japanese government. If such an agreement cannot be reached with the Japanese government, it is suggested that reciprocal action to close the hydraulic turbine market in this country must be taken.

Your implementation of this matter with the Japanese government will be very much appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to be 'AWE', written in a cursive style.

Enclosure

Senator HEINZ. That concludes my testimony.

I would be pleased to answer any questions you might have.

Senator CHILES. Thank you.

You have introduced legislation that includes the proposed implementing provisions of the Subsidy Code.

As I understand it, your bill would regularize our trade investigation procedures and insure full and aggressive U.S. investigation of unfair trade practices.

What are your thoughts on the 301 provisions in the Procurement Code? Do you have any suggestions for improving the procedure for bringing domestic complaints before the international forum proposed in section 301?

Senator HEINZ. Mr. Chairman, I haven't given a great deal of study to section 301.

It is a new system. It is an important improvement over what we have had before. It will put additional burdens and obligations on the GATT, which will be entirely new—you might even say "foreign"—with respect to what has gone on before.

And for that reason, while I do not quarrel with what is in section 301, I think we would be well advised to try to make sure that as many people as possible understand that if they don't live up to the principles in the Procurement Code, and if they don't play the game according to the rules, they will be subject, in fact, to some fairly substantial penalties. Namely: They will be banished to the outer darkness, where they will find themselves competing against American firms, who will be given a preference in their prices based on the economic principles I described.

I think an ounce of prevention is worth a pound of cure. And for that reason, probably, the strongest step we can take in terms of enforcement is to get up front very clearly what we intend to do to people who simply don't live up to this agreement.

Then, I think you, Mr. Chairman, will achieve your desires on enforcement, because, as we found out in our other trade laws, whether it be dumping or countervailing duties, those laws are only as good as they are credible. They are only as secure as the penalties.

Senator CHILES. I think that is exactly right.

That is the great concern that most of us in the Congress feel when we look back at the past provisions of GATT. The absence of any strong determination with which our Government dealt with clear violations of GATT certainly concerns us as we see what appears to be the new Procurement Code, which could be very fair and very beneficial.

We are opening up our markets. But, at the same time, our neighbors are opening up their markets to competition.

Senator HEINZ. On section 301, one of the things we are doing in the Finance Committee is, we are trying to provide some parallel procedures involving a Presidential determination at the appropriate time that would insure that the committee of signatories doesn't let the matter drag past what is supposed to be a 6-month termination period. Should the committee of signatories allow that to slide, we will go ahead and make our determinations and findings.

We haven't quite decided whether they will be done by STR or the International Trade Commission. But they would eventually go to

the President. And the President would be required to make a determination.

And that puts the pressure on the GATT to live up to their timetable.

Senator CHILES. In that context, I know you support legislation to create a Department of International Trade.

Would you comment as to how you think such a high-level or Cabinet-level Department would affect the Procurement Code in particular and some of these enforcement provisions?

Senator HEINZ. I think it would be very beneficial, Mr. Chairman.

As you know, there is a fragmentation of responsibilities between STR, the USITC, and Treasury Department. And we need one voice that can speak for us in international trade and do so without being diverted, as I think sometimes the Treasury Department must be by the other treasury ministry as to some of the concerns they have about stabilizing the dollar.

Sometimes I fear the Treasury gets sidetracked. It comes to a question of whether our so-called geopolitical or diplomatic interests or some of these larger interests are going to get highest priority over our own economic interests, as manifested in these trade statutes that we are talking about. Somehow, the larger, the bigger and, somehow, more intangible aspects of geopolitical and diplomatic issues seem to take precedence. And the American businessman and the American taxpayer seem to get the short end of the stick.

I think a Department of International Trade and Investment would go a long way toward giving a stronger voice to both the American business community and to the taxpayers.

Senator CHILES. We thank you very much for your thoughtful statement and for your appearance before the committee.

Senator HEINZ. Thank you, Mr. Chairman.

I appreciate the chance to be here. And it is good to be appearing before you.

I enjoyed very much serving with you on the Federal Spending Practices Subcommittee. And I compliment you on your work in chairing these hearings.

Senator CHILES. Thank you very much.

We certainly enjoyed your being the ranking member on our subcommittee.

One of the most important provisions of the Trade Act calls for the President to consult with members of the private sector.

Our next panel is made up of businessmen who have been following the progress of the negotiations and have taken a special interest in the Procurement Code.

Norborne Berkeley was the chairman of the Procurement Subcommittee of the President's Advisory Committee on Trade Negotiations. And Mr. Berkeley is president of the Chemical Bank of New York.

The other members of our panel are representatives of the industry sector's advisory committees. They all represent industries who have taken a special interest in the Procurement Code.

Jonathan Lasley is the chairman of the Industry Sector Advisory Committee on Telecommunication and Non-Consumer Electronics.

Oliver Smoot is the chairman of the Industry Sector Advisory Committee on Office and Computing Equipment.

Bernard Falk chairs the Industry Sector Advisory Committee on Electrical Machinery, Power Boilers, Nuclear Reactors, and Engines and Turbines.

Bruce Davis is the assistant vice president of public affairs of Bethlehem Steel Corp.

We are delighted to have you here today.

If you will come up to the witness table, we will be glad to receive your testimony.

Mr. Berkeley, we will allow you to lead off.

**TESTIMONY OF NORBORNE BERKELEY, JR., PRESIDENT, CHEMICAL BANK OF NEW YORK, AND CHAIRMAN, PROCUREMENT SUBCOMMITTEE, ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS; JONATHAN HOWARD LASLEY, INTERNATIONAL REPRESENTATIVE, COLLINS RADIO CO., AND CHAIRMAN, INDUSTRY SECTOR ADVISORY COMMITTEE, COMMITTEE ON COMMUNICATION EQUIPMENT AND NONCONSUMER ELECTRONIC EQUIPMENT; OLIVER R. SMOOT, JR., REPRESENTATIVE, COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION, AND CHAIRMAN, INDUSTRY SECTOR ADVISORY COMMITTEE ON OFFICE AND COMPUTING EQUIPMENT; BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, AND CHAIRMAN, INDUSTRY SECTOR ADVISORY COMMITTEE ON ELECTRICAL MACHINERY, POWER BOILERS, NUCLEAR REACTORS, AND ENGINES AND TURBINES; AND BRUCE E. DAVIS, ASSISTANT VICE PRESIDENT OF PUBLIC AFFAIRS, BETHLEHEM STEEL CORP.**

Senator CHILES. We apologize for the fact that we are running a little later than we thought we would.

As you know, we have been hearing Ambassador Strauss. And we didn't get through as quickly as we expected.

Mr. BERKELEY. Thank you very much, Mr. Chairman.

Senator CHILES. I might say, in the interest of time, the complete statements will be put in the record.

If there is any way you can abbreviate those statements, we will have time to ask you questions.

Mr. BERKELEY. I have submitted a written statement to the committee members.

Senator CHILES. Your statement will be printed in the record at the end of your testimony.

Mr. BERKELEY. It would seem more appropriate, I think, for me to—perhaps to underline a few of the highlights that I tried to make in that written statement, which was made available to all the members.

I do appreciate this opportunity to testify before the committee—and particularly in support of the agreement on Government procurement.

I might just emphasize this point:

You mentioned that I had been on the President's Advisory Committee for Trade Negotiations, which I have had the pleasure of participating in for the past 3½ years. And, also, as you noted, in my pro-

fessional life I am a New York banker. I have also had a tremendous interest in and involvement in international trade.

Having reviewed the progress of the negotiations for several years, I am convinced that the agreements represent a major step toward enhancing the free flow of trade among nations. And this is a package that I, for one, think will be extremely beneficial to the United States.

And I think I can speak very fairly for many other members of my committee in complimenting Ambassador Strauss and his wonderful staff, who did the superb job that we feel they have done.

Among the most significant of the results are the concrete steps negotiated to reduce the nontariff barriers to trade and, of course, the tariff barriers themselves.

The principal one among the agreements is the one on Government procurement.

And I must point out here that if this agreement is supported by the Congress through its procurement transparency and implementation procedures and structure, it will have eliminated, in my judgment, in one stroke a century of U.S. exclusion from this very huge and important foreign market. I do believe the price is modest, indeed. Today most governments discriminate at will against foreign suppliers in their purchasing practices.

The Government Procurement Agreement aims to change this practice for, as I believe has been pointed out previously, perhaps in excess of \$20 billion in markets for U.S. exports. The agreement outlines the new code of behavior, with procedures set forth to help assure that participants, in fact, live by the rules.

In my judgment, the code produced by these negotiations represents about as good a set of rules as could be put on a piece of paper at this time.

I think it represents an opening wedge, and perhaps only an opening wedge, in the markets that have been closed to U.S. suppliers. The only serious issue that I think remains is to make sure that we have adequate followup procedures so that the potential gains implicit in the agreement can and will in fact be realized.

I might just make a few general points to underline this.

It is the secrecy and closed administrative systems surrounding Government procurement in most foreign countries that enables those countries to discriminate against United States and other outside firms seeking to supply the needed goods.

The agreement on Government procurement aims to bring these procedures much more out into the open to make them more transparent. Each country that is a signatory to the agreement has identified specific entities within its own governmental structure which henceforth will follow a prescribed open procurement policy.

Establishing this framework of openness and transparency in Government procurement systems is clearly an essential first step helping U.S. suppliers to gain access to presently closed markets.

An equally important secondary step provided in the proposed agreement is a set of detailed and hopefully effective procedures for handling disputes if they arise.

I have detailed these procedures in my written statement, and I think it might not serve any particular purpose to do that here at this moment.

It is important to recognize that the dispute procedure goes well beyond other procedures presently found in the GATT. Specific power to suspend the agreement, thereby cutting off one's own procurement contracts from suppliers from any country that fails to live up to its obligations, is, in my judgment, extremely strong leverage.

One other point should be noted. In addition to providing for transparency on a case-by-case basis with individual contracts, the agreement also requires that signatories provide statistics annually concerning the application of the agreement.

These statistics will allow us here in the United States to monitor overall administration and adherence to the agreement country by country.

For the first time, we should have reliable worldwide figures on procurement from which we can make meaningful comparisons that, hopefully, will be helpful.

Operationally, there is very little that will have to be changed in U.S. procurement procedures to conform to the agreement. We already have an open procurement system to a very substantial extent. Protections and preferences we give to domestic producers are upfront and in the form of percentage set-asides. Only those countries which open their own procurement will benefit from similarly open procurement here.

Well, I don't mean to imply that our negotiators were always successful in achieving the degree of access to procurement of particular countries that we desired. But they achieved much and responded well to any foreign resistance. If a foreign government refused in negotiations to include some of its procuring entities under the agreement, we immediately withdrew from the agreement entities of our own Government involved in similar products. Thus, the United States did not include under the agreement Army Corps of Engineers, Department of Energy, Department of Transportation, TVA, Bureau of Reclamation, and three parts of the General Services Administration.

In addition, national security items and other essential products purchased by the Department of Defense will not be covered by the agreement.

Also of major importance, in my judgment, the United States has excluded from its coverage U.S. programs for minority and small business set-asides. Through these deletions, the United States has presented coverage which balances that offered by the major developed countries.

In my opinion, these actions have produced an excellent beginning to the difficult task of opening a market that was formerly completely closed to us.

The size of this potential market is not only large, but also a diverse one. Access to it will be of considerable benefit to a wide range of U.S. industries. At the same time, I think the industry preserves necessary safeguards for our own needs.

I have been assured the United States will continue to apply its preferences to areas not covered by the code and will refuse to accept bids from suppliers whose governments do not adhere to the code within 2 years.

Moreover, since the agreement only applies to contracts which have a value of roughly \$190,000 or more, our own procurement policies can

continue to meet national commitments to small and minority-owned businesses.

We must all bear in mind that this is just a first step, in essence a trial. The agreement provides that in 3 years, the parties to it will meet to broaden its coverage. At that time, we will have the opportunity to further increase the export opportunities for U.S. industries.

I do urge the committee to give favorable consideration to this agreement. With our balance of payments deficit and attendant economic problems, opportunities for this sort of progress must not be overlooked.

Thank you very much.

Senator CHILES. Thank you very much.

[The prepared statement of Mr. Berkeley follows:]

STATEMENT OF NORBORNE BERKELEY, JR., PRESIDENT, CHEMICAL BANK, NEW YORK  
CITY AND CHAIRMAN OF THE SUBCOMMITTEE ON GOVERNMENT PROCUREMENT OF THE  
ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS

Chairman Chiles and members of the Committee. I appreciate this opportunity to testify before your Committee today in support of the MTN and particularly in support of the Agreement on Government Procurement.

Let me begin with a word about my background in this area. I have been associated with the MTN negotiations for the past three and a half years as a member of the President's Advisory Committee for Trade Negotiations (ACTN). Further, I have a direct professional interest in the results of the Tokyo Round negotiations because my bank finances foreign transactions of United States firms, including those who do and who will export increasingly to foreign government customers as a result of this agreement.

Having reviewed the progress of these negotiations for several years, I am convinced that the agreements represent a major step toward enhancing the free flow of trade among nations. This is a package which I think will be good for the United States. Much of the credit belongs to our President who has made fairer trade a high priority and to Ambassador Strauss and his staff who have done such a splendid job of negotiating the package.

Among the most significant of the results are the concrete steps negotiated to reduce the non-tariff barriers to trade -- in most cases for the first time in modern history. The agreements on non-tariff measures represent a major effort to begin

dismantling those less evident barriers which have significantly restricted the flow of trade. Principal among these agreements is the one on government procurement.

The Government Procurement Agreement aims to open up for U.S. exporters a huge market which is now virtually closed to foreign competition. Today, most governments discriminate at will against foreign suppliers in their purchasing practices. If implemented properly, the Government Procurement Agreement will change this practice for upwards of \$20 billion in markets for U.S. exporters.

I want to emphasize that the nature of this agreement on government procurement is rather different from typical trade agreements of the past. This is not like a cut in tariffs, where the gains are in a sense fully defined by the Agreement itself. Rather, in the case of government procurement, the agreement is on a new code of behavior with procedures set forth to help assure that participants in fact live by the rules.

In my judgment, the code produced by these negotiations represents about as good a set of rules as could be put on a piece of paper at this time. I think it does represent an opening wedge into markets that have been closed to U.S. suppliers. The only serious issue that I think remains is to make sure that we have adequate follow-up procedures so that the potential gains implicit in the agreement can and will in fact be realized.

I do not want to go through the whole Agreement in detail. But a few general points I think are in order.

As I am sure most of you know, it is the secrecy and closed administrative systems surrounding government procurement in most foreign countries that enables those governments to discriminate against U.S. and other outside firms seeking to supply the needed goods. U.S. businesses often simply do not know when a purchase is going to be made. Proposed purchases are not advertised and outside suppliers are not asked to bid. Even if a foreign supplier learns about a proposed contract, its bid can be -- and often is -- automatically rejected.

The Agreement on Government Procurement aims to bring these procedures much more out into the open -- to make them more transparent. Each country that is a signatory to the Agreement has identified specific entities within its own governmental structure which henceforth will be committed to following the prescribed open procurement policies.

Specifically, for entities covered by the Agreement there are detailed requirements for the publication of notices of proposed purchases, for what material must be in those notices, and for following specific procedures to ensure that foreign suppliers are treated the same as domestic suppliers. Then, once a contract has been awarded, all suppliers which submitted a bid must be informed that an award has been made. Unsuccessful bidders must also be given explanations of why their bids did not succeed and the name of the winning bidder. Only in rare instances can the amount of the winning award be withheld from losing bidders.

But under such circumstances, that amount must be provided immediately to any government representing an unsuccessful bidder.

Establishing this framework of openness and transparency in government procurement systems is clearly the essential first step in helping U.S. suppliers to gain access to presently closed markets. An equally necessary second step, which is also provided in this Agreement, is a set of detailed -- and hopefully effective -- procedures for handling disputes if they arise.

It is hoped and anticipated that the transparency procedures themselves will permit most disputes to be resolved satisfactorily by direct contact between suppliers and the procuring entities. If this is not successful, however, parties to a dispute are guaranteed the right to appeal to the committee of signatories and to have the case heard by a panel within three months, with the panel then required to deliver its findings normally within four months. If the panel supports the claim of discrimination from a U.S. supplier but the foreign procuring entity still refuses to honor the settlement terms, then the U.S. could be authorized to suspend in whole or in part the application of the Agreement to suppliers from that foreign country.

It is important to recognize that this dispute procedure goes well beyond other procedures presently found in the GATT. The specific power to suspend the Agreement -- and thereby cut off one's own procurement contracts from suppliers from any country that fails to live up to its obligations -- is the kind of targeted response that in my judgment provides effective leverage for this country.

One other point should be noted. In addition to providing for transparency on a case by case basis with individual contracts, the agreement also requires that signatories provide statistics annually concerning the application of the Agreement. These statistics will allow us here in the U.S. to monitor overall administration of and adherence to the Agreement country by country. For the first time, we should have reliable world-wide figures on procurement from which we can make meaningful comparisons that hopefully will be helpful in opening markets even further.

As I indicated earlier, what I have been describing and what has been agreed to is simply a code of behavior. Whether it in fact fulfills its potential depends importantly on how firmly the rules are adhered to and enforced. Here too I am basically optimistic, based on the firmness that the U.S. negotiating team has already shown in the process of reaching agreement.

Operationally, there is very little that will have to be changed in U.S. procurement procedures to conform to the Agreement. We already have an open procurement system. The protections and preferences we give to domestic producers are up front in the form of percentage preferences.

From our point of view, then, the practical aim of the agreement was to get foreign procurement systems to open up in similar fashion. To achieve this, the Agreement was carefully limited in its applications, so that only those countries which open their own procurement will benefit from similarly open procurement here.

I do not mean to imply that our negotiators were always fully successful in achieving the degree of access to the procurement of particular countries that we desired. This is a two-way negotiation and you never get all that you want. Several industrial sectors in which U.S. suppliers have a strong interest were not included in the list of procuring entities to be opened in some of our major trading partners. I will leave it to my colleague here on the panel to go into some of these specifics.

But the point I want to make is how the U.S. negotiators responded to these situations. First, when a foreign government refused to include some of its procuring entities under the Agreement, we immediately withdrew from the Agreement entities of our government involved in the procurement of similar products. Thus, the U.S. did not include under coverage of the Agreement: the Army Corps of Engineers, the Department of Energy, TVA, the Department of Transportation, the Bureau of Reclamation, and three parts of the General Services Administration. In addition, national security items and other sensitive products purchased by the Department of Defense will not be covered by the Agreement. Also, of major importance, the U.S. has excluded from its coverage U.S. programs for minority and small business set-asides. Through these deletions, the U.S. has presented coverage which balances that offered by the major developed countries.

The second type of response involved specific negotiations with the Japanese, which as you know have been receiving considerable publicity. In this situation, even after all the individual withdrawals, I am told that the U.S. negotiators decided that the

coverage offered by Japan was insufficient to match that of the U.S. Accordingly, it was decided that unless Japan considerably improves its offer on both a qualitative and quantitative basis, the U.S. will not agree to apply the Agreement to Japan. Hopefully, new movement is now occurring in this area.

In my opinion, these actions have produced an excellent beginning to the difficult task of opening a market that formerly was completely closed to U.S. firms. The size of this potential market is very large. Even with the limits still in place, a market of over \$20 billion that is now completely closed to U.S. exporters will be opened by the Agreement. It is also a diverse market, and access to it will be of considerable benefit to a wide range of U.S. industries.

At the same time, I think the Agreement preserves necessary safeguards for our own needs. I have been assured that the U.S. will continue to apply its Buy American preferences to areas not covered by the code and will refuse to accept bids from suppliers whose governments do not adhere to the code within two years. Moreover, since the Agreement only applies to contracts which have a value of 150,000 Special Drawing Rights (SDRs) -- equivalent to roughly \$190,000 -- or more, our own procurement policies can continue to meet our national commitments to small and minority-owned businesses.

We must all bear in mind that, as Ambassador Strauss has pointed out, this is a first step, in essence a trial. The Agreement provides that in three years the parties to it will

meet to broaden its coverage. At that time, we will have the opportunity to further increase the export opportunities for U.S. industry, or if it has not proved useful, to notify or withdraw from the Agreement.

I want to conclude by urging this Committee to give favorable considerations to this Agreement. I believe it does represent a well drafted text which lays a solid foundation toward opening a closed procurement system abroad. It represents the key toward opening for the first time significant new opportunities for American business. At the same time, for those industries where we did not get a more open market, we gave nothing since we did not open our own market. With our balance of payments deficit and attendant economic problems, opportunities for this sort of progress must not be overlooked.

**Senator CHILES.** Mr. Lasley.

**Mr. LASLEY.** Contrary to the notice, I am chairman of ISAC-22, but I have recently retired from Rockwell and no longer claim direct connection. Presently, I am an export marketing consultant.

ISAC-22, as an advisory body to the STR, represents the Telecommunications and Nonconsumer Electronics Industries of the United States.

These industries manufacture and sell component parts, equipment, and systems for communications, aerospace, governmental, industrial, and other nonconsumer end-uses.

These industries represent big and small business. Some are specialized firms with a single product line, selling to domestic customers; their primary concern in international trade is import penetration. Other members are medium-sized companies with broader product lines, selling here and abroad. From the trade negotiations, their expectation is marked lowering of the barriers which other nations have erected and maintained against our electronics exports.

Also represented are U.S.-based multinational corporations with plants here and abroad, with highly diversified product lines extending beyond electronics into the sectors of business machines, instrumentation, aerospace, electrical equipment, nonelectrical machinery, chemicals, and plastics. They also look forward to a better international trading system, one in which the major trading nations are accorded "equivalent competitive access" into each other's marketplace.

The 1978 U.S. factory sales of electronic producers were over \$55 billion. Nearly 25 percent, \$13.3 billion, was exported to customers outside of the United States of America. Almost 10 percent of all U.S. exports were in electronic products, as such. If the electronic content in capital equipment such as airplanes—in which avionics account for 20 percent of the cost—or automated machine tools were to be included, these figures would be significantly higher.

Electronic manufacturing directly employs 1.35 million Americans. Of those jobs, at least 260,000 are tied to exports.

At the same time, imports of electronic products reached \$10.7 billion. It is evident that some of our industries are facing major competition from foreign sources. The U.S. electronic industries are at the center of increasing international competition.

Some of our products give high performance for reasonable prices and are among this economy's most exportable. Other product lines—namely, TV, CB radios, and similar component parts—have become "import sensitive". Nevertheless, in the balance of U.S. trade, the electronic industries generate more exports than imports. There is a \$2.6 billion electronics trade surplus.

One would expect that both the relative size and importance of overall U.S. international trade as part of the national economy and the enormity of our trade deficits would include a systematic and continuing attention on the part of the U.S. Government. The opposite, however, has been the case. While our present and continuing needs in trade policy and its implementation are consistency and activism, the fact has been one of fragmentation and contradiction in policy formulation and the conduct of administrative responsibilities.

These deficiencies on the part of the Government have been at least as great a cause of this Nation's trade problems and difficulties as the

imperfect macroeconomic and microeconomic factors which conventional analysis so often adduces as the reasons for our troubles.

We see the MTN codes, including Government procurement, as affording a major opportunity for the United States to work itself out of those economic problems that are trade induced. To be sure, none of those codes is self-executing or self-administering.

It is also apparent that, being the result of give-and-take bargaining, they will not provide perfection on earth. Yet, they begin to provide for international rules governing trade and their enforcement where neither has existed heretofore.

In other provisions, they improve considerably upon the present international body of law and good practice which has not been able to cope with trade imbalance and unfairness.

In addition to their possibilities for specificity in application, what we find noteworthy in the sweep of the codes is their interrelationship. Thus, for example, what may not be reachable as unfairness under the Government Procurement Code might well be pursued as partial remedy under the Subsidies Code. Again, the disciplines imposed by the Code on Import Licensing suggest that the regularized procedures of the Safeguards Code might be put to growing international usage.

Furthermore, we note the many areas of commonality that characterize all the codes as well as the framework agreements: In consultation, conciliation, and dispute settlement mechanisms; in reporting requirements; in unspecific but nonetheless variable preferential treatment of the developing countries; in national options for the granting of conditional most-favored nation treatment; and so forth.

In summary, ISAC-22 supports the concepts and framework of the Government Procurement Code as it now stands. However, it is disappointed by the limited entity coverage offered by other nations. It is gratified and takes some credit for the recent change in U.S. position which now maintains Buy American for low-threshold—150,000 SDR—contracts.

In view of the evidence that other nations will not, in the foreseeable future, give access to their PTT and other telecommunications markets, we believe that the Congress might consider, by resolution, discouraging purchase of offshore equipment by U.S. Federal- and State-regulated telecommunications utilities, subject to opening of other national markets reciprocally to U.S. suppliers.

This idea is not intended in any way to supplant bilateral agreements that may be reached in the future with any nation.

Specifically, the EEC has exempted the telecommunications portion of all of its Post and Telegraph Administrations—PTT's which own and operate all the telephone systems—and Japan has exempted the Nippon Telephone & Telegraph Co.

As you know, the negotiations on that came to a grinding halt yesterday.

At present, these and their suppliers are, by far, the principal potential markets for our products. Sweden and Switzerland are also offering PTT's but except telecommunications.

To counter, or to balance, these reservations by the EEC and Japan, the United States has withdrawn from its offer coverage of the Department of Energy, the Department of Transportation, the Corps of

Engineers, TVA, the Bureau of Reclamation, and GSA—the latter for telecommunications only.

This brings the United States overall offer of coverage to about \$12.5 billion versus \$10.5 billion for the EEC and \$4 billion for Japan if anything ever comes from it.

DOD remains Buy American for national security related equipment, which is defined to include a considerable part of telecommunications. However, the STR negotiators, the DOD itself and the Congress must insure that, consistent with national security, DOD achieves a balance for U.S. industry in what it gives away to foreign suppliers in MOU's—memoranda of understanding—such as that with the United Kingdom or other offset agreements, versus what U.S. industry receives in return in otherwise unattainable business opportunities.

We believe that the code, designed to discourage discrimination against suppliers at all stages of the procurement process, accomplishes its objectives by inclusion of specific rules covering the drafting of specification, advance publicity of tenders, restrictions in the use of single tendering, time allowed for bidding, supplier qualification, right of all potential suppliers to bid, opening and evaluation of tenders, awarding of contracts, requirements for ex-post facto information, and procedures for hearing and reviewing protests.

#### THE UNITED STATES

We do not feel the agreement will require significant changes in current U.S. procurement procedures. The primary effect will be elimination by those entities covered by the code of existing margins of preference on bids submitted from signatory countries. Suppliers from non-signatory countries will continue to face domestic margins of preference. Modification of the various Buy American laws will be required. Many sensitive products covered by current legislation will be excluded from code coverage.

#### FOREIGN

Significant changes in procurement practices will be required of all foreign signatories to insure transparency and nondiscrimination.

We think that, given the proper effort on their side plus Government support in other areas comparable to the received by their foreign competition, U.S. exporters in general could profit greatly from the opening up of presently hidden foreign government procurement policies.

At least, the proposed code's coverage constitutes what should be a real beginning to the opening of government markets. It is significant that no product exclusions are made by covered entities. Some other high technology industries apparently will be included by all signatories, for example, computers—except Japan—business and office machinery, and scientific and measuring instruments.

This ISAC recognizes a legitimate concern on the part of all countries that they maintain a strong internal telecommunications design and manufacturing capability. Therefore, we endorse, and strongly support the exclusion of departments, or ministries, as the case may be, of defense telecommunications from the Government Procurement

Code on the grounds of national security of the signatories to the treaty, and recommend that all security-oriented systems, equipment, and components be excluded from coverage of the code except upon the basis of bilateral negotiation.

In summary, ISAC-22 believes that, from a negotiating standpoint, the codes—as codes—are for the most part praiseworthy and that much is owed to the determination and persistence of the U.S. negotiators.

Given these interrelationships and commonalities, EIA deplors the seeming tendency in both the executive branch and Congress to treat implementation of the codes as if each code were in isolation from every other code. We urge the committee to resist this approach, for it is our growing fear that such a development in legislation will continue to leave the United States with an incoherent trade policy and inept trade administration.

Thus, the crux of our concerns over the MTN agreements is not the codes themselves. It is, instead, how the United States chooses to implement them. The basis for these concerns lies not only in the inadequacy of the present implementing proposals we have seen, but also that as a country, we are in danger of repeating past errors—precisely as we did after the Kennedy Round.

Then, the United States took as sufficient the work of the negotiators, failing utterly to realize that liberalized trade conditions in an increasingly competitive world would result in a rush to the improved international markets and their enlarged opportunities by export-conscious governments and firms alike. The United States cut back its export assistance programs while other countries expanded theirs.

Our one new program, the DISC, while certainly positive was so structured and then amended that its effectiveness was blunted: The DISC provisions were predicated for success on a substantial build up of interest-free, tax-deferred resources, but this build up was unreasonably expected to occur during a period when other countries were pre-empting market opportunities through the utilization of much larger subsidization, trade distortion and export incentive schemes.

Equally bad, by rejecting any genuine domestic implementation of the GATT Antidumping Code, the United States paved the way to major disruptions and preemptions of the domestic market by aggressive foreign imports. Television sets provide a glaring example. Though found to be dumped in 1971, the U.S. Treasury Department proved itself incapable or unwilling to administer the U.S. statute because it neglected to establish and collect an appropriate antidumping duty even as millions of dumped TV sets entered the country. Adoption in 1968 of pertinent parts of the GATT code would have made this dispiriting process impossible.

In the early 1960's, an "opportunity window" had opened, for us as well as for our major trading partners. They acted; we did not. That window stays open just so long, then slams shut. It became too late for U.S. interests to recoup. One vestige of our failure to implement the Kennedy Round is, now, our chronic trade deficit: \$25 billion in 1977. \$30 billion in 1978. What for 1979?

Government should take affirmative action, strengthening its organization as well as its statutes to do so. It could purposefully enable industry and labor to grasp these opportunities, upgrading exports as

a matter of sustained national priority—certainly until the energy crisis is contained.

Government could enable the private sector to grasp these opportunities as much by critically reviewing and, then, zealously reducing export disincentives, imposed by present laws and regulations on our potential export transactions, as by new measures toward expanding exportation. An interagency task force has within the last 2 months identified 11 such disincentives for scrutiny by the executive branch. The electronic industries agree that these, some statutory, others casting exports as an instrument of foreign policy, constitute real barriers against the materialization of purchase orders from abroad.

Remember that American companies must first have met foreign competition in the world market and won the order, before applying for export license or for export financing to deliver the goods. It is at this point that one or another Government-imposed disincentive often prevents consummation. This is particularly true for many electronic products which, together with those of the U.S.A.'s other high-technology industries, are among this Nation's most exportable.

We recommend affirmative action because we fear STR may be circulating a least-common denominator proposal for implementing the MTN. It makes the fewest possible changes. It gingerly avoids rocking the boat. For example, under the Subsidies Code, STR proposes change in only the Countervailing Duty Law. As to making the code affect the conduct of ours and other nations, it puts a pinch of authority in the Treasury Department, a dash of responsibility in STR, and a twist of accountability in interagency committees. In this context, half a loaf is not better than none.

Still within the context of affirmative action, we recommend that Government determine, this time from the standpoint of exports as a national priority, which of the disincentives are actually accomplishing their intended purpose—national security, human rights, environmental, and so forth—and whether the intended purpose transcends export's importance. Then, with those criteria in mind, Government should relax the disincentives.

Affirmative action is needed in order to overcome the policies and the approach to them which brought us a \$30 billion trade deficit.

The Tokyo Round has developed Codes of Conduct toward remedying a host of nontariff barriers. Understandably, since these tread untried ground, some nations will sign a given code and others will not. Nor will the same nations sign all of the codes. Even among major trading partners of the free world, there will be nonsignatories.

A signatory to a given code need not accord the code's benefits to all GATT members, nor even to all nations enjoying its MFN tariff status. A signatory need only accord those benefits to the other signatories.

Further, a signatory nation changing its law to conform with an emergent code need not amend them with respect to nonsignatory nations.

If the United States of America signs the Government Procurement Practices Code, it would be necessary to change the Buy American Act for the covered entities. But it would not be necessary to amend them with respect to purchases from nonsignatory nations, nor to purchases beneath the code's threshold of \$190,000.

Reciprocity is inherent to the codes as they have evolved. Signatories reciprocate the codes' benefits. Non-signatories have made a purposeful decision not to lower their nontariff barriers against imports. So, why should the United States of America accord the codes' benefits to non-signatories—even if Congress had accorded them MFN status in the Tariff Schedules?

The strength and effectiveness of a nation's international political power relate directly to its economic strength. That economic strength is a function of a sound and stable currency, high industrial productivity, low unemployment, and a low rate of inflation. Although economic theorists in the classic tradition consider Government as a disturbing influence upon the self-regulating private economy, the fact that government does impose and will continue to impose its influence requires the private sector to make an attempt to contribute to the formulation of Government policy and to ameliorate negative factors. One such attempt is the call for an aggressive U.S. trade policy which fosters exports and allows them to compete effectively in world markets.

A strong and positive trade policy would contribute significantly to the requirements for a sound, healthy economy. Increased exports would boost economic productivity and create much-needed resources for capital investment in equipment and facilities to expand current productivity and capacity. Increased productivity and its concomitant, lower unemployment, generates more revenue to the Treasury from both the corporate and personal sides, and decreases Federal credit demands.

As Federal borrowing is a major factor driving inflation, its reduction would lower the cost of money and strengthen the dollar, thereby lowering the cost of essential imports—another significant factor in rising inflation.

While a strong trade policy is obviously not the total answer to our economic problems, it is a most important factor.

To develop and administer an aggressive trade policy, however, calls for centralization of the current highly fragmented administration of U.S. trade policy. Such centralization is an extension of the logic behind the sunset and regulatory reform proposals considered by the Congress over the last several years.

The logic behind sunset proposals maintains that all programs in a given area of responsibility be looked at simultaneously, not merely with an eye to cut back and reduce, but to identify duplication, obsolescence, ineffectiveness, and voids in policy administration.

The concept of congressional sunset review is a highly laudable one. It recognizes the need for a comprehensive review of policy administration. But such review, bringing together all agencies assigned some facet of a larger policy, will be recreating the wheel at every 5- to 10-year cycle—depending on the specific proposal—if those agencies are not unified in the administration of that policy in the interim.

Why bring them together once every several years only to disperse them to the four corners of the bureaucracy after legislative corrective surgery? Thus, centralization of the 57 agencies administering U.S. trade policy would not only facilitate sunset review, but more fully carry out the goal of that periodic review by providing ongoing continuity in policy and commonality in practice.

The various regulatory reform proposals have as their common purpose the development of a coherent body of Federal regulation which escapes the charge of being excessively burdensome, incompatible, and a disincentive to productivity. Again, the centralization of the administration of U.S. trade policy would support this purpose. Given the multifunctional nature and characteristics of transactions in international trade, the interests of coherency and efficiency are best served by an optimum of centralization in administration. Current interdepartmental disputes stemming from conflicting or correlative assignment of administrative responsibility would be obviated.

Thus, rather than merely adding another layer of Federal regulation, the centralization of administration of trade policy at the Cabinet level has the potential to be far more efficient and productive than the current system, and is a natural response to efforts to control and rationalize the Federal bureaucracy and its regulation.

Centralization would work to eliminate duplication and obsolete programs, foster regulations that are not only compatible but supportive of one another and overall U.S. policy, and clearly identify gaps in current policy. Centralization will make it possible to formulate a trade policy which will measurably benefit the U.S. economy.

The cost of such centralization should be negligible. It would be accomplished through consolidation of existing agencies and might even result in a net savings as duplication is eliminated. This is not to say that an increase in Federal expenditures to initiate and carry out a strong trade policy will not be needed. Increased Federal investment in U.S. trade is a necessity if industry is to take full advantage of the multilateral trade agreements currently being negotiated. If strong export expansion programs are not forthcoming upon congressional approval of the MTN, the United States could be in a worse trade position than before because of the liberalization of world trade made possible by the agreements.

In contrast to the precepts stated above—which are no more than principles of good administrative practice—stands the present organizational structure of the executive branch for international trade. Here, some 57 agencies compete for the choicest turf and available funding but leave untended the truly difficult problems of policy and administration.

Inevitably, in such excessive division of labor, administrative responsibility is fragmented, innovation is stifled, and major elements in the formulation of policy or its execution are left undone. The basis for precedence between agencies is mainly ill-defined and policy authority is focused on esoterics and the arcane. In short, the U.S. system for trade administration is manifestly inadequate to the contemporary economic world and, on its record, pathetically insufficient to the enhancement of U.S. interests. Yet, the proposals now being developed within the executive branch to implement the MTN codes do little or nothing to correct these inadequacies. On the contrary, they load additional responsibilities on the same weak administrative chain.

As a key element, and first order of implementation business, we see reorganization of the trade function of the Federal Government to be a vital necessity. Alternatively, either virtually all trade administration functions affecting nonagricultural goods should be placed in a new Cabinet department endowed by statute with focal responsi-

bility, authority and accountability for U.S. trade and offshore investment, or, such assignment of authorities should be given to a single existing Cabinet-level department whose primary and specific responsibility and accountability would then become the administration of U.S. trade.

Before concluding, we wish to make one further point.

In the experience of our members, the advisory process established under section 135 of the Trade Act of 1976 has worked well. Especially at the industry sector level, it has provided a means of continuing dialog with the Special Trade Representative and his negotiators that would otherwise have been impossible.

The approach, we believe, has contributed much to the generally satisfactory shape of the codes—provided, of course, that the latter are suitably implemented. Accordingly, in order to provide for a continuation of this useful function, we strongly recommend that provisions of the implementing legislation accomplish the following:

One: Establish permanent ISAC's and LSAC's along the present structural lines—that is, by industry groupings rather than in accordance with code coverage. These committees should have assured ability to provide advice on all policy, program, and negotiating activities.

Two: For advice on purely technical matters—such as the content of specific product standards or deductive methods in customs valuation—these permanent committees should be consulted on the formation of special panels, as and when necessary, and the nomination of individuals known to possess specific expertise in the particular problem area.

Three: In establishing permanent advisory committees, several improvements over the present process are desirable. For example, the committees should have direct access to interagency committees of the executive branch. When committee advice is sought, the advisors should be given more current and more complete information on a timelier basis. And, staffing of the committees by the lead administrative agency should be more consistent.

Thank you.

Senator CHILES. Thank you, sir.

Mr. Smoot?

Mr. SMOOT. Thank you, Mr. Chairman. You can read the statistics about our industry in my written remarks submitted for the record and since I think that the code's provisions have been sufficiently covered, I won't go into them.

The sector that I am speaking for consists of a group of competitive, high technology firms that are deeply involved in world trade. Because governments are one of the principal potential customers for our products, and especially because in many countries we find that numerous public corporations operate under firm government guidance in their procurements, we are very concerned that the United States receive a balanced government procurement offer from its trading partners, and in particular, from the Japanese and the EC.

We believe only the inclusion of appropriate entities and sophisticated products by all signatories will demonstrate a true willingness to adhere to this code. Specifically, product exemptions should not be allowed for the entities covered by the code.

We endorse the code in general because it uses open procedures in

the bidding and contract awards process but we assume there will not be significant deficiencies in the offers of our trading partners.

One of the most heartening experiences is the strong stand that has been taken by our negotiators on this issue.

Turning to the implementation of the code, we believe there must be, from the very beginning, a close monitoring of the implementation abroad, particularly to insure that the national security exemption is not used to accomplish broad product exclusions in other countries. Many of our industries' products, for example, while essentially commercial products, are also procured by various military groups and as such have been the basis of protective exclusions before.

Second, we believe very strongly that the agency which is charged with handling private sector complaints under the codes in the United States must be expert, well-staffed, but above all, insulated from extraneous foreign policy considerations. In too many instances, our Government uses trade to accomplish its political ends. If this tactic is used in processing complaints under the code, American business will quickly lose faith in it. Since the rights granted vendors under the code are minimal, the implementation procedure leans heavily on the U.S. Government. We urge the committee to put in the legislative history strong support for vigorous followthrough on industries' complaints without the opportunity for political intervention.

Talking about the nonsignatories, we believe we understand the reasoning behind the various provisions proposed for countries which do not sign the code or whose adherence the United States doesn't accept. We are concerned, however, about these provisions. I don't believe that nonsignatories should be penalized by total exclusion from government procurement.

This action will place nondomestic bidders in a worse position than they are at present when there is no code at all. That is not the intended result of the MTN. We do support full application of the Buy American provisions to nonsignatories and even raising of the percentage differential to provide adequate incentive to join the code.

Second, we have some technical concerns about how the provisions on exclusion would work with follow-on contracts which I will not cover here.

We believe also that right now we have to begin to turn our minds toward improving the code. The 3-year review that is contained in the code, we think, will provide an excellent opportunity not only to look at those first 3 years, but also to extend the code.

We believe it should be extended in three ways: First, services should be included under the code. Developed countries are becoming increasingly service-based economies, and governments are major procurers of those services. With certain exceptions, such as that for local personnel services, procurement of services should be subject to the same standards as product procurement.

Second, we hope that in this first review, the United States will offer additional entities for coverage under the code and will negotiate with our trading partners the inclusion of entities from their government also.

Finally, we hope that the United States will seek to reduce the lower threshold of 150,000 SDR's on a planned and phased basis down to a

much lower minimum which will cover primary government procurements also.

In sum, we endorse the ideas behind the code, support its wide adoption, encourage the inclusion of additional entities, and commend the efforts of Ambassador Strauss and his staff in bringing us thus far.

I don't believe we felt 3 years ago we would get anywhere near this far.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Smoot follows:]

STATEMENT OF OLIVER SMOOT, REPRESENTING THE COMPUTER AND  
BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. Chairman and members of the Subcommittee, I am Oliver Smoot, Vice President of the Computer and Business Equipment Manufacturers Association (CBEMA). Though I am also chairman of the Industry Sector Advisory Committee on Office and Computing Equipment, today I speak for CBEMA. CBEMA represents the leading manufacturers of computer and business equipment.\*

Last year the combined revenues of CBEMA member companies, produced by nearly a million employees in the United States, increased to more than 45 billion dollars. Over 18 billion dollars of this revenue were derived from international sales. And, CBEMA members contributed more than 2.8 billion dollars to the U.S. balance of trade with exports of 5 billion dollars. Typically, our members receive from 30 percent to over 50 percent of their revenues from overseas operations.

CBEMA actively supports, through its programs, expansion of world trade in a free and fair environment. To us, free and fair trade, means low, harmonized tariffs and effective rules for conducting trade. The objectives of the U.S. in the MTN reflect these goals and, if achieved, will result in a firm basis for improving the current condition of world trade.

GOVERNMENT PROCUREMENT IS IMPORTANT TO THIS INDUSTRY

The Government Procurement Code is a priority issue for our industry. Governments have always been important buyers of our goods and services. And, over the years, the proportion of GNP represented by government

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\*See Attached List

procurement has increased markedly in all countries. In an era when at least one quarter of the gross national product of most countries passes through public budgets, discrimination against foreign products by government purchasing officials constitutes one of the most important barriers to world trade from a purely quantitative point of view.

In addition, in many countries, the "government" includes many enterprises which are private companies in the U.S. This is of particular concern to our industry because these public corporations typically are very intensive users of office and computing equipment.

Because CBEMA represents a competitive, high technology industry deeply involved in world trade, because governments are major potential customers for our products and especially because in many countries numerous public corporations operate under firm government guidance; we are very concerned that the U.S. receive balanced government procurement offers from its major trading partners, the Japanese and EEC. Only the inclusion of appropriate entities and sophisticated products by all signatories will demonstrate a true willingness to adhere to this code. Specific product exemptions should not be allowed for the entities covered by the code. We endorse the code in general, because it uses open procedures in the bidding and contract awards process, but we do so assuming that there will not be significant deficiencies in the offers of our major trading partners. One of the most heartening experiences of the MTN is the strong stand by our negotiations on this issue.

## IMPLEMENTATION REQUIRES STRONG U.S. ADMINISTRATION

Effective implementation of each of the MTN Codes requires U.S. Government administrative follow through on a level never before attempted. The Government Procurement Code, especially will require aggressive U.S. action in three areas:

First, there must be close monitoring of the Code's implementation in other countries to insure that the national security exemption clause is not used to accomplish broad product exclusions from the Code. Many of our industry's products, while essentially commercial, are also procured in significant amounts by military organizations, and such procurements have been the basis for protective action in the past.

Second, the U.S. must actively monitor foreign government conformance on its own initiative. The changes required in foreign government procurement systems will be major and varied. The experts on the Code are in the U.S. Government and these experts must be marshalled effectively to assure real adherence to the Code.

Third, the agency charged with handling vendor complaints under the code must be expert, well staffed, and, most importantly, insulated from extraneous foreign policy considerations. In too many instances our Government uses trade to accomplish its political ends. If this tactic is used in processing complaints under the Code, American business will quickly lose faith in it. Since the rights granted vendors are minimal, the implementation proposal before you leans heavily on action by the U.S. Government. We urge the Committee to include in the legislative

history strong support for vigorous follow through on industry's complaints without provision for political intervention.

#### PROBLEMS PRESENTED BY THE NON-SIGNATORY PROPOSALS

We understand the reasoning behind the various provisions proposed for countries which do not sign the Code or whose adherence the U.S. does not accept. These, proposals concern us, however, in three ways.

First, we do not believe non-signatories should be penalized by total exclusion from government procurement. This action will place non-domestic bidders in a worse position than at present when no code exists. That, in our view, is not the intended result of the MTN. We do support full application of the Buy America provisions to non-signatories and even raising the percentage differential to provide adequate incentive to join the Code.

Second, the requirement for certification of origin for products delivered under maintenance contracts following an initial procurement could pose significant problems, if adequate attention is not given initially to this problem.

The problem arises because the U.S. Government procures equipment under contracts limited to one year. Then, because of the prohibition of multi-year contracts, maintenance is procured annually. While under the rules proposed, the product originally procured may be domestic, many of the frequently used spare parts may come from abroad bringing about unforeseen complexities. Proper, forward-looking regulations covering maintenance can prevent this problem.

Third, we note the proposal to change the Federal Procurement Data System to include country of origin. We do not believe this is necessary. It has not been necessary under the current Buy America provisions and could raise questions as to whether specific foreign countries are receiving a "fair" share of the U.S. market.

#### THE CODE MUST BE IMPROVED

The Three Year Review of the Code will provide an excellent opportunity not only to review actual experience but also to extend the Code. We suggest three objectives for that review. First, services should be included under the code. Developed countries are becoming increasingly services-based economies, and governments are major procurers of such services. With certain exceptions, such as for local personnel services, Procurement of services should be subject to the same standards as product procurement.

Secondly, we hope the U.S. will offer coverage of additional entities in exchange for balancing offers from other signatories. The patchwork entity coverage of the Code should be erased gradually as all countries adjust to the new procedures.

Finally, we suggest an intensive look at the \$150,000 SDR threshold for code coverage. Perhaps an agreement can be reached on a staged reduction of that threshold to an amount closer to that level which divides major from minor procurements in the various countries. This approach will require extensive development, but we believe a lower

threshold, balanced against the burdens of administration, should be a high priority target.

In sum, CBEMA endorses the ideas behind the code, supports its wide adoption, urges the inclusion of additional entities and commends the efforts of Ambassador Strauss and his staff in bring us this far.

Thank you Mr. Chairman, I should be pleased to answer any questions you may have.

#### CBEMA MEMBER COMPANIES (1979)

3M Company  
 A.B. Dick Company  
 ACME Visible Records, Incorporated  
 Addmaster Corporation  
 AM International, Incorporated  
 AMF Incorporated  
 Bu roughs Corporation  
 Control Data Corporation  
 Dictaphone Corporation  
 Digital Equipment Corporation  
 Eastman Kodak Company, Business Systems, Markets Division  
 EXXON Enterprises Incorporated  
 General Binding Corporation  
 Harris Corporation  
 Hewlett-Packard Company  
 Honeywell Information Systems, Incorporated  
 IBM Corporation  
 Lanier Business Products, Incorporated  
 Liquid Paper Corporation  
 Micro Switch, Division of Honeywell Incorporated  
 NCR Corporation  
 North American Philips Corporation, Philips Business Systems, Incorporated  
 Olivetti Corporation of America  
 Pitney Bowes  
 Remington Business Systems, Incorporated  
 Royal Business Machines, Incorporated  
 Sanders Associates, Incorporated  
 Sony Corporation of America  
 Sperry UNIVAC  
 Sweda International  
 TRW Communications Systems & Services  
 Tab Products Company  
 Tektronix, Incorporated  
 The Standard Register Company  
 UARCO Incorporated  
 Xerox Corporation

Mr. FALK. With the understanding that my written statement will be part of the record, perhaps I could summarize.

Senator CHILES. It will be part of the record.

Mr. FALK. We reviewed the outcome of the code with some irony. This code did not begin with the Multilateral Trade Negotiations. It began at the request of the heavy electrical manufacturing industry in the midsixties. And in 1968, the administration, through the STR, recognized the need for a government procurement code that would deal with the rigid nationalistic procurement policies being followed by our so-called trading partners in the areas of heavy electrical equipment.

Bearing in mind that the United States is the only heavy electrical-producing nation in the world who openly buys from foreign suppliers, in all other markets government procurement policies are such that they are closed not only to the United States, but neighboring countries as well.

With that in mind, in 1968, our folks from STR, through the Organization of Economic Cooperation and Development, initiated a negotiation which ultimately was transferred to the MTN. That negotiation resulted in what appears to be a most adequate code, but ironically, from the standpoint of the heavy electrical equipment industry, which was the instigator—in fact, helped write early drafts of that code—ironically we are right back where we started from; namely, our trading partners have refused to include their heavy electrical entities in the code.

Now, one might say as a result of that, so what, nothing has changed, we are right back where we started from. But unfortunately, we are faced with a situation that gets progressively worse. First, we have tariffs on U.S. electrical products. They will be reduced as a result of this negotiation. We are faced with a situation where the foreign entities, particularly the European Community, are taking about 10 percent of the American market, about \$500 million a year.

We are getting next to nothing. So in essence, maybe we were naive in supporting the Trade Reform Act because we believed that a government procurement code was the method, at least in terms of our industry, to show the foreigner's intent to give us equal competitive access, which we did not obtain. We feel we are worse off than we were before this round started.

I am here today to really discuss with you what type of response this committee should consider in terms of inducing our friends in the European Community and Japan to enter into a government code that makes some sense.

Now, I understand that the administration proposal is to maintain the present Buy America price differential with respect to those U.S. agencies that are the principal purchasers of the products in question. Continuation of those differentials, in our judgment, will not serve to alter the positions of our major trading partners, nor will it serve as an inducement to them. The very minimum response that would be likely to have some effect would be to increase the various sets of Buy American price differentials to the various U.S. agencies to a level where they would have a real competitive impact.

Bearing in mind that the objective is to induce foreign markets to open up their markets, and that the U.S. countermeasures would be ap-

plied only as long as necessary, it seems reasonable to me that Congress consider temporarily resorting to the U.S. equivalents of what the Europeans and Japanese are doing. That is, Congress, as part of the legislation, shall implement these trade agreements and, until we obtain opening up of the counterpart foreign markets, should prohibit the sales of heavy electrical goods made in noncooperating countries to U.S. agencies that are the principal purchasers of such goods.

Further, in recognition of the non-Federal part of the domestic markets in these product areas, Congress should prohibit the use of Federal funds or credits to facilitate the domestic purchase outside of the Federal procurement system of such goods made in noncooperating countries.

Thank you, Mr. Chairman.

Senator CHILES. Thank you, sir.

[The prepared statement of Mr. Falk follows:]

**STATEMENT OF BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION ON THE MTN GOVERNMENT PROCUREMENT CODE**

I am Bernard H. Falk, President of the National Electrical Manufacturers Association. I am also Chairman of Industry Sector Advisory Committee 18, Electrical Machinery, Power Boilers, Nuclear Reactors, and Engines and Turbines.

I appreciate this opportunity to appear before the Senate Governmental Affairs Committee for the purpose of presenting the views of American manufacturers of heavy electrical equipment with regard to the MTN Government Procurement Code.

Attached to my statement is an excerpt from testimony which I presented before the Senate Finance Committee on April 1, 1974, when my Association had the opportunity to bring its views in support of what eventually became the Trade Reform Act of 1974. This attachment has been included to explain how foreign "Buy National" procurement policies have effectively foreclosed U.S. producers of heavy electrical equipment from competing in the markets of other producer nations while the suppliers of similar equipment from those nations have enjoyed relatively open access to the large U.S. market place.

Within this in mind, we were strongly supportive of the Trade Act and particularly Section 104 which directed that a principal U.S. negotiating objective would be to obtain, to the maximum extent feasible, equivalent competitive market access in developed countries for U.S. product sectors. Obviously, one of the means to accomplish this objective was to be a comprehensive Code on non-discriminatory government procurement. This matter of the need for such a Code was not new at that time; as a matter of fact, in 1968, U.S. trade authorities became convinced that restrictive nationalistic procurement in heavy electrical equipment had created clear conditions of unfairness in international trade. Seeking correction, U.S. officials initiated discussions within the Organization of Economic Cooperation and Development which eventually was essentially transferred to the MTN negotiation for a Government Procurement Code.

What has happened in the trade negotiations, however, is that while an adequate procurement code has been negotiated, the European Community has refused to have the code apply to its national government entities that buy heavy electrical equipment. What other countries will finally agree to do relative to the procurement code is still unclear but is not promising. It is, therefore, already apparent that the U.S. is coming out of the trade negotiations with a failure to obtain significant increased foreign access in the main potential markets for U.S. exports for these products.

There is an important aspect in this situation that has to be understood. The extent to which each country's home market purchases in these product areas are made by national-level government entities that could be put under the procurement code varies from practically 100 percent of the total home market in France and England to practically none in Japan. In other words, the Japanese market for heavy electrical goods is practically 100 percent "private". But the foreign governments effectively block U.S. access to practically all of their home markets, whether the would-be purchasers are national-level government agencies, below-national-level government agencies, or "private". The premise of sec-

tion 104 of the Trade Act and of the U.S. push for a government procurement code was that a country that put under the procurement code its national-level government agencies that purchase this equipment would also urge other purchasers of such equipment within its borders to stop discriminating against U.S. suppliers. The failure to put their national-level purchasers under the code obviously means that their "across-the-board" nation-wide discriminatory import controls will be maintained.

In fact, unless appropriate steps are taken by Congress to compensate for this negative outcome in the trade negotiations, the U.S., after the negotiations, may be even worse off than before. For example, tariffs in these product areas will be reduced. Such reductions will have a favorable impact on imports into the U.S. but will mean nothing for U.S. exports in the face of the pervasive foreign government discrimination.

The case of the world-wide heavy electrical goods market (power generating equipment, including steam-turbine generators, gas turbines, hydro-turbines and generators, power switchgear and large power transformers) illustrates the disadvantage to the U.S. of the one-sided relationship in these product areas that our trading partners are trying to continue. Over the last five years, on an average annual basis, the European heavy electrical goods market is worth about \$2 billion; the Japanese market about \$500 million; and the U.S. market about \$5 billion. And whereas Europe and Japan have been getting about 8-9 percent of the U.S. heavy electrical goods market, the U.S. has been practically totally excluded from theirs. The consequences to the U.S. economy in terms of jobs, sales by raw material and component suppliers (steel, for example), etc. are obviously serious.

No doubt the foreign assumption is that the status quo will continue; foreign home markets will continue protected; the U.S. market will stay relatively open. If this assumption proves correct, any U.S. hopes for liberalization in the future will obviously remain futile.

We accordingly must devise a legislative response to this one-sided situation that will forcefully tell our major trading partners that their continued protectionism in these areas was and is a mistake and that greater trade liberalization in the future will be a better alternative.

How best to respond is, of course, the question. I understand the Administration proposal is merely to maintain the present "Buy American" price differential with respect to those U.S. agencies that are the principal purchasers of the products in question. Present "Buy American" application provides for a 6 percent price differential, increased to 12 percent where the U.S. supplier is in a high unemployment area. Continuation of these differentials at existing levels will not, in our judgment, serve to alter the positions of our major trading partners nor will it serve as an inducement to them. The very minimum response that would be likely to have some effect would be to increase the various sets of "Buy American" price differentials for the listed U.S. agencies to a level where they would have a real competitive impact. We also have to keep in mind that, by far, the larger part of the domestic market in these product areas is outside federal procurement. The non-federal parts of the U.S. heavy electrical market are about 85 percent.

Bearing in mind that the objective is to induce foreign governments to open up their markets and that U.S. countermeasures would be applied only so long as necessary, it seems reasonable that Congress resort temporarily to U.S. equivalents of what the Europeans and Japanese are doing; that is, Congress as a part of the legislation to implement the trade agreements—and until we obtain opening up of the counterpart foreign markets—should prohibit sales of heavy electrical goods made in non-cooperating countries to U.S. agencies that are the principal purchasers of such goods and, further, in recognition of the non-federal parts of the domestic markets in these product areas, Congress should prohibit the use of federal funds or credits to facilitate the domestic purchase outside of the federal procurement system (for example, purchases by state or regional cooperatives, state highway systems, municipalities, etc.) of such goods made in non-cooperating countries.

Congress would empower the President to relax the countermeasures as our trading partners become more cooperative and would, of course, provide adequate safeguards against various possible contingencies such as unavailability, as it now does in the "Buy American" laws.

The Congress and the Administration are now in the final stages of determining the overall implementation aspects of the MTN trade agreements. In that connection, I respectfully recommend your support for the position set forth above.

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**EXCERPT FROM STATEMENT OF NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION ON H.R. 10710, THE TRADE REFORM ACT OF 1973, BEFORE THE COMMITTEE ON FINANCE, U.S. SENATE, APRIL 1, 1974**

Every nation of the world regards its electrical manufacturing capability as an essential national resource which underpins its economic strength and measures its potential for growth. Consequently, every industrialized nation, to one degree or another, and with the U.S. as a notable exception, has historically adopted policies to protect and encourage its electrical equipment capability, in terms of research and development assistance, strict buy-national procurement policies, discriminatory standards regulations and export aids and incentives.

The buy-national procurement policies of electrical utilities owned or controlled by the governments of Western Europe, for example, have effectively foreclosed U.S. producers of heavy electrical equipment from competing in those foreign markets. At the same time, however, electrical machinery producers in those foreign countries, often supported by government export aids and incentives, have enjoyed relatively open access to the large U.S. market, subject only to a low tariff, and the Buy-American differential in the case of Federal procurement. As a result of this one-way flow of trade, U.S. electrical manufacturers have sold very little equipment in the other producer countries of the world, while hundreds of millions of dollars of foreign-made equipment are now in place throughout most major U.S. electric systems—investor owned utilities as well as Federal and municipal power authorities.

We regard this one-way flow as anti-competitive *per se*. Moreover, it is based on a pervasive discrimination which makes a mockery of the principle of non-discriminatory trade laid down in the General Agreement on Tariffs and Trade (GATT).

NEMA is gratified that the U.S. government has tried to do something about the anti-competitive behavior of foreign governments and their government-owned or controlled electric utilities. In 1968, approximately one year after the Kennedy Round negotiations were concluded, U.S. trade authorities became convinced that restrictive nationalistic procurement in heavy electrical equipment had created clear conditions of unfairness in international trade. NEMA had made this point in many statements over the years, to the Congress and the Executive Branch. Seeking correction, U.S. officials initiated working party discussions within the Organization for Economic Cooperation and Development (OECD) to try to develop an international code on government procurement. At the request of the Treasury Department and the Office of the Special Representative for Trade Negotiations, NEMA submitted a draft of a proposed international code for electrical equipment procurement, modeled on applicable U.S. federal procurement regulations. We believe that since 1968 U.S. officials have worked diligently toward adoption of an international procurement code based, at least in part, on the NEMA draft. But now, in 1974, little tangible progress has been made, and we must conclude that there is scant interest among the other OECD members in facilitating broadened access for U.S. manufacturers to these members' own home markets.

NEMA is also gratified that the Committee on Finance has recognized the inhibiting and discriminatory effects of certain government procurement practices. Appendix B to the Committee Print, "Summary and Analysis of H.R. 10710—the Trade Reform Act of 1973," dated February 26, 1974, identified such practices as a significant non-tariff barrier.<sup>1</sup> Of particular interest to U.S. electrical manufacturers are the following paragraphs:

"The principal practices that inhibit foreign participation in government procurement are insufficient publicity in the solicitation of bids and in the disclosure of the criteria on the basis of which contracts are awarded. Most trading partners

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<sup>1</sup> It should be added that Appendix B also identifies two other types of non-tariff barriers of concern to NEMA members: (1) subsidies and export aids, and (2) discriminatory standards regulations.

of the United States, such as Japan, the United Kingdom and most European Community countries use predominantly the selective and single tender bid procedures. It is generally recognized that these lend themselves much better to discriminatory practices against foreign suppliers than public tendering.

"Foreign suppliers can also be suppressed through specific conditions of bidding which put them at a disadvantage, such as certain administrative requirements or inadequate time allowed for submission of bids. Moreover, purchasing authorities may specify technical requirements in advance collaboration with domestic suppliers limiting thereby the competitiveness of the foreign bidder. *In some countries only resident firms may undertake government contracts of certain types.*" (p. 91, emphasis added.)

In sum, it would appear that both the term "competitiveness," and the Most Favored Nation principle, are viewed differently in most foreign industrial countries than in the U.S. To us they mean individual firms, regardless of national origin, competing among themselves on the same non-discriminatory terms and with equal competitive opportunity. To foreign governments, their power authorities and their electrical equipment manufacturers, they mean domestic and foreign economic policies which accord special treatment and discrimination in world trade to their own producers. Under these conditions, the contest between U.S. and foreign manufacturers can hardly be equal—and it has not been.

Senator CHILES. Mr. Davis?

Mr. DAVIS. Mr. Chairman, I think the testimony that we have submitted in behalf of the American Iron and Steel Institute can be reduced to five points. First, we know that the United States will honor both the letter and the spirit of the procurement code. Second, we see significant opportunities for circumvention of the code by our trading partners. Third, our past experience suggests that our trading partners will in fact try to find ways and means to circumvent the code unless they clearly understand that there has been an alliance in this country between Congress, the administration, labor, and industry to insure that the code will in fact be honored by all the signing nations. Our testimony reflects our willingness to join in that alliance. Finally, we wish to endorse the formal statement that will be submitted later this afternoon by Dr. Oswald in behalf of AFL-CIO.

Our position can be reduced to one sentence, Mr. Chairman, and that would be a sentence on page 2 of your opening remarks, "This international procurement code is an important first step." However, unless the code is properly enforced, honored, and supervised by Congress, the administration, labor, and industry, the code will truly in fact "be a meaningless undertaking."

Thank you very much.

Senator CHILES. Thank you.

Excuse me a minute.

[Brief recess.]

Senator CHILES. I appreciate your patience. I am sorry we had this interruption. We are running awfully late to try to finish up with our other witnesses. I have several questions I would like to submit to you and ask you if you would try to give me written answers, because I am sure some of your answers are going to be different on some questions.

So rather than have each of you go through the panel. I think that might be helpful to us.

One question I would like to ask maybe as a panel, and maybe we could get a quick answer, is what has your experience been in working with our Special Trade Representative? I would just like to quickly hear what you think about that, if a couple of you want to answer that.

Mr. LASLEY. I would say the relationship has been excellent. Our

input has been noticed. In some cases, to your surprise, action has been taken. You might have noticed I said we take credit for maintenance of the threshold figure. In that case, we sent an emissary and a cable and got action. That was a reversal. We found them very cooperative. And in the case of the Government Procurement Code, Mort Pomeranz, sitting in this room, did most of the work and he had to put up with a lot of flak on our part, and all kinds of things. He did a great job.

Mr. SMOOR. Our experience has also been excellent. I guess, like most industries, we feel that people think we are a very esoteric group and hard to understand. STR has a man who understands what our problems are, and in fact about 1 year ago, began to anticipate some of the things he thought we would be interested in. I thought that was a very good example of the way they were organized.

Second, having been to Geneva three times during the course of the last year to the delegation and given the conditions under which we were operating in Geneva, I believe everybody in STR, the Commerce Department, and other departments who were over there really deserve a vote of thanks because they did a very good job under very trying physical conditions.

Mr. BERKELEY. I, too, as a member of the advisory committee, would agree with all of those comments. I think that Ambassador Strauss and, before him, Ambassador Dent, both sought a very open, two-way communication between the private sector and public sector. They were very flexible and were very receptive to any and all counsel that was directed toward them. And my own personal experience has been the tremendously high quality and ability throughout the entire staff, not just the negotiating Ambassadors and Ambassador Strauss himself, but right through the whole organization. They have been very receptive, very open, very flexible, and very firm, really, in working for the objectives of the original legislation.

Mr. FALK. I had the unhappy experience of being the heavy electrical good advisor in the Kennedy round as well as this round, so I not only second the comments of my other members of the panel, but also wish to point out in comparison, we are talking about a grade of A versus D-minus in terms of relationships. I think a lot of that is not only due to the efforts of STR, but Congress deserves credit by requiring this kind of consultation in the legislation, and I would hope you give some consideration to extending that mechanism beyond the legislation, beyond the act we intend to implement.

Mr. DAVIS. With Mr. Pomeranz handling the technical aspects, and Ambassador Strauss handling the negotiations, we have some reason for concluding that our trading partners would adhere to the code. However, we are troubled by the fact Ambassador Strauss has just been given a very enormous assignment, starting Labor Day, which might remove him from the proceedings for months, at a very critical time when the message needs to be conveyed to our trading partners that we will in fact accept nothing less than the same kind of commitment to the code as the United States is going to give to it.

Senator CHILES. Thank you very much, and I am sorry I don't have a little more time to ask you some more questions. I would like to submit some questions to you.

Thank you.

[The prepared statement of Mr. Davis follows:]

STATEMENT OF BRUCE E. DAVIS, ASSISTANT VICE PRESIDENT, PUBLIC AFFAIRS  
BETHLEHEM STEEL CORP., IN BEHALF OF AMERICAN IRON AND STEEL INSTITUTE

I. INTRODUCTION

My name is Bruce E. Davis. I am Assistant Vice President, Public Affairs, Bethlehem Steel Corporation, Bethlehem, Pennsylvania. I present this statement in behalf of the American Iron and Steel Institute, an association of 64 domestic steel companies accounting for 95 percent of the raw steel produced in this country.

II. SUPPORT OF CONGRESS

Our industry welcomes and appreciates the interest Congress has demonstrated in restoring vitality to the domestic steel industry.

Today's hearing is an indication of the interest this Committee and Congress have shown in seeking meaningful and long-lasting solutions to our foreign trade problems. Discrimination against American goods when allied governments purchase articles for their own use surely is a significant part of our nation's international trade difficulties.

III. AISI ENDORSES BASIC OBJECTIVES OF TOKYO DECLARATION

The AISI member companies support the basic objectives recited in the 14 September 1973 Tokyo Declaration that the comprehensive Multilateral Trade Negotiations seek, inter alia, to

reduce or eliminate nontariff measures in the area of government procurement.

Our statement concerns (i) whether the negotiations have achieved a fair and just result for the interests of our nation and our industry, and (ii) what the nature and the content of the legislation should be to implement, in terms of United States legislation, the Agreement on Government Procurement ("the Code") initialed by 41 nations in Geneva, Switzerland, on April 12, 1979.

#### IV. OUR UNDERSTANDING OF UNITED STATES OBJECTIVES

The United States negotiators involved in reaching agreement on an international government procurement code had an overriding objective: secure greater opportunities for American products, including steel, to compete for sales to foreign governments. Our negotiators sought to establish appropriate rules, where such rules now do not exist, so that all interested parties would accept the basic principle that future government procurements would be carried out by all signatory nations in a fair and equitable manner.

From the beginning, our negotiators recognized that most of our trading partners achieve their discrimination against American goods by use of administrative practices and procedures that are virtually invisible.

Our negotiators sought to discourage discrimination at all stages of the procurement process. Thus, we find that specific

rules are prescribed on the drafting of specifications by which goods are purchased, on the advertising of prospective purchases, on the time allocated for the submission of the bids, on the qualification of suppliers, on the opening and evaluation of bids, on the award of contracts, and on hearing and reviewing protests.

In essence, we sought to achieve rules which would bar invisible barriers and make all aspects of the procurement process open and aboveboard.

Our negotiations were successful in many respects. However, the member companies of AISI had several explicit concerns about the final Agreement initialed in Geneva two weeks ago.

A. Ex Poste Publicity (Publication of Awards)

Our industry counseled our negotiators that one of the most essential elements for insuring transparency in the procurement process is the guarantee that the name of the winning bidder and the amount of the award will be published for each procurement contract. Our trading partners argued that such publication is unnecessary and would lead to collusive bidding in future procurements of the same item.

The Code, as agreed to by our negotiators, does not meet the expected standards of transparency, equity, and fairness.

For example, Article 14 (f) of the Code provides that an award may be made to other than the low bidder, if another bid is considered "most advantageous" by the entity. However, no criteria are provided for such a decision.

Further, when the government entity decides to award a contract to other than the low bidder, a written record, available to all interested parties, should be prepared. This requirement for a written documentation of reasons for awarding the contract to other than lowest bidder would minimize attempts by our trading partners to circumvent the requirement of awards to the lowest bidder.

The Code loopholes have been much discussed. There is not much we can do about the Code as now written. What we depend on -- to limit use of these loopholes -- is attention by our government in tracking down and forwarding to United States bidders followup information on foreign government procurement bids.

We ask that the Administration recognize that loopholes exist in the Code. However, insistence that the letter and the spirit of the Code be honored by our trading partners may minimize the use of these loopholes.

**B. Continued Use of Invisible Practices and Procedures to Disadvantage of United States Goods**

The final Agreement contains many opportunities for circumvention by our trading partners.

In his September 30, 1976 Report to the Congress on Governmental Buy-National Practices (B-162221), the Comptroller General of the United States concluded:

"Subtle administrative guidance and practices, rather than laws and regulations, are used [by our major world trading partners] to effectively preclude most foreign competition."

On March 23, 1978, in testimony before the United States Senate Subcommittee on Federal Spending Practices, Deputy Assistant Secretary of the Treasury, Gary Hufbauer, stated:

"The United States is unusual among nations in that we give our national preferences through clearly-stated percentage margins which are embodied in law. In contrast, other nations generally rely on highly invisible practices and procedures which achieve a degree of restrictiveness equal to or greater than ours."

In our opinion, the Code in its present form does not insure that "subtle" or "invisible" practices and procedures discriminating against American-made goods will be eliminated.

For example, Part II, Article 2, states that the non-discrimination against foreign products and suppliers:

"[S]hall not apply to customs duties and charges of any kind imposed [on imported supplies], the method of levying such duties and charges, and other import regulations and formalities." (Emphasis added.)

A number of our trading partners have inspection procedures, licensing fees, and other subtle barriers to imported goods that can (and have in the past) effectively barred American goods from the marketplace.

The Code should have precluded the use of import regulations or "formalities" that have been demonstrated as being effective deterrents to American-made goods being sold in foreign countries. The entire purpose of the Code can be circumvented and

thus nullified by continued use of past practices still permitted under Part II, Article 2.

We suggest that, as the Code becomes effective, our government commit itself to catalogue instances where "import regulations and formalities" are used in violation of the spirit of the Code. Such a catalogue should provide the basis for the earliest evaluation of the effectiveness of the Code and the spirit in which our trading partners intend to implement the Code.

C. Entity Coverage

The United States total procurement by federal agencies of goods potentially subject to the Code could (and likely does) exceed that of any nation participating in the negotiations. Nevertheless, acceptable reciprocity would exist if our trading partners agreed to subject to the Code a significant percentage of the government agencies directly or substantially controlled by them. It seems clear that many industrial nations are not prepared politically to agree to this level of entity coverage.

For example, in recent days, considerable attention has been focused on the Japanese entities subject to the Code, particularly the omission of Nippon Telegraph and Telephone Public Corporation. Initially, the Japanese offer was such that non-Japanese firms would be eligible to bid to Nippon T & T only on such limited items as utility poles, while \$5 billion in annual purchases of telecommunications gear would be from Japanese suppliers. We note with approval that the Japanese Government may revise its position, but only after

our negotiators and Congress made it clear that the initial Japanese position was unacceptable.

Our industry is not privy to what other situations similar to the Nippon T & T situation may exist. We urge that Congress develop, in hearings such as today's proceedings, and in staff negotiations with the Office of the Special Trade Representative, what exemptions from the Code have been agreed upon by the Geneva negotiators.

#### V. IMPLEMENTATION OF THE CODE

##### A. A Need For a Partnership between Congress, the Administration, Labor and Industry

Realistically, we recognize that the United States will, on the basis of past practice, try to follow not only the letter but also the intent of the Code. However, also on the basis of past practice, we are concerned that other nations may not be as scrupulous in their compliance with the Code.

Our industry proposed, without success, that our negotiators advocate a period -- perhaps several years -- during which, on the basis of fully identifying, publicizing, and checking all the procedures and practices involved in government procurement among the GATT nations, the feasibility of full compliance with the Code could be established. Now, the United States would move to repeal our Federal Buy American Act, and other federal laws allowing some degree of national preference, without any practical, proven assurance of obtaining full reciprocity.

Congress and the Administration must remain partners with American labor and industry to insure fairness and equity for American interests. Without assurances that Congress and the Administration are committed to this partnership, we cannot conclude that the Code will in fact establish full and fair reciprocity between the United States and our trading partners.

B. United States Entities Covered (or Not Covered) by the Code

We note with approval that specialt, metals purchased by the Defense Department are not subject to the Code.

Purchases by the Environmental Protection Agency are subject to the Code. Section 39 of the Clean Water Act of 1977 (P.L. 95-217, Dec. 27, 1977), amended the Federal Water Pollution Control Act to require that state and local purchasing bodies grant a preference to American materials. Congress should insure that the implementing legislation maintains this domestic preference requirement, inasmuch as state and local purchases are not subject to the Code (Part I, Article 2).

C. Protection of National Economic Interests

Purchases by the Department of Commerce are subject to the Code. Section 103 of the Public Works Employment Act of 1977 (P.L. 95-28, May 13, 1977) sought to insure that American materials would be used in the so-called \$4 billion jobs bill. If, at some future time, Congress seeks to provide employment and stimulate the economy with similar legislation, the implementing legislation should

insure that Congress has the authority to act without violating the Code.

Our reading of Part VIII of the final Agreement suggests the implementing legislation must clarify that Congress reserves the right to take action, consistent with the Code, to protect our national economy. Part VIII does authorize parties to the Agreement to protect "essential security interests." However, the present provisions of Part VIII are so narrowly drawn that the protection of essential economic interests is not authorized.

#### D. State and Local Procurements

Our interpretation of Part I, Article 2, of the final Agreement is that state and local public bodies, by law or regulation, may continue to grant bid preferences to American goods. At present, nearly 30 states, plus the District of Columbia, either by law or regulation, grant bid preferences to domestic materials purchased for public purposes, and not for resale.

Congress should insure that nothing contained in the implementing legislation abridges or infringes upon the rights of state and local authorities, state governments, local governments, and political subdivisions, to continue enforcement of their domestic materials bid preference laws and regulations.

### VI. SUMMARY

The international government procurement code, as written, will be a failure for the United States without a completely new thrust

in government trade policy. The United States will have to monitor compliance. Congress, in considering the Code, must realize and provide for this responsibility.

Recently, a member of the United States Senate, commenting on enforcement of the final Agreement, stated:

"The [Federal] Buy American Act is a law, a rule of the game, that is known by all prospective bidders, and is uniformly administered without prejudice. Other countries' buy national practices are, by their nature, prejudiced and covertly discriminatory. They are rooted in intangibles. As in the old adage, our Buy American Act is a rule of law; other nations' practices are rules of men. I am skeptical that we can change the latter to our economic benefit."

We believe that this Congress has the will and the power to insure that the United States achieves fairness, equality, and reciprocity in the Code's implementation and administration.

The international government procurement code that has been negotiated in Geneva is, in essence, a code of international behavior. And that means that penalties or sanctions should be applied whenever the standard of conduct is violated.

Now is the time for our government officials to mend their ways. Now is the time to adopt a policy of fair, even-handed enforcement of domestic trade laws, including the Agreement on

Government Procurement, while at the same time insisting that our trading partners do no less!

I think Congress and the American public at large are sending loud and clear signals to the President and to our trading partners that the post-World War II era of America playing Santa Claus to the rest of the world is coming to an end. The deck has been stacked against us too long. This time, we insist on a fair shuffle.

All in all, while we have concerns, the Code could well be a step in the right direction. It is a noble effort and if properly implemented it could prove beneficial.

**TESTIMONY OF DR. RUDOLPH OSWALD, DIRECTOR OF RESEARCH,  
AFL-CIO**

Senator CHILES. Our next witness is Dr. Rudy Oswald, director of research for the AFL-CIO.

Nice to see you again.

Mr. OSWALD. Thank you, Senator. I appreciate this opportunity to present the views of the AFL-CIO on this code. With me is Ray Denison, assistant director of our legislative department, and Elizabeth Jager, an economist at AFL-CIO.

I ask that my entire statement be made part of the record, Senator. Senator CHILES. It shall be.

Mr. OSWALD. I would like to just highlight a few of the aspects of that testimony in terms of your time constraints.

This code is unlike other codes negotiated in Geneva over the past 4 years, because it goes far beyond normal market transactions and involves the operations of governments themselves in terms of national defense, national security, internal economic policies, and the role of government as massive consumers.

As purchasers of billions of dollars of goods yearly, government procurement policies can determine whether industries live or die, expand or shrink, and can shape the kind of country that we live in. Because of the uniqueness of government procurement, the GATT has always excluded it from trade agreements. And as you indicated in your opening statement, Senator, the Trade Act did call for freer trade proposals, but it was silent on the matter of a code in government procurement.

It directed the negotiations in a number of areas but did not do so in terms of government procurement.

The AFL-CIO is deeply concerned that the new code will have serious impact in the United States in terms of heavy losses in government procurement contracts and will not necessarily open up foreign government procurement. All that Congress can do is enact U.S. law. It cannot assure foreign compliance with the code.

We see a number of problem areas. We have listed nine of them in the testimony itself, and I think that they are all important. But I think Senator Heinz also highlighted this part of the issue in his testimony: That one of the central problems is that foreign buy-national operations are often past practices. They are obscure, they defend their internal buying practices without any basic public notice.

And we are very skeptical that the widespread presence of State-owned corporations and their interrelationships with other parts of government will lead to a sort of openness that takes place in the United States.

We are also very concerned with the question of a rule of origin provision which would assure that a product is actually made in another signatory country rather than some other place. And we would be just as concerned if U.S. goods are made in a third country, even if there were a U.S. company or some other company which bid but made a product somewhere else.

The problems are highlighted by our concerns with nonmarket economics and government-owned industries. More and more of the

signatory countries have nationally or government-owned industries. Other countries have moved into nationalized industries on a heavy basis in order to insure preservation of an industry and to escape massive loss of jobs.

For example, in steel, aluminum, in aerospace in France and Germany, pulp and paper in Norway, heavy engineering in others; these nations are now going into high-risk ventures where private capital is hesitant.

During 1977, State-owned British Steel lost \$165 million. Now Britain is making heavy investments in a State-owned company to manufacture integrated circuits to compete with the United States and Japan.

With these State-owned firms, there is no need to earn profits, there is no fear of bankruptcy, and there aren't any dividends to pay. They enjoy the benefits of low-cost State loans and the serenity of monopoly power.

These State-owned firms help other domestic industries by selling goods and services at lower costs. All of these transactions defy the basic rules of capitalism as practiced in this country.

With the government as the sole stockholder whose only goal is to keep an industry in operation and keep workers employed, how is it possible to outbid such an entity in the marketplace?

Not only will these State-owned entities be able to insure that their bids are lower for their own government's business, but they would be able to bid on contracts for the U.S. Government procurement.

An example of the complex problems involved in Government procurement was spelled out in a March-April issue of Harvard Business Review in an article entitled, "State-owned Business Abroad: New Competitive Threat." And I think you will find, if your staff has an opportunity to brief you on that article, that it excellently describes some of the problems.

We would also like to highlight an example of the ambiguities that still result from the codes and what they might mean in terms of its impact in terms of the United States.

For example, it is unclear what is included in the code's reservations for national defense and national security. It is obvious what arms and ammunition are, but defense and security mean much more.

It is our understanding from the reading of the code and discussions that all motor vehicles, except buses, are exposed in the code. A heavy-duty truck is a much needed defense unit for transportation of troops and supplies. What is our defense capability if our trucks and tens of thousands of items are manufactured in Hungary or elsewhere? Where are our industrial supply planes and spare parts in the event of emergency and where are the truck plants for developing new prototypes for American defense needs?

As a result of studies of this code, the AFL-CIO would like to make the following recommendations.

In view of the fact that the \$29-billion trade deficit in 1978 and our industrial unbalanced trade situation, we believe that inclusion of this Government procurement code in the MTN package is unlikely to improve our balance of trade and is most likely to cause even further erosion. The cost could also affect the Government's latitude for product and technology development, for helping to maintain the health

of U.S. procurement-related industries and for preserving tens of thousands of U.S. jobs in thousands of private sector industries.

We strongly urge that your committee recommend that the code be returned for negotiation in tandem with the safeguard and counterfeited codes. These are still being negotiated and the code can be submitted to Congress at a later date when the multitude of problems have been solved and procurement is put on a more equitable basis.

It is inconceivable to the AFL-CIO that there can be a net benefit to the United States as it now stands.

State-owned industries and political realities abroad will virtually close out most opportunities for successful bids. Further, state-owned industries, because of their direct and indirect subsidies, can underbid U.S. companies in every market and successfully challenge us here at home.

Further, U.S. companies in many instances, because of special provisions in the code, will be predisposed to export technology, develop their product lines and bid on U.S. contracts from developing or least developed countries.

The likelihood of firms in the United States developing major export opportunities in the face of entrenched opposition to encroachment on this most strongly defended area of purchasing, we believe, is remote.

As in the past, foreign purchases will be predominantly of those U.S.-made products that are either nonexistent domestically, in short supply, or of a nature that would have not been highly developed in those countries to date.

If it is not possible to renegotiate the entire code, then specific safeguards should be insisted upon to minimize the damage that will likely occur.

Therefore, we recommend that the committee insist on the following provisions in the implementing legislation. We have nine specific recommendations to be made in the implementing legislation.

First of all: We believe that for true equality, the implementing legislation should assure that only those countries that are signatories to the code are allowed to bid for products in the United States, and only for these entities included within the list of entities.

We believe that nonsignators should be denied all access to the U.S. bids unless such products are not available elsewhere.

Second: We believe that there should be a clear rule of origin language so that the product is actually made in the country that is represented by the bidder rather than by some other country.

Third: We believe that STR should provide specific language that makes good its assurances that State and local Buy American laws are not affected by the code. Without such specific language, we believe that there will be serious disruption in State and local Buy American laws.

Fourth: We believe that Government should list all procurement listings by foreign governments in the Commerce Business Daily, as we do for U.S. business opportunities for bidding.

We believe that if a code is to be helpful for U.S. business, that such foreign opportunities should also be listed in appendices to or supplement to the current Commerce Business Daily, so that business can bid on those types of products.

**Fifth:** We believe that the implementing legislation should be limited to a 2-year provisional basis and that it should not go into effect before January 1981, when the code provides for its effectiveness.

**Sixth:** We believe that the implementing legislation should spell out a means for withdrawal. The code makes reference thereto, and we believe that we should clearly give provision for withdrawal of the rights from the code either by presidential order or by a single congressional House directive.

**Seventh:** A special overall legal caveat should assure that the implementing legislation amends existing law only where special amendments occur and that it should clearly state that no other domestic legislation is affected until Congress specifically amends such domestic legislation.

The codes are very broad. Without that caveat, we are afraid that substantial havoc may be wrought without congressional direct knowledge and intent.

**Eighth:** We believe provisions should be made so that there will be no authorization for reduction of U.S. product standards, nor any retarding of prospective improvement of U.S. standards by the legislation.

**Ninth:** Upon complaint, all participating countries should be required to make available the records and transactions of their State-owned companies as U.S. companies must do on Government bids. Any that are ruled to be secret should be considered subsidized and excluded from bid processing.

Similarly, any State-owned companies that are not making the same level of return on investment as their private counterparts are, in fact, being subsidized and are also excluded from bidding.

In conclusion, inasmuch as an international panel is established for administering this code and for deciding disputes, it is most important that the U.S. law be clear and specific.

This legislation does not provide U.S. exports any rights to foreign government procurement. The Congress is only legislating how the U.S. laws will respond to foreign bidders. Therefore, this is not export-guaranteeing legislation. It is in fact legislation of major changes to make easier the bidding on billions of dollars of U.S. contracts that now go to firms and workers in the United States.

Because of this multitude of weaknesses and problems, this code should properly be returned to the Special Trade Representative for renegotiation.

Failing that, the Congress can do no less than write implementing legislation in such a manner as to lessen the impact on our economy and our citizens' livelihood.

Thank you, Mr. Chairman.

Senator CHILES. Thank you, sir. I note that you call for extending the Buy American Act to State and local purchases. Do you have any feel for what the cost of that would be?

Mr. OSWALD. We are not asking the Congress to extend that to State and local purchases except as it now exists. The code makes reference to the Federal Government being covered and that the State and local governments are not covered as such.

We are asking that you make sure that the exemption from Buy American only apply to the Federal entities specifically spelled out

in the code and not to State and local governments. Many State and local governments have their own Buy American laws.

Senator CHILES. So they would still be able to have their own Buy American laws?

Mr. OSWALD. Yes; and we believe they can only have it if you make that explicit provision in the implementing legislation.

Senator CHILES. I see. Section 301 of the Trade Act allows interested parties to file complaints of violations with any of the codes with STR. Do you view that term "interested parties" as covering labor unions?

Mr. OSWALD. There has been a serious question of whether it has or has not up to this point. We would be hopeful that there would be a specific provision that a labor union would be considered an interested party. We are very much concerned with section 301. We believe that the intent by Congress to strengthen that provision in the 1974 amendment was clearly to provide better redress against injury. We have been very disappointed at the lack of administration consciousness of the import harm that has occurred in a number of industries.

Senator CHILES. A number of us in the Congress have been very disappointed with that, too. I have great concern about it. It seems to me the key to getting anything out of these codes is to make sure that free trade does mean the same thing to our trading partners as it means to us.

Do you think that STR has the staff to make sure that these agreements are enforced?

Mr. OSWALD. Senator, at the current level, we have found there is insufficient staff both in STR to know enough about the details of many industries and in Treasury to carry out the requirements of the antidumping law or countervailing duty law, or even in Commerce to help promote U.S. exports.

So in general, American firms get short shrift in each of these departments as they affect trade.

Senator CHILES. Then the other question, of course, is the one we have just touched on, whether we have the will even with the staff.

Doctor, you expressed deep concern over the way in which the rule of origin provision could be manipulated. And you urged that that rule be clarified. Do you all have any suggestions as to how that should be clarified? And if you don't now, if you have an opportunity to submit that to the committee, I think it might be helpful how you think we might go about it.

Mr. OSWALD. We have some general suggestions now. We would be glad to give you more specific language, because we think that clearly the majority of the product needs to be produced in the country that is bidding, that there are other safeguards that the product actually come from where it is, and we would be glad to submit additional language in terms of a proposal for the implementing language.

Senator CHILES. Thank you very much, and I appreciate your testimony and your appearance here today.

[The prepared statement, with attachment, of Mr. Oswald follows:]

STATEMENT OF DR. RUDOLPH OSWALD, DIRECTOR, RESEARCH DEPARTMENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO appreciates this opportunity to provide to your committee our assessment of the Government Procurement Code within the MTN. As the rep-

representative of 13½ million workers in 105 unions the specifics of this code and its impact on all Americans—not just union members—are of deep concern to us.

Unlike other codes negotiated in Geneva over the past four years, this code goes far beyond normal market transactions and involves the operations of governments themselves in terms of national defense, national security, internal economic policies and their role as massive consumers. As purchasers of billions of dollars in goods yearly government procurement policies can determine whether industries live or die, expand or shrink and can shape the kind of country we have. This involves the livelihoods and standard of living of millions of Americans, and the expenditure of their tax dollars. Because of the uniqueness of government procurement, the GATT has always excluded it from all trade agreements. Further, the 1974 Trade Act was silent on the matter of negotiating a code in this area.

The AFL-CIO is deeply concerned that under the new code the unique role of government procurement in the U.S. will suffer a major change that may well result in heavy losses in procurement contracts for firms in the U.S. and may well cost heavily in jobs—while realizing little if any widening of foreign government procurement for firms in the U.S. and American jobs.

Under the code, new international rules will be established to make discrimination in federal government purchasing a violation of international agreement. As a result, the U.S. will give up its Buy American laws and practices for certain federal government entities that have provided some advantage to U.S. producers and jobs to Americans. By adoption of the code into our laws, the U.S. will give up any opportunity to improve these laws in the future.

Under the present U.S. system—the most open in the world—government procurement enables our nation to spend internally \$154 billion in tax dollars to equip our armed forces, supply our agencies, replenish our government needs in goods and services and direct a portion of that purchasing to specific industries and areas for the wellbeing of the nation. The set-asides and the Buy American provisions have been mainstays to many U.S. industries in obtaining and retaining government contracts despite heavy competition from abroad. Now that differential will be surrendered. Difficult to assess is the loss that may come from plant closing due to loss of counter-cyclical use of procurement contracts and the research and development that may also be lost as firms fall by the wayside.

In return U.S. companies will have the opportunity to bid on the purchases of those government agencies on the entity list of each signatory country. We will not have the opportunity to bid on all their non-strategic goods, only on those items on their lists.

In our examination of the code and the lists, we see several problems:

1. Despite the procedure for tendering under the code, past practices of most countries are designed to carefully obscure and defend their internal buying practices and will be difficult to overcome. The widespread presence of state-owned corporations, for example, and their inter-relationships with non-state-owned corporations make a network of political and economic self-interest that is virtually impossible to penetrate.

2. The lack of a specific rule of origin provision makes it impossible to insure that a bidder will deliver products that originate in a signatory country; this allows "farming out" of manufacturing non-signatory countries.

3. Special provisions are made in the code to "facilitate increased imports" from developing countries, which already now have special non-tariff benefits for exports to the U.S.

4. The code commits the U.S. to give special treatment to supplies from least developed countries, even if they don't sign the code. The mechanism also provides for "developed country parties," which could include multinational corporations, to go to a less developed country, choose the products, develop them and help tender them to the U.S. for purchase. Here is a clear invitation to multinational corporations to set up export platforms in other countries to assault the U.S. government procurement market.

5. Under the code, the U.S. will establish centers where developing countries will be given full information on U.S. laws, regulations, procedures and practices, notices of proposed purchases, nature and volume of products, etc. They, in turn, can exclude the U.S. from their markets by signing bilateral agreements with other countries or by establishing "common industrial development programs" with other countries.

6. The code bars technical specifications that "have the effect of creating unnecessary obstacles to international trade." The United States does not have the metric system, which could be construed as a barrier, forcing the U.S. to change its system to receive imports; contrawise, the present system could be used as an excuse for refusing U.S.-made products abroad.

7. While the code states that state and local Buy American laws and practices are excluded, there is danger that these laws, which have already been struck down by some courts, could be in further jeopardy as a result of the code, since some courts might hold that such laws conflict with federal policy as manifested in the code. Assurances of this exclusion have been given by the Special Trade Representative, but no language has been presented as yet.

8. The list of entities that each country has exposed for procurement bidding, once settled, is subject to modification only by going before the committee charged with operation of the code. So, if the U.S. wants to remove any entity from the list it must make a case and then make compensation in some other area in order to "maintain the level of mutually agreed coverage."

For example, when small businesses and minority businesses recently received a set-aside from the code, the U.S. entity list was changed to make available to foreign bidding the previously exempt NASA procurement needs.

9. There is little incentive for a country to leave its developing status, regardless of how industrialized it becomes, because under the code, developing countries are allowed to require domestic content, offsets and the transfer of technology as criteria for the award of contracts. Again a clear invitation to relocation by multinational corporations.

Apart from these concerns, we ask the committee to consider the realities of government in most nations today. All of the industrialized nations signatory to the code have widespread state participation in industry. Many of these industries were nationalized as rescue operations to insure preservation of an industry and to escape massive loss of jobs in steel, aluminum, aerospace, pulp and paper, heavy engineering and others. These nations are now going into high risk ventures where private capital is hesitant. For example, during 1977 state-owned British Steel lost \$165 million. Now Britain is making heavy investment in a state-owned company to manufacture integrated circuits to compete with the U.S. and Japan.

With these state-owned firms there is no need to earn profits; no fear of bankruptcy; no dividends to pay. They enjoy the benefits of low-cost state loans and the serenity of monopoly power. These state-owned firms help other domestic industries by selling goods and services at lower than cost. All of these transactions defy the basic rules of capitalism as practiced in this country. With the government as the sole stockholder whose only goal is to keep an industry in operation and to keep workers employed, how is it possible to outbid such an entity in the marketplace?

Not only will these state-owned entities be able to insure that their bids are lower for their own government's business, they will now be better able to bid on contracts for the U.S. government procurement.

An example of the complex problems involved in government procurement in a world where state-owned and centrally controlled corporations are becoming the rule is described in the March-April, 1979, Harvard Business Review, an article entitled "State-owned Business Abroad: New competitive threat" states:

"Public opinion runs strongly against having governments purchase from foreign companies. Employees in domestic companies feel that government purchases from a foreign competitor are almost acts of treason—and to pass over a state-owned producer in favor of a foreign producer is to compound the offense. Government ownership of a company virtually ensures that government will be a customer.

"When the French and British governments became major owners of computer companies in their respective countries, they assured these businesses of a healthy number of orders from state bodies. Government campaigns to encourage the public to purchase domestic products (such as the British government's current Buy British campaign) require a government to buy domestic products itself—and the pressure is doubly compelling when a state-owned enterprise makes the product."

(Attached to this testimony—from the March-April 1979 Harvard Business Review—is a list of industrial nations and the degree to which they have state-owned firms in eleven key industries.)

With the tariff reductions in the MTN, with the elimination of the Buy American provisions and with the change in the subsidy-countervailing duty code an overwhelming advantage will be given to other countries seeking greater penetration of our procurement markets. We also understand that in the drafting of the entity lists by the various nations, great care was taken to insure that exclusions were made for certain manufacturers that they felt might suffer import penetration. For example, some European countries will not apply the code to their government entities that purchase heavy electrical equipment, transportation and telecommunications equipment. In France and England, the national and state agencies are about 100% of the market for heavy electrical equipment, so virtually the entire market for heavy electrical equipment is effectively excluded from U.S. or other bidders.

One further concern: There is no assurance that even if foreign procurement were to be fully open that there would be a net benefit to the U.S. economy. The proliferation of U.S. multinational corporations throughout the world could mean the successful bidding of a contract by a U.S.-named firm but the manufacture and the jobs could go to the successful firm's subsidiary within that country—or to that firm's export platform in a less developed country in some far-flung part of the world. In other words, a U.S.-based bidder could lose to a U.S. name, but the U.S. economy would not have the game.

Apart from the problems we have cited in terms of the overall impact of the code, there are specific questions that should be answered before implementing legislation is put to the Congress. For example:

1. What is included in the code's reservation for national defense and national security? It is obvious what arms and ammunition are, but defense and security mean much more. It is our understanding that all motor vehicles except buses are exposed in the code. A heavy duty truck is a much-needed defense unit for the transporting of troops and supplies. What is our defense capability if our trucks and tens of thousands of other items, are manufactured in Hungary and elsewhere? Where are our industrial supply lines and where are our spare parts in the event of an emergency? And where are the truck plants for developing new prototypes for tomorrow's defense needs?

The code refers to the inclusion of services incidental to the purchase of goods, but not in excess of the price of the goods. What does this mean? Does it mean that foreign nationals are permitted to install, operate and service large scale purchases by our government? In view of the British and French government activity in computer manufacture, will their computers be installed in our government offices and their nationals handle all service work incidental? Further, are feasibility studies and engineering also incidental to a contract?

If construction contracts are exempt, does this mean the material involved, which in many cases involve work that is often done on-site, are exempt too? An example of our concern would be an entire dry dock prefabricated in a foreign country and floated to the United States.

How, if the code goes into effect, can the U.S. Government use government procurement as a counter-cyclical tool—as other signatory countries have reserved for themselves, in times of economic distress or where persistent labor surpluses exist?

As a result of our study of this code—and the others as well—the AFL-CIO makes the following recommendations:

1. In view of the fact that the United States had a \$29 billion trade deficit in 1978 and is far from a balanced trade position, inclusion of this government procurement code in the MTN package is unlikely to improve our balance of trade and is most likely to cause even further erosion. The code could also affect the government's latitude for product and technology development, for helping maintain the health of U.S. procurement-related industries and for preserving tens of thousands of U.S. jobs in thousands of private-sector industries.

We strongly urge that your committee recommend that the code be returned for negotiation in tandem with the safeguard and counterfeit codes now being negotiated—and submitted to Congress at a later date when the multitude of problems have been solved and procurement is put on a more equitable basis.

It is inconceivable to the AFL-CIO that there can be a net benefit to the U.S. from this code as it now stands. State-owned industries and political realities abroad will virtually close out most opportunities for successful bids. Further, state-owned industries because of their direct and indirect subsidies can underbid U.S. companies in their markets and successfully challenge us here at home.

Further, U.S. companies, in many instances, because of special provisions in the code, will be predisposed to export technology, develop their product lines and bid on U.S. contracts from developing or least developed countries. The likelihood of firms in the U.S. developing major export opportunities in the face of entrenched opposition to encroachment on this most-strongly defended area of purchasing, is remote. As in the past, foreign purchases will be predominantly of those U.S.-made products that are either non-existent domestically, in short supply or of a nature that have not been highly developed in those countries to date.

If it is not possible to renegotiate the entire code, then specific safeguards should be insisted upon to minimize the damage that will likely occur.

Therefore, we recommend that the Committee insist on the following provisions in the implementing legislation :

1. The legislation should provide for full equality of government procurement between nations that sign the code. That is all signatory countries would have full rights to bid on the listed entities of all other signatory countries. Only those listed entities that are exposed to bidding would be available to foreign bidders. All other government procurement would not be available to foreign bidders unless the product is unavailable domestically. Such a procedure would be fairer than the present international practices where foreign government procurement is rarely available to U.S. bidding, but U.S. government contracts are open to foreign bidders. Thus, under this provision, only the items on the entity lists would be open to bidding by all signators, all other items would be closed off. Countries that remain outside the code would get none of the benefits.

2. A clear rule-of-origin language should be incorporated into the legislation so that only countries that sign the code can be the source of supplies for the U.S. market. A bidder in a signatory country should not have the opportunity to shop around for a lowest priced country for his source of the product he is contracted to deliver.

3. STR should provide specific language that makes good its assurance that state and local Buy American laws are not affected by the code. STR has assured that these laws will not be affected; the specific language should be forthcoming. If the code were to result in weakening state and local Buy American practices, the U.S. would have made a major concession without receiving anything in exchange.

4. Under the code, all procurement listings for U.S. purchases will be listed in "Commerce Business Daily." This same publication should gather and publish on a regular basis all the procurement bidding opportunities that are expected to be offered by the other signatory countries.

5. The implementing legislation should be for a two-year provisional basis and should provide that it does not go into effect before January 1, 1981, the date indicated in the code.

6. The implementing legislation should spell out the machinery for U.S. withdrawal, which is provided for in the code upon 60 days notice. The legislation should provide the President with authority to make a finding of detrimental effect to the U.S. and allow for withdrawal from the code by presidential order.

7. A special overall legal caveat should assure that the implementing legislation amends existing law only where specific amendments occur and it should clearly state that no other domestic legislation is affected until Congress specifically amends such domestic legislation.

8. Provision should be made that there will be no authorization for the reduction of U.S. product standards nor any retarding of prospective improvement of U.S. standards by this legislation. Only those legislatures that adopted the standards have the authority to repeal or change them.

9. Upon complaint, all participating countries should be required to make available the records and transactions of their state-owned companies. Any that are ruled to be secret should be considered as subsidized and thus excluded from any of the bidding processes. Similarly any state-owned companies that are not making the same level of return on investment as their private counterparts are in fact being subsidized and are also excluded from any bidding.

In conclusion, inasmuch as an international panel is established for administering this code and for deciding disputes, it is most important that U.S. law be clear and specific. This legislation, does not provide U.S. exports any rights to foreign government procurement. The Congress is only legislating how the U.S. laws will respond to foreign bidders; therefore, this is not export-guaranteeing

legislation. It is, in fact, legislation of major law changes to make easier the bidding on billions of dollars of U.S. contracts that now go to firms and workers in the U.S. Because of its multitude of weaknesses and problems, this code should properly be returned to the Special Trade Representative for renegotiation. Failing that, the Congress can do no less than write implementing legislation in such a manner as to lessen the impact on our economy and our citizens' livelihoods.

Exhibit I  
Scope of state ownership

	Posts	Tele-communications	Electricity	Gas	Oil production	Coal	Railways	Airlines	Motor industry	Steel	Ship-building
Australia	○	○	○	○	○	○	○	○	○	○	NA
Austria	○	○	○	○	○	○	○	○	○	○	NA
Belgium	○	○	○	○	NA	○	○	○	○	○	○
Brazil	○	○	○	○	○	○	○	○	○	○	○
Britain	○	○	○	○	○	○	○	○	○	○	○
Canada	○	○	○	○	○	○	○	○	○	○	○
France	○	○	○	○	NA	○	○	○	○	○	○
West Germany	○	○	○	○	○	○	○	○	○	○	○
Holland	○	○	○	○	NA	NA	○	○	○	○	○
India	○	○	○	○	○	○	○	○	○	○	○
Italy	○	○	○	○	NA	NA	○	○	○	○	○
Japan	○	○	○	○	NA	○	○	○	○	○	○
Mexico	○	○	○	○	○	○	○	○	○	○	○
South Korea	○	○	○	○	NA	○	○	○	○	○	○
Spain	○	○	○	○	NA	○	○	○	○	○	○
Sweden	○	○	○	○	NA	NA	○	○	○	○	○
Switzerland	○	○	○	○	NA	NA	○	○	○	○	NA
United States	○	○	○	○	○	○	○	○	○	○	○



NA - Not applicable or negligible production    Adapted from a chart in *The Economist* (London), December 26, 1978 and reprinted with special permission.  
\*Including Canal

AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
Washington, D.C., May 3, 1979.

Hon. LAWTON CHILES,  
U.S. Senate,  
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CHILES: At the hearings on the multilateral trade agreement's before the Committee on Governmental Affairs on April 26, you asked me to

supply AFL-CIO suggestions on a rule of origin for the government procurement code.

As you know, Senators Bayh and Heinz have introduced S. 533, which attempts to clarify the meaning of "substantially all" in the U.S. law. The provisions of rule of origin should include the "substantially all" concept as S. 533 does and provide for certification that the provision has been met. I have attached the definition of Section 9 of S. 533 which provides guidance on this point.

Present U.S. law on imports is totally inadequate to assure that the provisions of the code will be carried out.

Sincerely,

RUDY OSWALD,  
Director, Department of Research.

#### **Attachment.**

**Section 9. Definitions:** This section details the definitions of various terms used throughout the bill. Of particular importance are the definitions of domestic article and federal agency.

A domestic article is defined to mean any final good delivered to the government 75% of the total delivered cost of which can be directly attributed to United States sources. The 75% definition includes the costs of components, assembly, transportation and delivery.

The definition, however, specifies that those components of a good supplied to the government which cannot be produced in the U.S. in sufficient quantity or quality are not to be considered in determining whether the good is foreign or domestic. Therefore, less than 75% of the cost of a government purchased product may actually be attributable to domestic sources (due to components which cannot be obtained in the U.S.). However, it is the policy embodied in this definition that substantially all of the cost of products purchased with federal funds must be derived from U.S. sources if the product is to be considered domestic for purposes of this legislation.

Federal agency includes not only any instrumentality of the Federal Government (as defined in the U.S. Code) but also specifically includes AMTRAK and Conrail which are not presently covered by the Buy American Act.

**Section 10. Regulations:** The Administrator for Federal Procurement Policy is authorized to administer the provisions of this bill.

Senator CHILES. Our final witness today is Mr. Frank Wikstrom, who is speaking on behalf of small business. An earlier version of the Procurement Code had done away with the small business set-aside. I am glad to see we have changed the position on that since then and now small business set-asides will be retained.

Mr. Wikstrom, it is good to have you with us.

#### **TESTIMONY OF FRANK WIKSTROM, CHAIRMAN, GOVERNMENT RELATIONS COMMITTEE, NATIONAL TOOL, DIE AND PRECISION MACHINING ASSOCIATION**

Mr. WIKSTROM. Thank you, Mr. Chairman, Senators. I not only represent small business, but a small, small business in that I am a representative of the National Tool, Die, and Precision Machining Association, an industry where our average size is about 30.

We have in our association some 2,800 member firms and we represent in the industry about 10,000 member firms.

I am speaking not only on behalf of them this afternoon, but also on behalf of the Small Business Legislative Council, an organization of national trade and professional associations whose membership is primarily small business.

SBLC focuses on issues of common concern to the entire small business community. The SBLC membership and their affiliates represent approximately 4 million small business firms nationwide. The SBLC

supports an increased share for small business in Federal procurement, and this position is supported by 40 national associations.

On behalf of the Nation's small business community, we wish to express our displeasure with the approach taken in the administration's negotiated Multilateral Trade Agreement. This agreement restricts many of the long-standing programs gained after many years of efforts by small business.

Soon the administration will be sending to the Hill the Multilateral Trade Agreement.

Before action is taken on MTA, we express our concern about two aspects of the agreement which would be repealed, for all practical purposes:

One: The Buy American Act under which foreign companies must underbid U.S. firms by 12 percent to obtain Federal procurement contracts;

Two: The labor surplus procurement program which restricts competition on certain contracts to firms which will perform a substantial proportion of the production under the contract in a high unemployment area.

It is true that total emasculation of these two laws—Buy American and labor surplus program—will not occur since there are exemptions included in the MTA.

Ambassador Strauss stated before the House Committee on Small Business on March 20, that no exact figures were available on just how much in current small business sales to Federal agencies will be lost to MTA. He speculated that it might be \$300 to \$400 million. At his side at the time was Robert Griffin, formerly Deputy Administrator with the General Services Administration.

Mr. Chairman, for many years each Federal agency has been required to file detailed quarterly reports on procurement with the Office of Finance of the GSA. We find it hard to understand why this information could not be provided to the committee. And we also find the estimate ridiculously low.

According to the data compiled, provided by GSA's Office of Finance, the annual small business procurement by the executive agencies is \$28.6 billion.

Approximately \$9 billion of this is direct small business procurement and a significant portion of the remaining \$19.6 billion results in subcontracting contracts to small business. GSA figures show that only one-half of the small business direct contracting will be exempted. Large contractors will fare much better—about two-thirds of the large contracts will still remain exempt.

We are giving away over \$4 billion in small business procurement and \$6.8 billion in large business procurement. Our estimate is that we are talking about \$5 to \$6 billion in small and minority business procurement contracts—not the \$300 to \$400 million as Mr. Strauss has speculated.

Another matter that concerns us are rumors that the price for restoration of the small business set-asides will be the elimination of NASA procurements from the exempt list. If that happens, subtract another \$3.4 billion in exempt procurement and add it to the \$10.8 billion giveaway. Remember also that you are talking about depending on foreign resources for critical technology. Technology developed

for our space program is technology which is eventually applied to our defense program. Is it in the interest of the United States to be dependent on other countries for the ability to produce sophisticated systems and ordnance for our military needs? This technology also filters down into domestic products, giving domestic industry a headstart in such areas as minicomputers and many other areas.

In spite of the set-aside changes already made in MTA, the business community in the United States is bound to be affected by provisions still in the treaty. If the door is shut to big business by the elimination of the Buy American Act, considerable subcontracting to small or minority business by large business or by Government, will be lost. The total Government procurement that could be affected permanently in sales to civilian executive agencies is \$14.2 billion.

Ambassador Strauss has testified that a number of products and agencies will be excluded from the code. In addition, purchases by certain governmental agencies, not covered by the code, are excluded tentatively.

If a foreign producer sells to one agency of the Federal Government at a price lower than an American firm, the pressure will be on all agencies of Government, whether or not they were included in the MTA, to purchase from the foreign producer—Canada is a good example.

Here is the breakdown by program: Minority business enterprises subcontracting to large business, \$1.207 billion; small business subcontracting to large business, \$863,652,000; prime procurements from other than small business, \$20.12 billion. Procurements in the labor surplus areas, an additional \$227 million in contracts would be affected. We have attachments here which go into detail.

We believe it important that, in light of the tentative exemptions in the MTA, Congress should demand line-by-line specificity as to the amount of Government procurement that will be affected with respect to current domestic sales by large and small business to agencies of the U.S. Government. Only when that information is provided can a reasonable and fair comparison of benefits and concessions be made.

It is important to note that Federal procurement with certain exceptions must go to a U.S. small business if its bid is within 12 percent of the foreign offer. The 12-percent differential represents partial offsetting of the lowered cost of doing business by foreign competitors who are not subject to compliance with wage laws, U.S. Government regulations, pension programs, and so forth.

The MTA scraps this 12-percent differential in favor of competition by businesses from some 98 nations. These countries, in practical effect, will subsidize this competition because they need not conform to U.S. business regulations. We have another attachment in our statement that goes into this in detail.

Ambassador Strauss' defense that contracts of \$190,000 or less are exempt should be given no weight, since he has produced no figures to show the average contract under the Buy American Act or the labor surplus procurement program.

This same exemption of \$190,000 was trumpeted by the Ambassador in advocating elimination of set-asides as negating any material effect on that program. He withdrew that defense when it was established

that the average minority set-aside is \$222,357, and the average set-aside for manufacturers is \$526,821. As you know, the proposed MTA, until approximately 5 weeks ago, severely limited the present small and minority business set-aside programs.

After vigorous opposition by members of the House Small Business Subcommittee on Government Oversight and Minority Enterprise, this limitation on set-aside was removed.

Ambassador Strauss was able to accomplish this in 48 hours in negotiations with 98 nations.

The erroneous answer of the Ambassador to those who question the provisions of MTA is that there will be no loss to small business but a gain, since the quid pro quo is that sales to the procurement offices of some 98 foreign nations—Japan is an exception—will now be opened up to U.S. business. The export opportunities are supposed to total \$20 billion, but this means little to small business for these reasons.

First: The \$20 billion of export opportunities is not exclusively for U.S. business, but for 98 nations competing for that \$20 billion;

Second: Many firms in the 98 nations can underbid U.S. business—and still make a sizable profit—because they don't have the added costs of compliance with U.S. mandatory regulations. Again, I refer to attachment M. We know of no requirement that foreign firms will have to comply with such regulations.

Third: U.S. small business does not have the wherewithal or the marketing expertise to penetrate the foreign market. U.S. big business, including their already in-place multinational companies, are in a preferred position to take advantage of MTA, and we have a further attachment in which we make reference to that.

Moreover, the Small Business Administration, the Export-Import Bank, and the Department of Commerce have testified that adequate funding for additional small business export opportunities is not available.

After years of practice, we have established a successful SBA program that certifies whether small business has the competency to compete on a Government contract. Will the many thousands of foreign businesses, who want to compete on U.S. Government contracts, be subjected to the same certification program? Who will administer the program to insure competency?

At the White House Conference on Small Business in Dallas, Tex., on January 23, Ambassador Strauss said:

President Carter has recognized the enormous potential for small business in international trade. A principal part of the expanded export promotion policy announced by the President last September was the channeling of up to \$100 million of Small Business Administration loan guarantees to small business exporters to provide seed money for entry into foreign markets.

I have heard this quoted in New York a few weeks ago by Frank Weil, talking about the opportunities that are going to be available to small business.

A review of the appropriations does not indicate an additional request for loan guarantees for the purpose of exporting.

Other major industrialized nations have long histories of aggressive export promotion and blocking imports of our members' products, not through trade sanctions but through customs rules, subsidies, distribution complications, and all manner of delays.

Will the Strauss "open door" change this? Are the \$20 billion phantom opportunities—the birds in the bush—offered by Mr. Strauss actually be better for American business than the business in hand?

One small manufacturer made this comment about the proposed MTA action:

If I were responsible for a U.S. company that was seeking Federal contracts and had not been successful, I would move my headquarters to San Marino, Bermuda, or Haiti, where I would not be concerned with OSHA, social security, income taxes, labor standards, minimum wages or labor unions, and find myself in a better position to compete and actually obtain U.S. Government contracts.

The end result of the MTA, if adopted by Congress, will mean a sizable loss to the U.S. small and large business which now sells, or hopes to sell, to Federal agencies; loss of U.S. jobs to cheap labor abroad; and a step backward for U.S. small business.

More than Federal procurement to the nations opened more widely to U.S. Federal procurement to the nations abroad, the next step will be for foreign business to further exploit the U.S. State-county-city-metro government market.

When Members of Congress stated their strong opposition to limiting the set-aside program under MTA, Ambassador Strauss was able to remedy the situation quickly. He can do the same with respect to the Buy American Act and the labor surplus program if Congress strongly registers its opposition. Unless the MTA is amended to correct these two inequities, we urge you to vote against its adoption.

Thank you.

In addition, I would like to say that I echo many of the concerns expressed by Mr. Oswald and others here today. I think we have a real problem before us, particularly the small businessman I speak for.

Thank you very much.

Senator CHILES. Thank you, sir. I am glad to see the possibilities of large foreign markets opening up for our own business, but the Government has an obligation to make sure that our businesses, especially our small businesses, can take advantage of that.

The administration has mentioned a new program designed to help U.S. businesses, especially small businesses, to export. What do you think would be the necessary ingredients of a successful export program?

Mr. WIKSTROM. Well, frankly, I do not find that small businessmen are too prone to go into other markets. They do not have the expertise and the know-how to do it. There are a few that are in exporting. I, for one, am. I have a product, a small machine, and even though I am a small company, 25 employees total, we do have our equipment in England, Belgium, Italy, Spain, Canada, in Japan, and we hope soon to have some in Australia. But I have a special product, and I do perform a special service, and there is a need for it. I think if I were competing with some other people, being a small man that I am, I probably could not compete with some other foreign people. If I did not have my specialized product, I would probably be looking for, or trying to get some of these preferential programs which should be made available to American industry and American wage earners.

I cannot answer your question as to what would be the proper thing. I think it depends upon the product and the type of service and so forth.

Senator CHILES. I note your concern over the potential adverse impact the Procurement Code might have on small business subcontracting.

Mr. WIKSTROM. Yes.

Senator CHILES. Section 5 of the code allows countries to have offset requirements in their procurements. Could we apply these offset requirements to require foreign contractors to subcontract with American small businesses?

Mr. WIKSTROM. Well, I don't know whether we could require that, but what I have seen and have heard suggested, if they lose some of this business which is now kind of reserved for the small businessman, they have these vast markets in the rest of the world. But what we are saying is:

All right, we will take them out of the things they know how to do and which they are geared to do, and which they have learned to handle effectively and tell them go out into a new market they know nothing about and see if they can compete in that field.

That just doesn't make sense to me, Mr. Chairman. It just doesn't make sense to them.

Everybody has their particular field in which they have an expertise and know how to handle and market and produce and deliver. We are in effect saying we are going to take this away from them and leave it up to them to see if you can go and do it elsewhere. I don't think that is proper.

Senator CHILES. The figures that I have heard is that we are talking about opening up around 20 percent of our \$90 billion-plus Federal procurement with the code provisions that are there.

Have you all got any figures of what you expect or how you expect that 20 percent to be affected in regard to small businesses, how that small business will be affected by this?

Mr. WIKSTROM. I think you will find that in the attachments. I have not developed each of these, but they have been and I have just been told they are included.

Senator CHILES. We will review that. I want to thank you very much for your testimony.

Mr. WIKSTROM. Thank you for giving me the opportunity to be here.

Senator CHILES. We will recess our hearings subject to the call of the Chair.

[Whereupon, at 5 p.m., Thursday, April 26, 1979, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**STATEMENT OF AMBASSADOR ROBERT S. STRAUSS, SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS**

Chairman Chiles, Senator Ribicoff, members of the Committee. I appreciate this opportunity to discuss with you the results of the Multilateral Trade Negotiations, and, in particular, the Agreement on Government Procurement.

The Government Procurement Agreement opens an enormous foreign market that currently is largely closed to competition. For U.S. exporters, we estimate this additional market to be worth about \$20 billion, depending on our Japanese negotiations. The Agreement on Government Procurement has tremendous, immediate implications in real dollar terms.

We know that the U.S. is strong and competitive in many of the product lines bought by foreign governments—in computers, sophisticated office machines, scientific instruments and other high technology items. And that is why this code is clearly to our advantage.

Tough negotiation brought about this Agreement. The members of this Committee are well aware of the importance of public purchases to governments. Let me set out some of the key points in this agreement.

Only signatories to the Agreement will have access to its benefits—no country is obliged to open its markets to parties which do not sign or adhere to the Agreement. The Agreement applies only to purchases of 150,000 Special Drawing Rights or more—roughly \$190,000.

The code does not cover national security items, construction contracts, or service contracts. Items purchased by the Department of Defense under the Berry Amendment are not covered, among other purchases. In addition, this Code does not effect the operation of our small and minority business programs.

We will also implement, along with the Government Procurement Agreement, part of the Agreement on Civil Aircraft that provides for government-wide non-discrimination in purchases of civilian aircraft. That agreement is enthusiastically supported by our aircraft industry.

#### TEXT

The text of this agreement is the yardstick against which to measure its impact on other participating countries. The text imposes the necessary obligations on our trading partners to ensure open, transparent procurement systems.

In our negotiations, we drafted the tightest, most comprehensive code possible. To do so in some cases meant less entity coverage in the final code. The text of the Agreement achieves our goal.

To measure the effectiveness of this text, we must consider the procurement systems currently operating in other nations. In our own country, we maintain an open system. Clearly established percentage preferences afford domestic suppliers protection.

On the other hand, most foreign governments now shelter their domestic suppliers behind "closed door" administrative procedures. We have built into the international agreement provisions which guarantee the opening of those closed doors for the first time.

A series of obligations and procedural requirements in the Agreement achieve open, transparent procurement practices. All parties to the Agreement are legally obligated to treat suppliers from other signatory governments as favorably as they treat domestic suppliers. The Agreement forbids parties from establishing standards which would discriminate against foreign products. To ensure that these basic legal obligations are observed, the Agreement contains extensive technical procedural requirements detailing the procurement process.

Parties to the Agreement must accept bids from qualified suppliers from any signatory country. In qualifying suppliers, the same criteria must be applied to all interested suppliers.

Importantly, this Agreement requires covered government agencies in each nation to publish a notice of each proposed purchase in sufficient time so that any interested supplier may bid. This requirement is essential to opening public purchasing. It would be impossible for interested suppliers to compete for a contract without advance knowledge.

Furthermore, the Agreement details the information which must be included in the notices. The information required ensures that no one supplier is privy to more information than another. The tender document given to interested suppliers is subject to similar requirements.

The Agreement details time limits for all aspects of the procurement process, giving foreign suppliers the same opportunities as domestic suppliers. The Agreement also provides rights of inquiry for suppliers throughout the procurement process. These rights are another integral part of the Agreement which will ensure its proper application. In establishing the obligations and procedures which will open up closed procurement systems, we also had to build in enforcement procedures to ensure that the obligations are observed. The first and most effective line of enforcement in this type of agreement is between the buyer and the seller.

In addition to the procedural inquiry rights during the individual procurement process, an essential tool for enforcement is the availability of information once a contract has been awarded. The Agreement requires that the losing bidders be informed within seven working days that a contract has been awarded. On request, a losing bidder must be given full information on the award process.

He must be told why his bid was not selected and the relative merits of the winning bid.

On a broader scale, the Agreement also contains provisions to monitor its overall application by other signatories. Each party must provide to other parties data on purchases made under the provisions of the Agreement and outside the Agreement. In this Code we therefore have included provisions for two types of monitoring—(1) that on the level of individual contracts, and (2) that on the level of the general operation of a government's procurement system.

Finally, the text provides effective procedures for dispute settlement at either of the monitoring levels. The Agreement's dispute settlement procedures are much tighter than those found in the GATT. Once a dispute reaches the Committee of signatories, a party to the dispute has the right to a panel within three months. The panel normally must make a decision within four months. If the losing party fails to follow the panel recommendations, the winning party can be authorized to suspend, in whole or in part, the provisions of this Agreement.

The impact of these procedural changes will be much greater on our trading partners than on the United States. Our current procedures, except for minor details, already conform to the code obligations. The Agreement will force open the closed administrative systems of the other signatories. This was our objective. The obligations and procedures in the Agreement, if properly applied, will ensure transparent procurement systems. As a necessary safeguard, however, the provisions for monitoring application and settling disputes will ensure that the Agreement is properly applied.

You have my word that this Administration will insure that we take an aggressive role in pursuing breaches of this Agreement. We have laid the groundwork to ensure compliance with the code. We must now work to ensure that the provisions are observed.

#### COVERAGE

The second major aspect of the Agreement is the coverage. It became clear early in the negotiations that other countries were not in the position to initially include the entire universe of public purchases in an international agreement, particularly if the agreement had any teeth. Accordingly, it was agreed to negotiate a "balanced" coverage package. We would not include any more quantitatively or qualitatively than we would receive. We have also built into the Code provisions for expanding coverage on a reciprocal basis in the future.

Through the coverage, we can evaluate more precisely the Agreement's impact on the United States, both through what we have included and what we have received. As I have pointed out, in total export potential, a foreign market estimated at \$20 billion, depending on our Japanese negotiations, is being opened to U.S. firms for the first time. It is our intention to see that this new market is open to all American businesses, both small and large.

In the case of the Japanese, as you know, we have decided that their coverage both quantitatively and qualitatively does not match ours. Unless their coverage is improved, the United States will not apply this Agreement to Japan, and we have so indicated to them just yesterday. We would welcome Japanese participation in this Code, but it must be on the basis of reciprocity both in quality and quantity.

These are two additional aspects of the United States' coverage which warrant specific attention: (1) national security, and (2) small/minority businesses.

#### NATIONAL SECURITY

The Agreement excludes purchases of items essential to national security. A very significant portion of DOD purchases will be excluded under this provision. Among those items to be excluded by this National Security provision are purchases for such items as combat aircraft, weapon systems, guided missiles, and all other military systems of a classified nature.

#### SMALL/MINORITY BUSINESS

As you are well aware, another important issue is the impact of this Agreement on small and minority business programs in the United States. I mentioned earlier our belief that this Agreement will be of major benefit to American businesses, both large and small, because of the new markets opening up. As part of the implementation of this Agreement, the Administration is working on a

program to help small businesses take advantage of this market. We plan to greatly expand export assistance for small and minority businesses. That assistance can include direct contacts on pending tenders, translation facilities, and direct assistance in dealing with foreign purchasing entities.

However, we recognize very clearly the possible impact of this Agreement on small/minority business opportunities in the U.S. We have excluded our small and minority business set-aside programs from the Code. This exclusion cuts across all entities and products otherwise included in the United States offer.

#### CONCLUSION

The Agreement on Government Procurement brings purchases of products now largely excluded from foreign competition into the international marketplace. It brings discipline to an area exempt from any international control. I believe the Agreement as drafted, with its initial coverage, constitutes a firm stepping stone towards our long-term objective of fair access to all major procurement markets. Through this Agreement we will begin for the first time to receive fair and open treatment from other nations without major changes in our own system.

I will be happy to answer any questions.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,  
Washington, D.C., June 12, 1979.

HON. LAWTON CHILES,  
U.S. Senate, Washington, D.C.

DEAR SENATOR CHILES: Since receipt of your letter of May 7, our staffs have been working very closely on the subject areas raised by your questions and have been translating this into the implementing legislation on which work was completed last week. The attached responses record and amplify on much of the staff discussions.

Please call upon me if there should be any further need.

Sincerely,

ROBERT S. STRAUSS.

1. I would go further and say that if there is not vigorous enforcement of the code, it will not be worth the paper on which it is written. The code is structured so that it will be largely self policing. Suppliers have the right to make inquiry, and receive satisfactory answers, at any stage in the procurement process. Equivalents to our contracts appeals boards must be provided by procuring agencies. Consequently we expect that few cases will fail to be resolved by the potential supplier himself. For those few which do escalate beyond this point we have recourse to bilateral consultations with the offending government and, should that fail to resolve the issue, we can go to the multilateral dispute mechanism also provided by the code.

STR has an enviable record of handling a great volume of business with an even smaller staff than we now have available through use of the interagency trade agreements machinery which we direct. The negotiating positions for the code were developed by a subcommittee of the Trade Policy Staff Committee composed of both procurement experts and trade experts from a number of other agencies. We have no doubt that this same subcommittee can provide the staff work to process the anticipated volume of cases expeditiously.

2. The procurement code took so long to negotiate because we insisted that it had to contain basic rules, clearly written, to insure that there would be transparency and honesty in the procurement process. We must recognize that, in spite of such a massive effort, no international agreement can cover all contingencies nor be free of normative rules which give some leeway for interpretation. Consequently one can anticipate that those cases which escalate to a bilateral or multilateral dispute level will involve disputes over interpretation of the intent and meaning of the rules provided. It would be impossible to anticipate the nature of such cases. Clearly though, there will have to be judgment calls as to the validity of cases raised by our suppliers and the desirability of prosecuting such complaints.

We do not believe that the type of issues covered by Section 301 lend themselves to court review. For example, a case might be brought under Section 301

that OPEC oil pricing policies are "unreasonable". In such a case the President might well determine that Section 301 action is not in the national interest. For these types of issues, we believe that requiring the Administration to publish its reasons for taking—or not taking—action provides appropriate public and Congressional review over Administration actions on Section 301 cases. We were pleased that the Congressional recommendations on our proposed implementation bill were consistent with this view.

The President may seek the advice of the ITC on the domestic effects of particular cases.

3. As pointed out earlier, the procurement code is notable in that it provides detailed rules for the processing of individual procurements. Clearly violations of those rules are "nullification and impairment". As indicated earlier there will have to be interpretations in those areas of the code where something better than a normative rule was not possible. Those cases processed in such circumstances will have to be based to a large degree on impairment of rights and violation of the intent of the code.

As the negotiating arm of the government, STR will present U.S. complaints internationally. We obviously will staff such efforts with U.S. experts in both the procurement and trade fields. While the business complainant could not be physically present in the intergovernmental proceedings, he will of course be fully aware of the developments.

We will work toward publication of the rulings and reports of the dispute settlement processes. Whether or not we are successful in obtaining publication, the code assures that prior decisions and rulings will be precedents for new cases.

4. The Code (not the GATT) provides the time limits for resolution of disputes and other devices for minimizing stalling tactics. In an agreement such as this, no government, including the U.S., is prepared to give up that degree of sovereignty which would result in something more akin to the judicial process. Consequently, provisional measures, such as a temporary injunction will not be available, and in the final analysis, the weight of international consensus pressures will have to be utilized to bring about a satisfactory result. Recognizing all limiting factors we have been prudent to the point of insuring that, failing all other alternatives, we can withdraw from the agreement by giving 90 days notice to the other signatory governments.

5. The operative U.S. statute is 10 U.S.C. 2313. There is nothing in the code to prevent us from continuing to apply this requirement as a condition for bidding for both foreign and American firms.

6. The Procurement Code does not require us to afford special treatment to LDCs. Therefore, in deciding whether we wish to provide special treatment we are free to decide which LDCs we would wish to provide it to and the nature of such treatment. One possible form of assistance we could provide would be help in drafting procurement regulations. This form of assistance may be of considerable benefit to U.S. exporters.

7. The Code's provisions for "national treatment" require us to treat foreign firms the same as domestic firms. Therefore, we could not bar foreign firms from countries which are parties to the Agreement from access to GAO. However, GAO and the Inter-agency panel serve two different functions. GAO reviews complaints as to whether U.S. laws and regulations are being followed properly. The inter-agency panel would review complaints as to whether a particular U.S. procurement was contrary to our obligations under the procurement practice was contrary to our obligations under the procurement Code. Therefore, foreign firms would have the ability to go forum shopping.

8. The implementing legislation now provides that the existing advisory structure will be continued. Consequently, industry, labor, agriculture, and the Congress will be consulted in any review of the code. In accordance with the Congressional recommendations received during our consultations on the implementing legislation, the Administration would have to consult with the Congress and private sector before making any changes in the coverage of the code. The Congressional approval procedures of Section 102 of the Trade Act of 1974 could be available should there be any substantive changes in the code itself.

9. Code benefits will only be extended to those suppliers from other countries who adhere to the code. There will be no free ride provided. The one exception is that contained in the implementing legislation which provides that the Presi-

dent may extend benefits to least developed countries, e.g. Bangladesh, Chad, Central African Republic.

MEMORANDUM—APRIL 25, 1979

To: Members of the Committee on Governmental Affairs.

From: Ell.

Subject: Consideration of Legislation to Implement the Multilateral Trade Agreements—Procurement Code—Briefing by STR Ambassador Strauss.

As indicated earlier, the Committee on Governmental Affairs has a major interest and responsibility with respect to proposed legislation to implement the provisions of the Procurement Code contained in the Multilateral Trade Agreements.

On Thursday, April 26, 1979, at 1:30 p.m. Ambassador Robert S. Strauss, Special Representative for Trade Negotiations, will brief the Committee at a closed session with respect to legislation required to implement the Agreements. At 2:30 p.m., the Committee will hold a public hearing on the proposed legislation, receiving testimony from representatives of industry, labor and small business. Members will have an opportunity to question Ambassador Strauss during the closed portion of the briefing.

The Procurement Code creates an international obligation among the parties to it to refrain from discriminating against non-domestic suppliers and products in their procurements which are unrelated to national security and to certain other procurements which are involved in specified Federal programs. Thus, the Code would apply only to procurements by specified Federal departments and agencies (referred to as "entities") and only for their own use. Further, the Code will apply only to contracts in excess of the threshold amount of \$190,000.

The Procurement Code will specifically exclude from coverage the "Berry Amendment" types of restrictions, thus enabling the Department of Defense to continue to purchase, solely from U.S. sources, its needs for textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, ships, hulls and superstructures. Similarly, hand tools, which now have a 50 percent differential in favor of domestic suppliers for all procurements, will probably not be affected by the Code. Prison-made and blind-made goods, cargo transportation preferences and buy-national restrictions maintained by State and local governments will not be affected. Code obligations will not apply to Federal grant funds, school lunch programs, AID purchases and purchases by the Department of Agriculture for agricultural support programs or human feeding.

If the United States adheres to this Code, amendments or waivers will be required with respect to the following statutes which have been identified to date:

1. The Buy American Act (41 U.S.C. 10a-10d), as implemented by Executive Orders. This Act generally grants domestic sources a preference when consideration is made of bids on products procured for public use within the United States. It appears that the requirements of the Procurement Code can be satisfied by authorizing a waiver of its requirements in appropriate situations and no further amendment would be required.

2. Labor Surplus Area Set-Asides (15 U.S.C. 644(d)). This statute requires all Federal departments and agencies to give priority in awarding contracts and placing subcontracts to concerns within areas or concentrated unemployment, underemployment and labor surplus.

It appears that, with respect to set-asides and preferences for businesses in labor surplus areas, the requirements of the Procurement Code can be met by authorizing the President to waive the preferences and set-asides in appropriate situations. This would have the advantage of "taking the heat" off Congress and placing the responsibility on the President. An alternative would be amendments to the pertinent statutes which would provide that the restrictive provisions would not apply to entities and contracts which are covered by the Procurement Code.

It should be noted that the Procurement Code originally covered small business and minority enterprises and would have required amendment or waiver of statutes providing for set-asides and preferences for them. However, following an "uproar" by the small business and minority enterprise community, and threats by House Members concerned with such problems, the Administrator has renegotiated portions of the Multilateral Trade Agreement so as to exclude small business and minority enterprises from Code coverage.

MEMORANDUM—APRIL 25, 1979

To: Committee members.

From: Committee staff.

Re Overview of the Government Procurement Code.

The Government Procurement Code provides for national and most-favored-nation treatment between signatory governments for procurements by governmental entities listed in Annex I of the Code for all of their procurement contracts of a value of 150,000 SRDs<sup>1</sup> (approximately \$193,000) or more. The Code applies only to the procurement of products, but includes services incidental to the supply of products which do not exceed the value of the products. It does not cover service contracts. The Code contains an exception relating to the procurement of arms, ammunition, was materials, and procurements indispensable for national security or national defense purposes as well as an exception for measures necessary to protect public morals, order or safety, human, animal or plant life, industrial and commercial property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labor. The Code also does not cover construction contracts, or purchases by ministries of agriculture for farm price support programs and for human feeding programs.

Discrimination against U.S. suppliers in foreign procurement markets is largely addressed in the Code by requiring transparent application of procurement procedures which largely conform to the existing U.S. procurement system. As a result, only minimal changes will be required in U.S. procedures. Current U.S. discriminations against foreign purchases (Buy American preferences) would be eliminated subject to a number of exclusions and only with respect to purchases specifically covered by the Code.

## CODE COVERAGE

## 1. The Code covers:

- (a) Only the purchase of goods,
- (b) Only those purchases of goods made by certain government agencies, (for their own use) that is, those agencies offered in the U.S. "entity list" in Annex I to the Code.
- (c) Only those purchases of goods by the offered agencies that are above a threshold of approximately \$190,000.

## 2. The Code does not cover:

- (a) all national security items;
- (b) all construction contracts;
- (c) all service contracts (the Code does include services incidental to the purchase of goods, but will not affect U.S. cargo preference legislation);
- (d) certain items purchased by the DOD ("Berry Amendment" types of restrictions for textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, hand tools, ships, and ship components);
- (e) tied-aid procurements under AID foreign assistance programs;
- (f) all purchases by non-covered entities (DOT, DOE, Bureau of Reclamation, Army Corp of Engineers, TVA, GSA's ADTS, Region 9, National Tool Center, COMSAT, AMTRAK, CONRAIL, and U.S. Postal Service);
- (g) all purchases by State and local governments, including purchases by State and local authorities with the use of Federal funds;
- (h) all purchases under small/minority business set aside programs, although labor surplus area set asides are covered; and
- (i) purchases by Department of Agriculture for farm support programs and human feeding programs.

The U.S. agencies covered by the Code are included as Annex I to the Code.

## SUBSTANTIVE OBLIGATIONS

The universal commitment of the Code is to accord national and most-favored-nation treatment to the suppliers and products of all parties to the Code. The national treatment and MFN principles are further repeated in relation to specific obligations found elsewhere in the Agreement; for example, in qualifying suppliers, maintaining selective lists of suppliers, opening and consideration of bids, and in single tendering. The MFN obligation is a conditional

<sup>1</sup> SDR (Special Drawing Right) is IMF's international reserve currency based on a basket of 16 different currencies. It's value floats daily.

one—only parties to the Code are entitled to its benefits. However, least-developed nations are entitled to the Code's benefits without adhering to it.

Other parts of the Code address the barriers raised by practices associated with administering procurements. In particular, an attempt is made to render the procedures as transparent as possible by ensuring that necessary procurement information is available and that certain minimum ground rules are universally observed. Thus, specific information must be made available with regard to contracting opportunities and qualification of suppliers, and opportunities must remain open sufficiently long to account for foreign suppliers (Part V).

Other provisions require the use of internationally recognized specifications where possible (Part IV), discourage the use of single tendering, and prescribe accepted methods of tender, evaluation and award (Part V). Further, "pertinent" information must be disclosed to disappointed tenderers and their governments (Part VI). The attempt to secure openness and regularity through such provisions as these reflects the desire to construct a self-policing agreement. Whether the attempt is successful is partially contingent on the manner in which the parties exercise the discretion vested in them by the qualifications modifying the Code's obligations; for example, a party need only release "pertinent" information to an unsuccessful bidder, as noted above.

Besides the obligations imposed with respect to all procurements, the parties undertake specific responsibilities regarding developing and least-developed countries (Part III). In general, these involve the recognition of the special concerns of such nations with encouraging the growth of their domestic industrial base and safeguarding their balance of payments position. To this end, the developed nations parties to the Code will accept less in the way of coverage and more derogations in obligations, while undertaking to provide special technical assistance to these nations in procurement matters.

#### DISPUTE SETTLEMENT

The Code is designed to be self-policing, in an attempt to avoid cumbersome and often inconclusive dispute settlement procedures which would be of little value once an award has been made. Thus, specific rules are set forth concerning the qualification, tendering, and awards process (Part V). Certain information surrounding these procurements steps must be readily available (Part VI). These transparency requirements are designed to discourage disputes from arising in the first instance by subjecting the parties to maximum public scrutiny with the resulting tendency to adhere to the community consensus on proper administration of its obligations.

If a tenderer is dissatisfied with a party's compliance with the rules, the Code provides a two-tier dispute settlement process. First, the supplier must seek information surrounding the procurement from the government involved; if he is dissatisfied, his government may intercede on his behalf to obtain further information (Part VI). The Administration is proposing to revise section 301 of the Trade Act of 1974 to provide a mechanism for handling domestic complaints concerning all of the codes.

The second tier of the process involves the formation of ad hoc panels to study disputes failing bilateral consultation among the concerned parties (Part VII). This process may be invoked whenever a party considers that benefits arising from the Code are being nullified or impaired or that the Code's objectives are being impeded by conduct of another party. The concept is analogous to that found in the GATT; further, the precise procedures mirror those found in the Frameworks Understanding, also currently under negotiation, which is intended as a statement of GATT practices. Because the Code apparently does not amend the GATT, and thus will not become a part of it, the sanctions possibly obtainable under GATT procedures are apparently unavailable here. Rather, as an ultimate remedy a party may be authorized to suspend application of the Code with respect to the offending party or parties.

#### ADMINISTRATION

The Code is to be administered by a Committee on Government Procurement, composed of representatives from each of the parties. The primary functions of the Committee are to facilitate the dispute settlement process, and to conduct reviews and negotiations of the operation of the Agreement pertaining to expanded coverage and necessary improvements.

To: Governmental Affairs Committee.

From: Committee staff.

Re United States Government procurement practices.

Two statutes govern the purchase of products and services by the Federal Government: the Armed Services Procurement Act of 1947 (for military activities) and the Federal Property and Administrative Services Act (for civilian activities).

Both laws state a preference for formal advertising (or sealed bidding) but allow negotiations (competitive or sole source) to be used in specified circumstances. All impending government purchases must be advertised in the "Commerce Business Daily" (with exceptions for classified items, and all Procurement regulations and agency practices are published and available to interstate bidders. U.S. law requires all bids to be opened publicly; in negotiated procurements, all competitors must be treated in the same manner. If negotiations are held with any one competitor, they must be held with all competitors. Both executive agencies and the GAO have access to a contractor's records, and aggrieved bidders are allowed to file bid protests with the Comptroller General.

Government procurement has been used as a tool to promote social and economic policies. Perhaps the best known device in this area is the small business and the minority business set-aside. These programs allow government agencies to limit competition for government contracts to small business or to minority businesses. Awards of prime contracts to small business usually are about twenty percent of the total value of all contracts awarded; contractor awards to minority business usually total about one percent.

The Administration had originally proposed eliminating small business and minority business activities for certain types of contracts, but has not changed its position and plans to retain these set-asides.

Several other items govern the purchase of specific commodities by the federal government: like stainless steel flatware, or purchases from the blind. In large part, these items have been "exempted" from the provisions of the international Procurement Code. The attached schedule lists these laws, and discusses their proposed treatment under the Code.

#### EXISTING LAWS WHICH WILL NOT BE AFFECTED BY THE CODE

1. All purchases less than \$190,000 and all purchases for services and construction are excluded from the Code. All purchases for national security items are exempted.
2. Small and Minority Business Set-Asides: that is, purchases reserved exclusively for small and minority businesses, are excluded from the Code.
3. Defense Department Purchases: for textiles, clothing, shoes, food, stainless steel flatware, certain speciality metals, buses, ships and components of all the above will not be affected by the Code. Under the Berry Amendment, they will continue to be purchased exclusively from U.S. businesses.
4. Hand-tools: The current fifty percent bid differential in favor of U.S. suppliers will not be affected by the Code.
5. Prison and Blind made Goods are excluded from the Code.
6. Cargo Transportation Preferences for U.S. vessels are excluded from the sale.
7. State and Local Government purchases are excluded from the Code.
8. Purchases made by State and Local governments with Federal Grant funds (e.g. Clean Water Act) are excluded from the Code.

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To: Governmental Affairs Committee members.

From: Committee staff.

Re multilateral trade negotiation hearings.

Section 151 of the Trade Act of 1974 (Pub. L. 93-618) requires the President to submit any non-tariff trade agreements to the Congress for approval. The agreements are incorporated into a bill which amends current U.S. laws and administrative procedures to conform with the agreements. This bill, once submitted, cannot be amended and must be considered under expedited procedures.

In order to give the Congressional committees with jurisdiction over the subject matter of these agreements a chance to review them, a "consultation period"

prior to actual introduction was created. During this period, Committees meet in closed session with the trade negotiation team to reconcile any potential problem areas in the proposed implementing legislation. This consultation period probably will end sometime in May.

Since the Governmental Affairs Committee has jurisdiction over Government Procurement, it has been asked by the Finance Committee to review one of the non-tariff codes: the International Procurement Code. The April 26th hearing is the first step in that review. Ambassador Strauss and representatives from business, labor and small business will set out the scope of the Code, and its substantive provisions. The issues raised in the hearing will allow the Committee to identify those areas which need to be addressed when the Committee develops its recommendations for the implementing legislation.

Negotiations to create an International Procurement Code have been underway for over a decade. The Code recognizes that government procurement is a large market (\$90 billion in the U.S. last year) and that restrictive government purchasing practices act as a barrier to free trade. The United States is unique in government procurement because it publishes its procurement regulations, advertizes impending opportunities, and provides for review of agency procurement practices by the General Accounting Office and the courts. Other countries usually operate informally; they do not advertize procurement opportunities nor do they publish their procurement regulations. The effort is to limit opportunities for foreign bidders to win government contracts.

The International Procurement Code establishes guidelines to which all signatory nations must adhere. The stress is on published regulations, non-discriminatory treatment of foreign bidders and prohibition of impending procurement opportunities. A somewhat elaborate mechanism for resolving disputes between signatory nations which arise from alleged violations of the code is established.

Some of the issues which the Committee may wish to focus on are listed below:

1. None of the countries are "opening up" their entire procurement systems to foreign competition. (The United States "offer" will be about \$20 billion). The size and the nature of each nation's offer (e.g. will Japan allow foreign bids on its telecommunications purchases?) has not been resolved.

2. How will U.S. procurement for agencies *not* included in the U.S. offer be handled? Currently, a six percent "Buy American" price differential is favorably applied to all bids received from U.S. bidders. Should that differential be modified?

3. The Code provides for the resolution of disputes involving the Procurement Code. The disputes procedures are on a country-to-country basis however. A U.S. company who feels that a foreign government is violating that Code must petition the STR to carry its complaint through the process. How the STR decides which complaints to carry forward (and the role the aggrieved U.S. business plays in the disputes process) has been a source of concern with some business.

4. The Procurement Code will open foreign markets of \$20 billion to U.S. businesses. What assistance will be provided to U.S. business seeking to win foreign government contracts is not clear.

The agencies which will be charged with administering the Procurement Code and with reporting and assisting U.S. bidders should be identified.

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## MTN IMPLEMENTATION GOVERNMENT PROCUREMENT CODE

### I. SUMMARY

The Government Procurement Code provides for national treatment and non-discrimination between signatory governments for procurements by governmental entities listed in Annex I of the Code for all of their procurement contracts of a value of 150,000 SRDs<sup>1</sup> (approximately \$190,000) or more. The Code applies only to the procurement of products, including services incidental to the supply of products which do not exceed the value of the products. It does

<sup>1</sup> SDR (Special Drawing Right) is IMF's international reserve currency based on a basket of 16 different currencies.

not cover service contracts. The Code contains an exception relating to the procurement of arms, ammunition, war materials, and procurements indispensable for national security or national defense purposes as well as an exception for measures necessary to protect public morals, order or safety, human and animal life, and plant life, industrial and commercial property, or relating to the products of handicapped persons, of philanthropic institutions or of prison labor. The Code does not cover construction contracts. Purchases by ministries of agriculture for farm price support programs and for human feeding programs are similarly not subject to the Code.

Discrimination against U.S. suppliers in foreign procurement markets is largely addressed in the Code by requiring open and transparent application of procurement procedures which largely conform to the existing U.S. procurement system. As a result of this, only minimal changes will be required in U.S. procedures. Current U.S. discriminations against foreign purchases (Buy American preference) would be eliminated subject to a number of exclusions and only with respect to purchases specifically covered by the Code.

#### *Code coverage*

##### 1. The Code covers :

- (a) Only the purchase of goods ;
- (b) Only those purchases of goods made by certain government agencies, (for their own use) that is, those agencies offered in the U.S. "entity list." in Annex I to the Code.

(c) Only those purchases of goods by the offered agencies that are above a threshold of approximately \$180,000.

##### 2. The Code does not cover :

- (a) All national security items ;
- (b) All construction contracts ;
- (c) All service contracts (the Code does include services incidental to the purchase of goods, but will not affect U.S. cargo preference legislation) ;
- (d) Certain items purchased by the DOD ("Berry Amendment" types of restrictions for textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, hand tools, ships, and ship components) ;
- (e) Tied-aid procurements under AID foreign assistance programs ;
- (f) All purchases by non-covered entities (DOT, DOE, Bureau of Reclamation, Army Corps of Engineers, TVA, GSA's ADTS, Region 9, National Tool Center, Comsat, Amtrak, Conrail, U.S. and Postal Service) ;
- (g) All purchases by State and local governments, including purchases by State and local authorities with the use of Federal funds ;
- (h) All purchases under small/minority business set aside programs ;
- (i) Purchases by Department of Agriculture for farm support programs and human feeding programs.

The U.S. agencies covered by the Code are included as an Annex to the Code.

## II. PROPOSED LEGISLATIVE CHANGES

A. Authority will be established for the President to waive discriminatory purchasing requirements for procurements covered by the Code. This will authorize the adjustment of the threshold to account for changes in the dollar relative to SDRs. Such a waiver authority would encompass future expansions of Code coverage subject to Congressional review procedures under the proposal for continuing current negotiating authority.

B. For non-covered procurements (i.e. below threshold and for non-covered entities and products), authority will implicitly be retained for the President to continue the present application of the Buy American Act for all foreign suppliers. This will be included in the statement of Administrative action.

C. For procurements covered by the Code authority will be given to the President to prohibit receipt of bids from non-signatory suppliers. The prohibition would not take effect for two years for countries that are not "major industrial countries," as defined in Section 128 of the Trade Act of 1974. The prohibition could be waived, for countries that are not "major industrial countries."

By the President for countries that apply the code de facto or agree to phase it in on a schedule acceptable to the President.

By the President for countries that enter into a bilateral arrangement with the U.S. providing for reciprocal treatment in government procurements.

By the President for least developed countries.

In addition, the prohibition could be waived for any country :

By an agency head on a case-by-case basis on individual contracts when in the public interest.—

By the Secretary of Defense for Department of Defense purchases from countries that enter into a reciprocal procurement agreement with DOD.

All such waivers will be made subject to interagency review. General policy guidance for case by case waivers will be prepared by an interagency group.

F. Authority will be established for verifying the certification of the origin of products by the procuring entity or the Customs Service, and establish or refer to existing authority to impose penalties for false certifications.

G. A procedure for responding to U.S. suppliers complaints against the procurement practices of other Code signatories will be established as part of a common system for enforcing all MTN Codes. (Attached)

### III. STATEMENT OF ADMINISTRATIVE ACTION

Regulatory changes required are minimal and are listed on Attachment II. The Code's time period for keeping bids open will have to be reflected in the U.S. regulations. All bidders on contracts of a value above the Code's threshold will be required to certify the country or origin of the goods they propose to supply under the contract. Penalties will be prescribed for false certifications. Customs Regulations will have to be amended to provide for prompt rulings or advice by Customs when questions arise concerning the country of origin of the products.

Technical assistance on government procurement to developing countries will be accomplished by responding to requests from developing countries to signatory governments on particular country procurement contracts or relating to the signatory government's overall procurement system. Such inquiries will be handled by each procurement entity's existing procedures or directed to the Office of Federal Procurement Policy. Full rights of inquiry by the supplier at any point in the procurement process and an obligation on the part of the procuring agency to provide full and timely responses thereto will be required. An administrative machinery to resolve disputes during this process will be maintained. International cooperation by signatories may also be appropriate.

For covered purchases (from signatories, covered entity, above threshold, not subject an exclusion) the President will waive the application of all U.S. law discriminating against foreign suppliers from signatory countries. For non-covered procurements, the President will continue the present application of all existing U.S. law that discriminates in favor of any domestic supplier, including, for example, the 6 percent and 12 percent Buy American differential (50% for DOD).

For procurements covered by the Code, non-signatories will be prohibited from bidding, subject to the qualifications in part II.c. above.

The Code provides for annual reviews of its operation, and for further negotiations not later than the end of the third year after its entry into force. The Administration contemplates corresponding domestic reviews of the operation of the Code in advance of the international reviews and negotiations.

A program to facilitate exports, particularly by small and minority businesses, will be established.

### IV. EFFECTS ON U.S. LAW

*Existing Legislation Which Will Be Affected by Code Buy American Act*<sup>1</sup>—The existing 6 percent differential in favor of domestic sources (increased to 12 percent if involving small business or labor surplus area) and the 50 percent differential for all DOD procurements (and for all other federal agencies for procurements for use outside the U.S.) will be waived for entities on the U.S. list for goods originating in all code signatory countries when the value of the contract is 150,000 SDRs or greater. Buy American percentage preference below this threshold will not be affected by the Code. Regardless of the contract size, suppliers of goods originating in countries which have not signed the Code are not entitled to Code benefits.

*Labor Surplus Set Aside*—Will be waived for covered purchases.

*C. Related Legislation Which Will Not Be Affected by Code*

<sup>1</sup> 41 U.S.C. 10, and E.O. 10582 of Dec. 17, 1954.

1. *Small Business and Minority Business Programs*<sup>2</sup>—Set-aside, that is, purchases reserved for small and minority businesses are excluded from the Code's coverage.

2. "*Berry Amendment*" *Types of Restrictions on DOD*<sup>3</sup>—DOD coverage will be limited so that it will continue to purchase, solely from U.S. sources, its needs for textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses,<sup>4</sup> ships, and components thereof.<sup>5</sup>

3. *Hand Tools*<sup>6</sup>—Fifty percent differential in favor of domestic suppliers for all procurements of hand tools will not be affected because purchasing entities are not covered.

4. *Prison- and Blind-Made Goods*<sup>7</sup> are an exception to Code coverage.

5. *Cargo Transportation Preferences*<sup>8</sup> are not deemed to be covered as a service "incidental" to a procurement.

6. *Purchases by State and Local Governments* are not covered since the Code obligates the U.S. government only to inform regional and local governments of the principles and rules of the Code and draw their attention to the overall benefits of liberalization of government procurement.

7. *Federal Grant Funds to State and Local*—The Code is intended to apply solely to purchases by covered entities for their own use. The purchases resulting from grant funds under such legislation as the Surface Transportation Act, the Jobs Act, and Clean Water Act, are made by State and local governments.

#### V. RECOMMENDATION ON THE APPLICATION OF THE CODE TO NON-SIGNATORIES

The Administration recommends that no legislative requirement for discrimination be enacted, but rather that the President be authorized to establish for suppliers from non-signatories discriminatory preferences or prohibitions on submitting bids (see related limitations in Section II above).

#### ATTACHMENT I

(Text of code.)

#### ATTACHMENT II

Changes in U.S. Procurement Regulations required by the following underscored provisions of the Government Procurement Code:

##### *Part V—tendering procedures*

1. *Para 4.* Section I, part 10 of both the DAR and FPR which cover synopsis in Commerce Business Daily would have to be expanded to add language in which tender must be submitted.

2. *Para 6.* Would necessitate a new regulation to require annual publication of bidders lists. (Titles only)

3. *Para 10.* Would require revision of DAR and FPR, Section 2, part 201 and Section 3, to specify 30 day minimum bidding time. However, FAR will incorporate 30 day requirement, so this may be accomplished before code becomes effective.

4. *Para 12.* Tender documentation would require revision of both Section 2 (formal advertising) and Section 3 (negotiated procurement) of DAR and FPR to include "language in which tenders must be submitted."

##### *Part VI—information and review*

1. *Para 3.* DAR and FPR Section 3-508.3 require "prompt notification" to unsuccessful offerors. Seven day maximum would have to be added to this to conform to the Code.

*Rule of origin*—DAR and FPR will have to provide that bidders must certify as to origin of goods to be supplied. Customs service regulations will have to be amended to effect that service will provide prompt advisory opinions.

*Threshold*—New regulation will have to be provided regarding dollar equivalent of 150,000 SDR threshold.

<sup>2</sup> 15 U.S.C. 637 and implementing laws and regulations. Public Law 95-507.

<sup>3</sup> DOD Appropriations Act, Public Law 95-457.

<sup>4</sup> Public Law 90-500, Sec. 404.

<sup>5</sup> Byrnes-Tollefson Amendment to DOD Appropriations Act.

<sup>6</sup> GSA Appropriations Act.

<sup>7</sup> 18 U.S.C. 4124 and 41 U.S.C. 48.

<sup>8</sup> 10 U.S.C. 2631, 46 U.S.C. 1241(b)(1), International Air Transportation Fair Competitive Practices Act of 1974 (Public Law 92-623).

## ADMINISTRATION PROPOSAL

## Enforcement of U.S. Rights Under MTN Codes and other Section 301 Actions.

*A. Procedures applicable to all cases*

1. *Filing*—An interested party may file a complaint with STR.
2. *Initiation of Procedures*—STR must respond to the complaint within 45 days by either beginning a formal section 301 proceeding, or by publishing the substantive reasons why it will not pursue the complaint.
3. *Hearings*—If requested by petitioner, STR shall hold hearings within 60 days of initiating a case or on a mutually agreeable date thereafter.

*B. Further procedures for cases brought under MTN Codes or GATT*

1. On initiation of the formal proceedings (within 45 days of receipt) STR must also begin international consultations and, if necessary, proceed with formal the dispute settlement.

2. *On cases brought under the subsidy code—*

Within 7 months (for export subsidy case) or 8 months (for any other case) after deciding to begin a formal proceeding, the STR must recommend to the President whether he should take action domestically (e.g., impose offsetting import restrictions).

Within 30 days after receipt of STR recommendation, the President must decide whether to take action, but need not announce the timing for such action. His decision and reasons therefore must be published.

3. *On cases brought under other MTN codes or under GATT provisions—*

Within 30 days of the decision of the international dispute settlement mechanism, STR must recommend to the President whether he should take action domestically.

Within 30 days after receipt of the STR's recommendation, the President must decide whether to take action and publish his decision.

*C. Further procedures for other section 301 complaints*

1. Within 6 months of the initiation of formal proceedings, STR must publish a statement of its intended course of action.

2. Thereafter, each six months STR must publish an update of status of case.

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

MTN/FIM/W/211/Rev.2\*

11 April 1979

Special Distribution

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Government Procurement"

AGREEMENT ON GOVERNMENT PROCUREMENT

Revision

Following the meeting of the Sub-Group on 6 April 1979, a further revision of document MTN/FIM/W/211 - "Agreement on Government Procurement" - is hereby circulated to participants in the Multilateral Trade Negotiations.

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\* For technical reasons and to permit the earliest circulation of this document, Rev.1 should be read as Rev.2 on the following pages.

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PREAMBLE

Parties to this Agreement,

Considering that Ministers agreed in the Tokyo Declaration of 14 September 1973 that comprehensive Multilateral Trade Negotiations in the framework of GATT should aim, inter alia, to reduce or eliminate non-tariff measures or, where this is not appropriate, their trade restricting or distorting effects, and to bring such measures under more effective international discipline;

Considering that Ministers also agreed that negotiations should aim to secure additional benefits for the international trade of developing countries, and recognized the importance of the application of differential measures in ways which will provide special and more favourable treatment for them where this is feasible and appropriate;

Recognizing that in order to achieve their economic and social objectives to implement programmes and policies of economic development aimed at raising the standard of living of their people, taking into account their balance-of-payments position, developing countries may need to adopt agreed differential measures;

Considering that Ministers in the Tokyo Declaration recognized that the particular situation and problems of the least developed among the developing countries shall be given special attention and stressed the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations;

Recognizing the need to establish an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

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

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

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

Hereby agree as follows:

PART IScope and Coverage

## 1. This Agreement applies to:

(a) any law, regulation, procedure and practice regarding the procurement of products by the entities<sup>1</sup> subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se;

(b) any procurement contract of a value of SDR 150,000 or more.<sup>2</sup> No procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 150,000. If an individual requirement for the procurement of a product of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the value of these recurring contracts in the twelve months subsequent to the initial contract shall be the basis for the application of this Agreement;

(c) procurement by the entities under the direct or substantial control of parties to this Agreement and other designated entities with respect to their procurement procedures and practices. Until the review and further negotiations referred to in the Final Provisions, the coverage of this Agreement is specified by the lists of entities, and to the extent that rectifications, modifications or amendments may have been made, their successor entities, in Annex I.

2. Parties shall inform their entities not covered by this Agreement and the regional and local governments and authorities within their territories of the objectives, principles and rules of this Agreement, in particular the rules on national treatment and non-discrimination, and draw their attention to the overall benefits of liberalization of government procurement.

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<sup>1</sup>Throughout this Agreement, the word entities is understood to include agencies.

<sup>2</sup>For contracts below the threshold, the parties to this Agreement shall consider, in accordance with paragraph 6 of Part IX, the application in whole or in part of this Agreement. In particular, they shall review the procurement practices and procedures utilized and the application of non-discrimination and transparency for such contracts in connexion with the possible inclusion of contracts below the threshold in the Agreement.

PART IINational Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, parties to this Agreement shall provide immediately and unconditionally to the products and suppliers of other parties offering products originating within the customs territories (including free zones) of the parties to this Agreement treatment no less favourable than:

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

2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connexion with importation, the method of levying such duties and charges, and other import regulations and formalities.

3. Parties to this Agreement shall not apply rules of origin to products imported for purposes of government procurement covered by this Agreement from other parties to this Agreement, which are different from the rules of origin applied in the normal course of trade and at the time of importation to imports of the same products from the same parties to this Agreement.

PART IIISpecial and Differential Treatment for Developing CountriesObjectives

1. Parties to this Agreement shall, in the implementation and administration of this Agreement, through the provisions set out in this Part, duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to:
  - (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;
  - (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
  - (c) support industrial units so long as they are wholly or substantially dependent on government procurement;
  - (d) encourage their economic development through regional or global arrangements among developing countries presented to the CONTRACTING PARTIES to GATT and not disapproved by them.
2. Consistently with the provisions of this Agreement, parties to it shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of the least-developed countries and of those at low stages of economic development.

Coverage

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

Agreed exclusions

4. Developing countries may negotiate with other participants in the negotiation of this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities or products that are included in their lists of entities having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in paragraph 1(a)-(c) above shall be duly taken into account. Developing countries participating in regional or global arrangements among developing countries referred to in paragraph 1(d) above, may also negotiate exclusions to their lists, having regard to the particular circumstances of each case, taking into account, inter alia, the provisions on government procurement provided for in the regional or global arrangements concerned and taking into account, in particular, products which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, developing countries parties to this Agreement may modify their lists of entities in accordance with the provisions for modification of such lists contained in paragraph 5 of Part IX of this Agreement, having regard to their development, financial and trade needs, or may request the Committee to grant exclusions from the rules on national treatment for certain entities or products that are included in their lists of entities, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(a)-(c) above. Developing countries parties to this Agreement may also request, after entry into force of the Agreement, the Committee to grant exclusions for certain entities or products that are included in their lists in the light of their participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of paragraph 1(d) above. Each request to the Committee by a developing country party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

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

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 above shall be subject to review in accordance with the provisions of paragraph 13 of this Part.

Technical assistance for developing country parties

8. Developed country parties to this Agreement shall, upon request, provide all technical assistance which they may deem appropriate to developing country parties in resolving their problems in the field of government procurement.

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

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

#### Information centres

10. Developed country parties to this Agreement shall establish, individually or jointly, information centres to respond to reasonable requests from developing country parties for information relating to, inter alia, laws, regulations, procedures and practices regarding government procurement, notices about proposed purchases which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products purchased or to be purchased, including available information about future tenders. The Committee may also set up an information centre.

#### Special treatment for least-developed countries

11. Having regard to paragraph 6 of the Tokyo Declaration, special treatment shall be granted to least-developed countries parties to this Agreement and to the suppliers in those countries with respect to products originating in those countries, in the context of any general or specific measures in favour of the developing countries parties to this Agreement. Parties may also grant the benefits of this Agreement to suppliers in least-developed countries which are not parties, with respect to products originating in those countries.

12. Developed country parties shall, upon request, provide assistance which they may deem appropriate to potential tenderers in the least-developed countries in submitting their tenders, selecting the products which are likely to be of interest to entities of developed countries as well as to suppliers in the least-developed countries and likewise assist them to comply with technical regulations and standards relating to products which are the subject of the proposed purchase.

#### Review

13. The Committee shall review annually the operation and effectiveness of this Part and after each three years of its operation on the basis of reports to be submitted by the parties to this Agreement shall carry out a

major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Part II, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 to 6 of this Part shall be modified or extended.

14. In the course of further rounds of negotiations in accordance with the provisions of Part IX, paragraph 6, developing countries parties to this Agreement shall give consideration to the possibility of enlarging their lists of entities having regard to their economic, financial and trade situation.

PART IVTechnical Specifications

- (a) Technical specifications laying down the characteristics of the products to be purchased such as quality, performance, safety and dimensions, testing and test methods, symbols, terminology, packaging, marking and labelling, and conformity certification requirements prescribed by procurement entities, shall not be prepared, adopted or applied with a view to creating obstacles to international trade nor have the effect of creating unnecessary obstacles to international trade.
- (b) Any technical specification prescribed by procurement entities shall, where appropriate:
  - (i) be in terms of performance rather than design; and
  - (ii) be based on international standards, national technical regulations, or recognized national standards.
- (c) There shall be no requirement or reference to a particular trade mark or name, patent, design or type, specific origin or producer, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tenders.

PART VTendering Procedures

1. Parties to this Agreement shall ensure that the tendering procedures of their entities are consistent with the provisions below. Open tendering procedures for the purposes of this Agreement are those procedures under which all interested suppliers may submit a tender. Selective tendering procedures, for the purposes of this Agreement are those procedures under which, consistent with paragraph 7 and other relevant provisions of this Part, those suppliers invited to do so by the entity may submit a tender. Single tendering for the purposes of this Agreement, is a procedure where the entity contacts suppliers individually, only under the conditions specified in paragraph 15 below.

Qualification of suppliers

2. Entities, in the process of qualifying suppliers, shall not discriminate among foreign suppliers or between domestic and foreign suppliers. Qualification procedures shall be consistent with the following:

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

(b) any conditions for participation required from suppliers, including financial guarantees, technical qualifications, information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to foreign suppliers than to domestic suppliers and shall not discriminate among foreign suppliers;

(c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep foreign suppliers off a suppliers' list or from being considered for a particular proposed purchase. Entities shall recognize as qualified suppliers such domestic or foreign suppliers who meet the conditions for participation in a particular proposed purchase. Suppliers requesting to participate in a particular proposed purchase who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

(d) entities maintaining permanent lists of qualified suppliers shall ensure that all qualified suppliers so requesting are included in the lists within a reasonably short time;

(e) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;

(f) nothing in sub-paragraphs (a) to (e) above shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

Notice of proposed purchase and tender documentation

3. Entities shall publish a notice of each proposed purchase in the appropriate publication listed in Annex II. Such notice shall constitute an invitation to participate in either open or selective tendering procedures.

4. Each notice of proposed purchase shall contain the following information:

(a) the nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature; (b) whether the procedure is open or selective; (c) any delivery date; (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted; (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents; (f) any economic and technical requirements, financial guarantees and information required from suppliers; (g) the amount and terms of payment of any sum payable for the tender documentation.

The entity shall publish in one of the official languages of the GATT a summary of the notice of proposed purchase containing at least the following:

- (i) subject matter of the contract;
- (ii) time-limits set for the submission of tenders; and
- (iii) addresses from which documents relating to the contracts may be requested.

5. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each proposed purchase, invite tenders from the maximum number of domestic and foreign suppliers, consistent with efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.
6. (a) In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Annex III, a notice of the following:
- (i) the enumeration of the lists maintained, including their headings, in relation to the products or categories of products to be purchased through the lists;
  - (ii) the conditions to be filled by potential suppliers in view of their inscription on those lists and the methods according to which each of those conditions be verified by the entity concerned;
  - (iii) the period of validity of the lists, and the formalities for their renewal.
- (b) Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
- (c) If, after publication of the notice under paragraph 3 above, a supplier not yet qualified requests to participate in a particular tender, the entity shall promptly start the procedure of qualification.
7. Suppliers requesting to participate in a particular proposed purchase shall be permitted to submit a tender and be considered provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under paragraphs 2-6 of this Part. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.
8. If after publication of a notice to purchase but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the

original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular proposed purchase shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

9. (a) Any prescribed time-limit shall be adequate to allow foreign as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the proposed purchase, the extent of sub-contracting anticipated, and the normal time for transmitting tenders by mail from foreign as well as domestic points.
- (b) Consistent with the entity's own reasonable needs, any delivery date shall take into account the normal time required for the transport of goods from the different points of supply.
10. (a) In open procedures, the period for the receipt of tenders shall in no case be less than thirty days from the date of publication referred to in paragraph 3 of this Part.
- (b) In selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall in no case be less than thirty days from the date of the publication referred to in paragraph 3; the period for receipt of tenders shall in no case be less than thirty days from the date of issuance of the invitation to tender.
- (c) In selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall in no case be less than thirty days from the date of the initial issuance of invitations to tender. If the date of initial issuance of invitations to tender does not coincide with the date of the publication referred to in paragraph 3, there shall in no case be less than thirty days between those two dates.
- (d) The periods referred to in (a), (b) and (c) above may be reduced either where a state of urgency duly substantiated by the entity renders impracticable the periods in question or in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 4 of this Part.
11. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the GATT.

12. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the products required or of any requirements including technical specifications, conformity certification to be fulfilled by the products, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of foreign products, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment;
- (j) any other terms or conditions.

13. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate and shall reply promptly to any reasonable request for explanations relating thereto.

- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

Submission, receipt and opening of tenders and awarding of contracts

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

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or telecopy are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or telecopy. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or telecopy shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy;
- (b) the opportunities that may be given to tenderers to correct unintentional errors between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice;
- (c) a supplier shall not be penalized if a tender is received in the office designated in the tender documents after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide;
- (d) all tenders solicited under open and selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings as well as the availability of information from the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. To this effect, and in connexion with open procedures, entities

shall establish provisions for the opening of tenders in the presence of either tenderers or their representatives, or an appropriate and impartial witness not connected with the procurement process. A report on the opening of the tenders shall be drawn up in writing. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Parts VI and VII of this Agreement;

- (e) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from suppliers which comply with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract;
- (f) unless in the public interest an entity decided not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic or foreign products, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous;
- (g) if it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation, the entity shall, in any subsequent negotiations, give equal consideration and treatment to all tenders within the competitive range;
- (h) entities should normally refrain from awarding contracts on the condition that the supplier provide offset procurement opportunities or similar conditions. In the limited number of cases where such requisites are part of a contract, parties to this Agreement concerned shall limit the offset to a reasonable proportion within the contract value and shall not favour suppliers from one party over suppliers from any other party. Licensing of technology should not normally be used as a condition of award but instances where it is required should be as infrequent as possible and suppliers from one party shall not be favoured over suppliers from any other party.

Use of single tendering

15. The provisions of paragraphs 1-14 above governing open and selective tendering procedures need not apply in the following conditions, provided that single tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among foreign suppliers or protection to domestic producers:

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been either collusive or do not conform to the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, the products can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies or installations, or as the extension of existing supplies or installations where a change of supplier would compel the entity to purchase equipment not meeting requirements of interchangeability with already existing equipment;
- (e) when an entity purchases prototypes or a first product which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent purchases of products shall be subject to paragraphs 1-14 of this Part.<sup>1</sup>

16. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 15 of this Part. Each report shall contain the name of the purchasing entity, value and kind of goods purchased, country of origin, and a statement of the conditions in paragraph 15 of this Part which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Parts VI and VII of this Agreement.

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<sup>1</sup>Original development of a first product may include limited production in order to incorporate the results of field testing and to demonstrate that the product is suitable for production in quantity to acceptable quality standards. It does not extend to quantity production to establish commercial viability or to recover research and development costs.

PART VIInformation and Review

1. Any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, shall be published promptly by the parties to this Agreement in the appropriate publications listed in Annex IV and in such a manner as to enable other parties and suppliers to become acquainted with them. Parties to this Agreement shall be prepared, upon request, to explain to any other party their government procurement procedures. Entities shall be prepared, upon request, to explain to any supplier from a country which is a party to this Agreement their procurement practices and procedures.

2. Entities shall, upon request by any supplier, promptly provide pertinent information concerning the reasons why that supplier's application to qualify for the suppliers' list was rejected, or why that supplier was not invited or admitted to tender.

3. Entities shall promptly, and in no case later than seven working days from the date of the award of a contract, inform the unsuccessful tenderers by written communication or publication that a contract has been awarded.

4. Upon request by an unsuccessful tenderer, the purchasing entity shall promptly provide that tenderer with pertinent information concerning the reasons why the tender was not selected, including information on the characteristics and the relative advantages of the tender selected, as well as the name of the winning tenderer.

5. Entities shall establish a contact point to provide additional information to any unsuccessful tenderer dissatisfied with the explanation for rejection of his tender or who may have further questions about the award of the contract. There shall also be procedures for the hearing and reviewing of complaints arising in connexion with any phase of the procurement process, so as to ensure that, to the greatest extent possible, disputes under this Agreement will be equitably and expeditiously resolved between the suppliers and the entities concerned.

6. The government of the unsuccessful tenderer, which is a party to this Agreement, may seek, without prejudice to the provisions under Part VII, such additional information on the contract award as may be necessary to ensure that the purchase was made fairly and impartially. To this end, the purchasing government shall provide information on both the characteristics

and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders this information shall not be disclosed except after consultation with and agreement of the party which gave the information to the government of the unsuccessful tenderer.

7. Available information concerning individual contract awards shall be provided, upon a request, to any other party.

8. Confidential information provided to any party to this Agreement which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers, shall not be revealed without formal authorization from the party providing the information.

9. Parties to this Agreement shall collect and provide to the Committee on an annual basis statistics on their purchases. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under the Agreement:

- (a) global statistics on estimated value of contracts awarded, both above and below the threshold value;
- (b) statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system;
- (c) statistics on the total number and value of contracts awarded under each of the cases of Part V, paragraph 15.

PART VIIEnforcement of ObligationsInstitutions

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

2. The Committee may establish ad hoc panels in the manner and for the purposes set out in paragraph 8 of this Part and working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

Consultations

3. Each party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultations regarding, representations made by another party with respect to any matter affecting the operation of this Agreement.

4. If any party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded by another party or parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the party or parties in question. Each party shall afford sympathetic consideration to any request from another party for consultations. The parties concerned shall initiate requested consultations promptly.

5. Parties engaged in consultations on a particular matter affecting the operation of the Agreement shall provide information concerning the matter subject to the provisions of Part VI, paragraph 8, and attempt to conclude such consultations within a reasonably short period of time.

Resolution of disputes

6. If no mutually satisfactory solution has been reached as a result of consultations under paragraph 4 between the parties concerned, the Committee shall meet at the request of any party to the dispute within thirty days of

receipt of such a request to investigate the matter, with a view to facilitating a mutually satisfactory solution.

7. If no mutually satisfactory solution has been reached after detailed examination by the Committee under paragraph 6 within three months, the Committee shall, at the request of any party to the dispute establish a panel to:

- (a) examine the matter;
- (b) consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
- (c) make a statement concerning the facts of the matter as they relate to application of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

8. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of governmental officials experienced in the field of trade relations. This list may also include persons other than governmental officials. In this connexion, each party to this Agreement shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the parties to this Agreement would be willing to make available for such work. When a panel is established under paragraph 7, the Chairman, within seven days, shall propose to the parties to the dispute the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as governmental representatives nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

9. Each panel shall develop its own procedures. All parties, having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Before a panel seeks such information from a source within the jurisdiction of a party it shall inform the government of that party. Any party to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential

information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

Where a mutually satisfactory solution to a dispute cannot be found or where the dispute relates to an interpretation of the Agreement, the panel should first submit the descriptive part of its report to the parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Committee. Where an interpretation of the Agreement is not involved and where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution had been reached.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months from the date the panel was established.

#### Enforcement

11. After the examination is complete or after the report of a panel, working party or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to these reports, the Committee shall take appropriate action normally within thirty days of receipt of the report unless extended by the Committee, including:

- (a) a statement concerning the facts of the matter;
- (b) recommendations to one or more parties to the Agreement; and/or
- (c) any other ruling which it deems appropriate.

Any recommendations by the Committee shall aim at the positive resolution of the matter on the basis of the operative provisions of this Agreement and its objectives set out in the Preamble.

12. If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

13. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Balance of rights and obligations

14. If the Committee's recommendations are not accepted by a party, or parties, to the dispute, and if the Committee considers that the circumstances are serious enough to justify such action, it may authorize a party or parties to this Agreement to suspend in whole or in part, and for such time as may be necessary, the application of this Agreement to any other party or parties, as is determined to be appropriate in the circumstances.

PART VIII

Exceptions to the Agreement

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

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

PART IXFinal Provisions1. Acceptance and accession

- (a) This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT and by the European Economic Community whose agreed lists of entities are contained in Annex I.
- (b) Any government contracting party to the GATT not a party to this Agreement may accede to it on terms to be agreed between that government and the parties to this Agreement. Accession shall take place by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
- (c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the parties to this Agreement, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.
- (d) Contracting parties may accept this Agreement in respect of those territories for which they have international responsibility, provided that the GATT is being applied in respect of such territories in accordance with the provisions of Article XXVI:5(a) or (b) of the General Agreement; and in terms of such acceptance each such territory shall be treated as though it were a party to this Agreement.

2. Reservations

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

3. Entry into force

This Agreement shall enter into force on 1 January 1981 for the governments<sup>1</sup> which have accepted or acceded to it by that date. For each other government, it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

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<sup>1</sup>For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Economic Community.

4. National legislation

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

5. Rectifications or modifications

- (a) Rectifications of a purely formal nature and minor amendments relating to Annexes I-IV to this Agreement shall be notified to the Committee and shall become effective provided there is no objection within thirty days to such rectifications or amendments.
- (b) Any modifications to lists of entities other than those referred to in sub-paragraph (a) may be made only in exceptional circumstances. In such cases, a party proposing to modify its list of entities shall notify the Chairman of the Committee who shall promptly convene a meeting of the Committee. The parties to this Agreement shall consider the proposed modification and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually agreed coverage provided in the Agreement prior to such modification. In the event of agreement not being reached on any modification taken or proposed, the matter may be pursued in accordance with the provisions contained in Part VII of this Agreement, taking into account the need to maintain the balance of rights and obligations at the highest possible level.

6. Review and negotiations

- (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the periods covered by such reviews.
- (b) Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the parties thereto shall undertake further negotiations, with a view to broadening and improving the Agreement on the basis of mutual reciprocity

having regard to the provisions of Part III relating to developing countries. In this connexion, the Committee shall, at an early stage, explore the possibilities of expanding the coverage of the Agreement to include service contracts.

#### 7. Amendments

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

#### 8. Withdrawal

Any party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any party to this Agreement may upon such notification request an immediate meeting of the Committee.

#### 9. Non-application of this Agreement between particular parties

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

#### 10. Annexes

The annexes to this Agreement constitute an integral part thereof.

#### 11. Secretariat

This Agreement shall be serviced by the GATT secretariat.

#### 12. Deposit

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each party to this Agreement and each contracting party to the GATT a certified copy thereof and of each rectification or modification thereto pursuant to paragraph 5, each amendment thereto pursuant to paragraph 7, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 1, or each withdrawal therefrom pursuant to paragraph 8, of this Part.

#### 13. Registration

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

Done at Geneva this ..... day of .....  
nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

NOTESPart I, paragraph 1

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

Part V, paragraph 14(h)

Having regard to the general policy considerations of developing countries in relation to Government Procurement, it is noted that under the provisions of Paragraph 14(h) of Part V, developing countries may require incorporation of domestic content, offset procurement, or transfer of technology as criteria for award of contracts. It is noted that suppliers from one party shall not be favoured over suppliers from any other party.

ANNEX I

LISTS OF ENTITIES REFERRED TO IN PART I, PARAGRAPH 1(C)<sup>1</sup>

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<sup>1</sup>For technical reasons, some adjustments to the lists which follow may be needed.

AUSTRIA

- I. Federal Chancellery  
Austrian Central Statistical Office
- II. Federal Ministry of Foreign Affairs  
Procurement Office
- III. Federal Ministry of the Interior  
Procurement Office
- IV. Federal Ministry of Justice  
Procurement Office
- V. Federal Ministry of Social Affairs  
Procurement Office
- VI. Federal Ministry of Health and Environment  
Procurement Office

EUROPEAN ECONOMIC COMMUNITYPART INotes:

1. This Agreement does not apply to procurement by entities otherwise falling under this Agreement made on behalf of and under the specific procedure of an international organization.
2. This Agreement shall not apply to procurement by entities falling under this Agreement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.

BELGIUM1. List of Belgian Permanent-Departments

1. Services du Premier Ministre
2. Ministère des Affaires Economiques
3. Ministère des Affaires Etrangères, Commerce Extérieur et Coopération au Développement
4. Ministère de l'Agriculture
5. Ministère des Classes Moyennes
6. Ministère des Communications
7. Ministère de la Défense Nationale<sup>1/</sup>
8. Ministère de l'Education Nationale et de la Culture
9. Ministère de l'Emploi et du Travail
10. Ministère des Finances
11. Ministère de l'Intérieur
12. Ministère de la Justice
13. Ministère de la Prévoyance Sociale
14. Ministère de la Santé Publique et de l'Environnement
15. Ministère des Travaux Publics, dont
  - Fonds de Routes
  - Régie de Bâtiments
16. Régie des Postes<sup>2/</sup>

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<sup>1/</sup> Non-warlike materials contained in Part II of this list

<sup>2/</sup> Postal Business only.

2. List of actual Ministries, purchasing through entities listed under n° 1

Premier Ministre

Vice-Premier Ministre et Ministre de La Fonction publique

Vice-Premier Ministre et Ministre de La Défense nationale<sup>1/</sup>

Ministre de La Justice

Ministre des Affaires étrangères

Ministre des Affaires économiques

Ministre de La Prévoyance sociale et Secrétaire d'Etat aux Affaires sociales, adjoint au Ministre des Affaires wallonnes

Ministre des Communications

Ministre de L'Education nationale (Néerlandaise)

Ministre de L'Agriculture et des Classes Moyennes

Ministre de La Culture néerlandaise et Ministre des Affaires flamandes

Ministre de L'Education nationale (Française)

Ministre de La Santé publique et de L'Environnement

Ministre des Finances

Ministre du Commerce extérieur

Ministre de La Coopération au Développement

Ministre des Postes, Télégraphes et Téléphones et Ministre des Affaires bruxelloises<sup>2/</sup>

Ministre des Pensions

Ministre de L'Emploi et du Travail

Ministre de L'Intérieur

Ministre de La Politique scientifique

Ministre de La Culture française

Ministre des Travaux publics et Ministre des Affaires wallonnes

Secrétaire d'Etat à L'Economie régionale, adjoint au Ministre des Affaires wallonnes

Secrétaire d'Etat au Budget, adjoint au Premier Ministre, et Secrétaire d'Etat à L'Economie régionale, adjoint au Ministre des Affaires flamandes

Secrétaire d'Etat à La Réforme des Institutions, adjoint au Premier Ministre

Secrétaire d'Etat à La Culture française, adjoint au Ministre de La Culture française

Secrétaire d'Etat aux Affaires économiques, adjoint au Ministre des Affaires économiques, et

Secrétaire d'Etat aux Affaires sociales, adjoint au Ministre des Affaires flamandes

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<sup>1/</sup> Non-warlike materials contained in Part II of this list

<sup>2/</sup> Postal Business only

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Secrétaire d'Etat à la Réforme des Institutions, adjoint au  
Vice-Premier Ministre

Secrétaire d'Etat à la Culture néerlandaise adjoint au  
Ministre de la Culture néerlandaise, et

Secrétaire d'Etat aux Affaires sociales, adjoint au Ministre  
des Affaires bruxelloises.

DENMARKDanish Government Procurement Entities

- |   |   |
|---|---|
| 1. Prime Minister's Office                          |   |
| 2. Ministry of Labour                               | 4 directorates and institutions   |
| 3. Ministry of Foreign Affairs                      | 2 departments   |
| 4. Ministry of Housing                              | 1 directorate   |
| 5. Ministry of Finance<br>(3 departments)           | Directorate for Government Procurement<br>with Government Printing Office   |
| 6. Ministry of Taxes and Duties<br>(2 departments)  | 3 other institutions<br>5 directorates and institutions   |
| 7. Ministry of Fisheries                            | 4 institutions  |
| 8. Ministry of Trade, Industry<br>and Shipping      | - Research Establishment Risoe<br>- 20 directorates and institutions<br>- State Serum Institute<br>- Danish National Civil Defence<br>Directorate<br>- 3 other directorates and<br>institutions |
| 9. Ministry of the Interior                         | - Office of the Chief of Danish<br>Police<br>- 3 other directorates and<br>institutions   |
| 10. Ministry of Justice                             |   |
| 11. Ministry of Religious Affairs                   |   |
| 12. Ministry of Agriculture                         | - 19 directorates and institutions  |
| 13. Ministry of Environment                         | - 5 directorates  |
| 14. Ministry of Greenland                           | - Royal Greenland Trade Department<br>- Greenland Technical Organization<br>- 2 other institutions  |
| 15. Ministry of Cultural Affairs                    | - 2 directorates and several state<br>owned museums and higher educational<br>institutions  |
| 16. Ministry of Social Affairs                      | - 5 directorates  |
| 17. Ministry of Education                           | - University Hospital of Copenhagen<br>- 6 directorates<br>- 11 universities and other higher<br>educational institutions   |
| 18. Ministry of Economic Affairs<br>(3 departments) | - State harbours and State airports<br>- 4 directorates and several<br>institutions   |

DENMARKDanish Government Procurement Entities

- |     |   |   |
|-----|---|---|
| 1.  | Prime Minister's Office                         |   |
| 2.  | Ministry of Labour                              | 4 directorates and institutions   |
| 3.  | Ministry of Foreign Affairs                     | 2 departments   |
| 4.  | Ministry of Housing                             | 1 directorate   |
| 5.  | Ministry of Finance<br>(3 departments)          | Directorate for Government Procurement<br>with Government Printing Office<br>3 other institutions                         |
| 6.  | Ministry of Taxes and Duties<br>(2 departments) | 5 directorates and institutions   |
| 7.  | Ministry of Fisheries                           | 4 institutions  |
| 8.  | Ministry of Trade, Industry<br>and Shipping     | - Research Establishment Risoe<br>- 20 directorates and institutions  |
| 9.  | Ministry of the Interior                        | - State Serum Institute<br>- Danish National Civil Defence<br>Directorate<br>- 3 other directorates and<br>institutions   |
| 10. | Ministry of Justice                             | - Office of the Chief of Danish<br>Police<br>- 3 other directorates and<br>institutions                                   |
| 11. | Ministry of Religious Affairs                   |   |
| 12. | Ministry of Agriculture                         | - 19 directorates and institutions  |
| 13. | Ministry of Environment                         | - 5 directorates  |
| 14. | Ministry of Greenland                           | - Royal Greenland Trade Department<br>- Greenland Technical Organization<br>- 2 other institutions                        |
| 15. | Ministry of Cultural Affairs                    | - 2 directorates and several state<br>owned museums and higher educational<br>institutions                                |
| 16. | Ministry of Social Affairs                      | - 5 directorates  |
| 17. | Ministry of Education                           | - University Hospital of Copenhagen<br>- 6 directorates<br>- 11 universities and other higher<br>educational institutions |
| 18. | Ministry of Economic Affairs<br>(3 departments) | - State harbours and State airports<br>- 4 directorates and several<br>institutions                                       |

19. Ministry of Public Works<sup>1</sup>
20. Ministry of Defence<sup>2</sup>

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<sup>1</sup>With the exception of Danish State Railways. Postal Business only.

<sup>2</sup>Non-warlike materials contained in Part II of this list.

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FRANCEList of entities1) Main purchasing entitiesA. General Budget

Premier Ministre

Ministre délégué auprès du Premier Ministre, chargé de la condition féminine

Ministre de la justice

Ministre de la santé et de la famille

Ministre de l'intérieur

Ministre des affaires étrangères

Ministre de la défense<sup>1/</sup>

Ministre du travail et de la participation

Ministre de la coopération

Ministre de l'économie

Ministre du budget

Ministre de l'environnement et du cadre de vie

Ministre de l'éducation

Ministre des universités

Ministre de l'agriculture

Ministre de l'industrie

Ministre des transports

Ministre du commerce et de l'artisanat

Ministre du commerce extérieur

Ministre de la jeunesse, des sports et des loisirs

Ministre de la culture et de la communication

Secrétaire d'Etat aux postes et télécommunications<sup>2/</sup>

Secrétaire d'Etat aux anciens combattants

Secrétaire d'Etat auprès du Premier Ministre

Secrétaire d'Etat auprès du Premier Ministre (Relations avec le Parlement)

Secrétaire d'Etat auprès du Premier Ministre (Recherche)

Secrétaire d'Etat auprès du Garde des sceaux, Ministre de la justice

Secrétaire d'Etat auprès du Ministre de la santé et de la famille

Secrétaire d'Etat auprès du Ministre de l'intérieur (Départements et territoires d'outre-mer)

Secrétaire d'Etat auprès du Ministre de l'intérieur (Collectivités locales)

<sup>1/</sup> Non-warlike materials contained in Part II of this list<sup>2/</sup> Postal business only.

Secrétaire d'Etat auprès du Ministre des affaires étrangères  
 Secrétaire d'Etat auprès du Ministre du travail et de la participation  
 (Formation professionnelle)  
 Secrétaire d'Etat auprès du Ministre du travail et de la participation  
 (Travailleurs manuels et immigrés)  
 Secrétaire d'Etat auprès du Ministre du travail et de la participation  
 (Emploi féminin)  
 Secrétaire d'Etat auprès du Ministre de l'environnement et du cadre de vie  
 (Logement)  
 Secrétaire d'Etat auprès du Ministre de l'environnement et du cadre de vie  
 (Environnement)  
 Secrétaire d'Etat auprès du Ministre de l'éducation  
 Secrétaire d'Etat auprès du Ministre de l'agriculture  
 Secrétaire d'Etat auprès du Ministre de l'industrie (Petite et moyenne industrie)

B. Budget annexe

Imprimerie Nationale

C. Comptes spéciaux du trésor

On peut notamment signaler:

- Fonds forestier national
- soutien financier de l'industrie cinématographique
- fonds spécial d'investissement routier
- Fonds national d'aménagement foncier et d'urbanisme
- Union des groupements d'achats publics (UGAP)

2) Etablissements publics nationaux à caractère administratif

- Agence Nationale pour l'Emploi
- Institut national de la propriété industrielle
- Commission des opérations de Bourse
- Agence nationale pour l'amélioration de l'habitat
- Etablissement public du Centre Beaubourg
- Centre national de la cinématographie
- Office national des Anciens combattants et victimes de guerre
- Agence nationale pour l'indemnisation des français rapatriés d'outre-mer
- Office national d'immigration
- Fonds d'action sociale pour les travailleurs migrants
- Caisse d'aide à l'équipement des collectivités locales
- Caisse nationale des autoroutes
- Caisse des prêts aux organismes d'HLM
- Centre national des lettres
- Caisse nationale des monuments historiques et des sites

(3) Other entities

Académie de France à Rome  
 Académie de Marine  
 Académie des Sciences d'Outre-mer  
 Agence Centrale des Organismes de Sécurité Sociale (A.C.O.S.S.)  
 Agences Financières de Bassins  
 Agence Nationale pour l'Amélioration des Conditions de Travail (A.N.A.C.T.)  
 Agence Nationale pour l'Amélioration de l'Habitat (A.N.A.H.)  
 Agence Nationale pour l'Emploi (A.N.P.E.)  
 Agence Nationale pour l'Indemnisation des Français d'Outre-Mer (A.N.I.F.O.M.)  
 Assemblée Permanente des Chambres d'Agriculture (A.P.C.A.)  
 Bibliothèque Nationale  
 Bibliothèque Nationale et Universitaire de Strasbourg  
 Bureau d'Etudes des Postes et Télécommunications d'Outre-Mer (B.E.P.T.O.M.)  
 Caisse d'Aide à l'Équipement des Collectivités locales (C.A.E.C.)  
 Caisse Autonome de la Reconstruction  
 Caisse des Dépôts et Consignations  
 Caisse Nationale des Allocations Familiales (C.N.A.F.)  
 Caisse Nationale des Autoroutes (C.N.A.)  
 Caisse Nationale d'Assurance Maladie des Travailleurs Salariés (C.N.A.M.)  
 Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés (C.N.A.V.T.S.)  
 Caisse Nationale Militaire de Sécurité Sociale (C.N.M.S.S.)  
 Caisse Nationale des Monuments Historiques et des Sites  
 Caisse Nationale des Télécommunications<sup>1</sup>  
 Caisse de Prêts aux Organismes E.L.M.  
 Casa de Velasquez  
 Centre d'Enseignement Zootechnique de Rambouillet  
 Centre d'Etudes du Milieu et de Pédagogie Appliquées au Ministère de l'Agriculture  
 Centre d'Etudes Supérieures de Sécurité Sociale  
 Centres de Formation Professionnelle Agricole

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<sup>1</sup>Postal business only.

Centre National d'Art et de Culture Georges Pompidou  
 Centre National de la Cinématographie Française  
 Centre National d'Etudes et de Formation pour l'Enfance Inadaptée  
 Centre National d'Etudes et d'Expérimentation du Machinisme Agricole  
 Centre National d'Etudes et de Formation pour l'Adaptation Scolaire et  
 l'Education Spécialisée (C.N.E.F.A.S.E.S.)  
 Centre National de Formation et de Perfectionnement des Professeurs  
 d'Enseignement Ménager et Ménager Agricole  
 Centre National des Lettres  
 Centre National de Documentation Pédagogique  
 Centre National des Oeuvres Universitaires et Scolaires (C.N.O.U.S.)  
 Centre National d'Ophtalmologie des Quinze-Vingts  
 Centre National de Préparation au Professorat de Travaux Manuels Educatifs  
 et d'Enseignement Ménager  
 Centre National de la Promotion Rurale de Marmilhat  
 Centre National de la Recherche Scientifique (C.N.R.S.)  
 Centres Pédagogiques Régionaux  
 Centre Régional d'Education Populaire  
 Centres Régionaux d'Education Physique et Sportive (C.R.E.P.S.)  
 Centres Régionaux des Oeuvres Universitaires (C.R.O.U.S.)  
 Centres Régionaux de la Propriété Forestière  
 Centre de Sécurité Sociale des Travailleurs Migrants  
 Centres Universitaires  
 Chancelleries des Universités  
 Collèges  
 Collèges Agricoles  
 Commission des Opérations de Bourse  
 Conseil Supérieur de la Pêche  
 Conservatoire de l'Espace Littoral et des Rivages Lacustres  
 Conservatoire National des Arts et Métiers  
 Conservatoire National Supérieur de Musique

Conservatoire National Supérieur d'Art Dramatique  
Domaine de Pompadour  
Ecole Centrale - Lyon  
Ecole Centrale des Arts et Manufactures  
Ecole Française d'Archéologie d'Athènes  
Ecole Française d'Extrême-Orient  
Ecole Française de Rome  
Ecole des Hautes Etudes en Sciences Sociales  
Ecole Nationale d'Administration  
Ecole Nationale de l'Aviation Civile (E.N.A.C.)  
Ecole Nationale des Chartes  
Ecole Nationale d'Equitation  
Ecole Nationale Féminine d'Agronomie de Marmalhat (Put-de-Dôme)  
Ecole Nationale Féminine d'Agronomie de Toulouse (Htd-Garonne)  
Ecole Nationale du Génie Rural et des eaux et forêts (E.N.G.R.E.F.)  
Ecoles Nationales de l'Industrie Laitière  
Ecoles Nationales d'Ingénieurs  
Ecole Nationale d'Ingénieurs des Industries des Techniques Agricoles  
et Alimentaires  
Ecoles Nationales d'Ingénieurs des Travaux Agricoles  
Ecole Nationale des Ingénieurs des Travaux Ruraux et Techniques  
Sanitaires  
Ecole Nationale des Ingénieurs des Travaux des Eaux et Forêts  
(E.N.I.T.E.F.)  
Ecole Nationale de la Magistrature  
Ecoles Nationales de la Marine Marchande  
Ecole Nationale de la Santé Publique (E.N.S.P.)  
Ecole Nationale de ski et d'alpinisme  
Ecole Nationale Supérieure Agronomique - Montpellier  
Ecole Nationale Supérieure Agronomique - Rennes  
Ecole Nationale Supérieure des Arts Décoratifs  
Ecole Nationale Supérieure des Arts et Industries - Strasbourg

Ecole Nationale Supérieure des Arts et Industries Textiles - Roubaix  
 Ecole Nationale Supérieure d'Arts et Métiers  
 Ecole Nationale Supérieure des Beaux-Arts  
 Ecole Nationale Supérieure des Bibliothécaires  
 Ecole Nationale Supérieure de Céramique Industrielle - Sèvres  
 Ecole Nationale Supérieure de l'Electronique et de ses Applications  
 (E.N.S.E.A.)  
 Ecole Nationale Supérieure d'Horticulture  
 Ecole Nationale Supérieure des Industries Agricoles Alimentaires  
 Ecole Nationale Supérieure du Paysage  
 Ecole Nationale Supérieure des Sciences Agronomiques Appliquées  
 (E.N.S.S.A.A.)  
 Ecoles Nationales Vétérinaires  
 Ecoles Nationales de Perfectionnement  
 Ecoles Nationales de Premier Degré  
 Ecole Nationale de Voirie  
 Ecoles Normales d'Instituteurs et d'Institutrices  
 Ecoles Normales Nationales d'Apprentissage  
 Ecoles Normales Supérieures  
 Ecole Polytechnique  
 Ecole de Sylviculture - Crozay (Aube)  
 Ecole Technique Professionnelle Agricole et Forestière de Mayzac (Corrèze)  
 Ecole de Viticulture et d'Oenologie de La Tour Blanche (Gironde)  
 Ecole de Viticulture - Avize (Marne)  
 Etablissement National de Convalescentes du Vésinet (E.N.C.V.)  
 Etablissement National de Convalescents de Saint-Maurice  
 Etablissement National des Invalides de la Marine (E.N.I.M.)  
 Etablissement National de Koenigs Warter  
 Fondation Carnégie  
 Fondation Singer-Polignac  
 Fonds d'Action Sociale pour les Travailleurs Migrants  
 Hôpital Hospice National Dufresne-Sonneiller  
 Institut d'Elevage et de Médecine Vétérinaires des Pays Tropicaux  
 (I.E.M.V.P.T.)

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Institut Français d'Archéologie Orientale du Caire  
 Institut Géographique National  
 Institut Industriel du Nord  
 Institut International d'Administration Publique (I.I.A.P.)  
 Institut National Agronomique de Paris-Grignon  
 Institut National des Appellations d'Origine des Vins et Eaux-de-vie  
 (I.N.A.O.V.E.V.)  
 Institut National d'Astronomie et de Géophysique (I.N.A.G.)  
 Institut National de La Consommation (I.N.C.)  
 Institut National d'Education Populaire (I.N.E.P.)  
 Institut National d'Etudes Démographiques (I.N.E.D.)  
 Institut National des Jeunes Aveugles - Paris  
 Institut National des Jeunes Sourdes - Bordeaux  
 Institut National des Jeunes Sourds - Chambéry  
 Institut National des Jeunes Sourds - Metz  
 Institut National des Jeunes Sourds - Paris  
 Institut National de Physique Nucléaire et de Physique des Particules  
 (I.N2.P3)  
 Institut National de Promotion Supérieure Agricole  
 Institut National de La Propriété Industrielle  
 Institut National de La Recherche Agronomique (I.N.R.A.)  
 Institut National de Recherche Pédagogique (I.N.R.P.)  
 Institut National de La Santé et de La Recherche Médicale (I.N.S.E.R.M.)  
 Institut National des Sports  
 Instituts Nationaux Polytechniques  
 Instituts Nationaux des Sciences Appliquées  
 Institut National Supérieur de Chimie Industrielle de Rouen  
 Institut de Recherches d'Informatique et d'Automatique (I.R.I.A.)  
 Institut de Recherche des Transports (I.R.T.)  
 Instituts Régionaux d'Administration  
 Institut Scientifique et Technique des Pêches Maritimes (I.S.T.P.M.)  
 Institut Supérieur des Matériaux et de La Construction Mécanique de  
 Saint-Ouen  
 Lycées Agricoles  
 Lycées Classiques et Modernes

Lycées d'Enseignement Professionnel  
Lycées Techniques  
Musée de l'Armée  
Musée Gustave Moreau  
Musée de la Marine  
Musée National J.J. Henner  
Musée National de la Légion d'Honneur  
Musée Postal  
Muséum National d'Histoire Naturelle  
Musée Auguste Rodin  
Observatoire de Paris  
Office de Coopération et d'Accueil Universitaire  
Office Français de Protection des Réfugiés et Rapatriés  
Office National des Anciens Combattants  
Office National de la Chasse  
Office National d'Information sur les Enseignements et les Professions (O.N.I.S.E.P.)  
Office National d'Immigration (O.N.I.)  
Office de la Recherche Scientifique et Technique d'Outre-Mer (O.R.S.T.O.M.)  
Office Universitaire et Culturel Français pour l'Algérie  
Palais de la Découverte  
Parcs Nationaux  
Réunion des Musées Nationaux  
Service National des Examens du Permis de Conduire  
Syndicat des Transports Parisiens  
Thermes Nationaux - Aix-les-Bains  
Universités

FEDERAL REPUBLIC OF GERMANY

I. List of Central Purchasing Entities

1. Ministry of Foreign Affairs
2. Ministry of Labour and Social Affairs
3. Ministry of Education and Science
4. Ministry of Food, Agriculture and Forests
5. Ministry of Finance
6. Ministry of Research and Technology
7. Ministry of Internal Relations
8. Ministry of Interior
9. Ministry of Youth, Family and Health
10. Ministry of Justice
11. Ministry of Planning, Public Works and Urban Affairs
12. Ministry of Posts and Telecommunications<sup>1</sup>
13. Ministry of Economic Affairs
14. Ministry of Economic Co-operation
15. Ministry of Defence<sup>2</sup>

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<sup>1</sup> Postal Business only.

<sup>2</sup> Non-warlike materials contained in Part II of this list.

NOTE

According to existing national obligations the entities, contained in this list, shall in conformity with special procedures award contracts in certain regions which, as consequence of the division of Germany, are confronted with economic disadvantages.

The same applies to the awarding of contracts to remove the difficulties of certain groups caused by the last war.

FEDERAL REPUBLIC OF GERMANY(1) List of Central Purchasing Entities

1. Auswärtiges Amt
2. Bundesministerium für Arbeit und Sozialordnung
3. Bundesministerium für Bildung und Wissenschaft
4. Bundesministerium für Ernährung, Landwirtschaft und Forsten
5. Bundesministerium der Finanzen
6. Bundesministerium für Forschung und Technologie
7. Bundesministerium für Innerdeutsche Beziehungen
8. Bundesministerium des Innern (nur ziviles Material)
9. Bundesministerium für Jugend, Familie und Gesundheit
10. Bundesministerium der Justiz
11. Bundesministerium für Raumordnung, Bauwesen und Städtebau
12. Bundesministerium für das Post- und Fernmeldewesen (1)
13. Bundesministerium für Wirtschaft
14. Bundesministerium für wirtschaftliche Zusammenarbeit
15. Bundesministerium der Verteidigung (2)

(1) Nur Postwesen.

(2) ausschließlich materielle Leistungen im Sinne des Artikels 110.

Note

According to existing national obligations the entities, contained in this list, shall in conformity with special procedures award contracts in certain regions which, as consequence of the division of Germany, are confronted with economic disadvantages.

The same applies to the awarding of contracts to remove the difficulties of certain groups caused by the last war.

IRELAND1. Main purchasing entities

- (a) Office of Public Works
- (b) Stationery Office

2. Other departments

President's Establishment  
 Office of the Houses of the Oireachtas (Parliament)  
 Department of the Taoiseach (Prime Minister)  
 Central Statistics Office  
 Department of Finance  
 Office of the Comptroller and Auditor General  
 Office of the Revenue Commissioners  
 State Laboratory  
 Office of the Attorney General  
 Office of the Director of Public Prosecutions  
 Valuation Office  
 Ordnance Survey  
 Department of the Public Service  
 Civil Service Commission  
 Department of Economic Planning and Development  
 Department of Justice  
 Land Registry  
 Charitable Donations and Bequests Office  
 Department of the Environment  
 Department of Education  
 National Gallery of Ireland  
 Department of the Gaeltacht (Irish speaking areas)  
 Department of Agriculture  
 Department of Fisheries and Forestry  
 Department of Labour  
 Department of Industry, Commerce and Energy  
 Department of Tourism and Transport  
 Department of Foreign Affairs  
 Department of Social Welfare  
 Department of Health  
 Department of Defence<sup>1</sup>  
 Department of Posts and Telegraphs<sup>2</sup>

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1. ...  
2. ...

ITALYPurchasing entities

1. Treasury<sup>1</sup>
2. Finance<sup>2</sup>
3. Justice
4. External Affairs
5. Public Instruction
6. Interior
7. Public Works
8. Agriculture and Forest
9. Industry, Trade and Craftworks
10. Employment and Social Affairs
11. Health
12. Cultural Affairs
13. Defence<sup>3</sup>
14. Postal Services<sup>4</sup>

Note: This Agreement shall not prevent the implementation of provisions contained in Italian Law No. 835 of 6 October 1950 (Official Gazette No. 245 of 24 October 1950 of the Italian Republic) and in modifications thereto in force on the date on which this Agreement is adopted.

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<sup>1</sup>Acting as centralized purchasing entity for most of other Ministries or entities.

<sup>2</sup>Except for purchases by the monopoly administration for tobacco and salt.

<sup>3</sup>Non-warlike materials contained in Part II of this list.

<sup>4</sup>Postal Business only

LUXEMBOURG

"Liste des entités acheteuses centrales susceptibles de relever du champ d'application de l'instrument"

1. Ministère d'Etat: Service Central des imprimés et des fournitures de l'Etat;
2. Ministère de l'Agriculture: Administration des Services Techniques de l'Agriculture;
3. Ministère de l'Education Nationale: Ecoles de l'enseignement secondaire, de l'enseignement moyen, de l'enseignement professionnel;
4. Ministère de la Famille et de la Solidarité sociale: Maisons de retraite ;
5. Ministère de la Force publique: Armée<sup>1/</sup> - Gendarmerie - Police;
6. Ministère de la Justice: Etablissements pénitentiaires;
7. Ministère de la Santé Publique: Mondorf-Etat, Hôpital neuropsychiatrique;
8. Ministère des Travaux publics: Bâtiments publics - Ponts et Chaussées;
9. Ministère des Finances: Postes et Télécommunications<sup>2/</sup>
10. Ministère des Transports et de l'Energie: Centrales électriques de la Haute et Basse Sarre;
11. Ministère de l'Environnement: Commissariat général à la Protection des Eaux.

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<sup>1/</sup> Non-warlike materials contained in Part II of this list

<sup>2/</sup> Postal Business only.

NETHERLANDSLists of entities

## A.

1. Ministry of General Affairs
2. Ministry of Foreign Affairs
3. Ministry of Justice
4. Ministry of Home Affairs
5. Ministry of Defence (1)
6. Ministry of Finance
7. Ministry of Economic Affairs
8. Ministry of Education and Science
9. Ministry of Housing and Town and Country Planning
10. Ministry of Transport and Waterways, including
  - (a) Department of Civil Aviation
  - (b) Postal, telephone and telegraph services (2)
11. Ministry of Agriculture and Fisheries
12. Ministry of Social Affairs
13. Ministry of Culture, Recreation and Social Welfare
14. Ministry of Public Health and Environment
15. Ministry of Development Co-operation
16. Ministry of Science Policy
17. Cabinet of Netherlands Antilles Affairs
18. Higher Colleges of State.

B. Central procurement offices and the amount of their purchases

Entities listed above in A generally make their own specific purchases; other general purchases are effected through the entities listed below:

1. The Netherlands Government Purchasing Office
2. Directorate of Water Control
3. Quarter Master General's Office (1)
4. Air Material Directorate (1)

(1) Non-warlike materials contained in Part II of this list.

(2) Postal Business only.

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5. Procurement Division of the Royal Netherlands Navy (1)
6. State Printing and Publishing Office
7. Postal, Services<sup>(2)</sup>
8. Governmental Motorvehicle Department
9. Governmental Centre for Office Mechanization and Automation
10. Governmental Forestry Directorate
11. Directorate for Ijsselmeer Polders

(1) Non-warlike materials contained in Part II of this list.

(2) Postal Business only.

## NETHERLANDS

Lists of entitiesA Ministeries en centrale overheidsorganen.

1. Ministerie van Algemene Zaken
2. Ministerie van Buitenlandse Zaken
3. Ministerie van Justitie
4. Ministerie van Binnenlandse Zaken
5. Ministerie van Defensie (1)
6. Ministerie van Financiën
7. Ministerie van Economische Zaken
8. Ministerie van Onderwijs en Wetenschappen
9. Ministerie van Volkshuisvesting en Ruimtelijke Ordening
10. Ministerie van Verkeer & Waterstaat (2)
  
11. Ministerie van Landbouw en Visserij
12. Ministerie van Sociale Zaken
13. Ministerie van Cultuur, Recreatie en Maatschappelijk Werk
14. Ministeries van Volksgezondheid en Milieuhygiëne
15. Ministerie van Ontwikkelingsaanpak
16. Ministerie van Wetenschapsbeleid
17. Kabinet van de Nederlandse Antillen
18. Hoge Colleges van Staat

B Bovengenoemde organen kopen in het algemeen specifieke artikelen zelfstandig in ; voor de aanschaffing van artikelen voor algemeen gebruik, maken zij gebruik van een of meer van de navolgende centrale aanschaffingsdiensten.

1. Rijksinkoopbureau
2. Directoraal-Generaal voor de Waterstaat
3. Dienst van de Kwartiermeester-Generaal (1)
4. Directie (Materieel Koninklijke Luchtmacht (1)

(1) non-warlike materials contained in Part I. of this list

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5. Hoofdafdeling Materieel Koninklijke Marine (1)
6. Staatsdrukkerij - en - uitgeverijbedrijf
7. Centrale Afdeling Inkoop en Materieel controle van het Staatsbedrijf der P.T.T.<sup>(2)</sup>
8. Rijksautomobielcentrale
9. Rijkskantoormachinecentrale
10. Staatsbeheer
11. Rijksdienst IJsselmeerpolders.

(1) Non-warlike materials contained in Part II of this list.

(2) Postal Business only.

UNITED KINGDOMList of entities

Board of Inland Revenue  
 British Museum  
 British Museum (Natural History)  
 Cabinet Office  
 Central Office of Information  
 Charity Commission  
 Civil Service Department  
     Ancient Monuments (Scotland) Commission  
     Ancient Monuments (Wales) Commission  
     Boundary Commission for England and Wales  
     Boundary Commission for Northern Ireland  
     Central Computer Agency  
     Chessington Computer Centre  
     Civil Service Catering Organisation  
     Civil Service College  
     Civil Service Commission  
     Civil Service Pay Research Unit  
     Historical Manuscripts Commission  
     Historical Monuments (England) Commission  
     Medical Advisory Service  
     Museums and Galleries Standing Commission  
     Office of the Parliamentary Counsel  
     Review Board for Government Contracts  
     Royal Commission on Criminal Procedure  
     Royal Commission on Environmental Pollution  
     Royal Commission on Gambling  
     Royal Commission on Legal Services (England, Wales and Northern Ireland)  
     Royal Commission on Legal Services (Scotland)  
     Royal Fine Art Commission (England)  
     Royal Fine Art Commission (Scotland)  
 Crown Estate Office (Vote-borne services only)  
 Crown Office, Scotland  
 Customs and Excise Department

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Department for National Savings  
 Department of Agriculture and Fisheries for Scotland  
   Artificial Insemination Service  
   Crofters Commission  
   Red Deer Commission  
   Royal Botanic Garden, Edinburgh etc.  
 Department of Education and Science  
   University Grants Committee  
 Department of Employment  
   Duchess of Gloucester House  
   Employment Appeal Tribunal  
   Industrial Tribunals  
   Office of Manpower Economics  
   Royal Commission on the Distribution of Income and Wealth  
 Department of Energy  
 Department of Health and Social Security  
   Attendance Allowance Board  
   Central Council for Education and Training in Social Work  
   Council for the Education and Training of Health Visitors  
   Dental Estimates Board  
   Joint Board of Clinical Nursing Studies  
   Medical and Dental Referee Service  
   Medical Boards and Examining Medical Officers (War Pensions)  
   National Health Service  
   National Health Service Authorities  
   National Insurance Commissioners  
   Occupational Pensions Board  
   Prescription Pricing Authority  
   Public Health Laboratory Service Board  
   Supplementary Benefits Appeal Tribunals  
   Supplementary Benefits Commission  
 Department of Industry  
   Computer-Aided Design Centre  
   Laboratory of the Government Chemist  
   National Engineering Laboratory  
   National Maritime Institute  
   National Physical Laboratory  
   Warren Spring Laboratory

**Department of Prices and Consumer Protection**

Domestic Coal Consumers' Council  
 Electricity Consultative Councils for England and Wales  
 Gas Consumers' Councils  
 Metrication Board  
 Monopolies and Mergers Commission

**Department of the Environment**

British Urban Development Services Unit  
 Building Research Establishment  
 Commons Commissioners - (except payment of rates)  
 Countryside Commission  
 Directorate of Estate Management Overseas  
 Fire Research Station/Boreham Wood  
 Hydraulics Research Station  
 Local Valuation Panels  
 Location of Offices Bureau  
 Property Services Agency  
 Rent Control Tribunals and Rent Assessment Panels and Committees

**Department of the Government Actuary****Department of the Registers of Scotland****Department of Trade**

Coastguard Services  
 British Export Marketing Centre, Tokyo  
 Market Entry Guarantee Scheme  
 Patent Office

**Department of Transport**

Road Construction Units and Sub-Units  
 Transport and Road Research Laboratory  
 Transport Tribunal - (except payment of rates)  
 Transport Users Consultative Committees - (except payment of rates)

**Director of Public Prosecutions****Exchequer and Audit Department****Exchequer Office Scotland****Export Credits Guarantee Department****Foreign and Commonwealth Office**

Government Communications Headquarters  
 Middle East Centre for Arab Studies  
 Wiston House Conference and European Discussion Centre

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Home Office

Gaming Board for Great Britain  
 Immigration Appeals Tribunal  
 Inspectors of Constabulary  
 Parole Board and Local Review Committees

House of Commons

House of Lords

Imperial War Museum

Intervention Board for Agricultural Produce

Legal Aid Funds

Lord Chancellor's Department

Council on Tribunals  
 County Courts  
 Courts Martial Appeal Court  
 Crown Courts  
 Judge Advocate General and Judge Advocate of the Fleet  
 Lands Tribunal  
 Law Commission  
 Pensions Appeal Tribunals  
 Supreme Court

Ministry of Agriculture Fisheries and Food

Advisory Services  
 Agricultural Development and Advisory Service  
 Agricultural Dwelling House Advisory Committees  
 Agricultural Land Tribunals  
 Agricultural Wages Board and Committees  
 Artificial Insemination Research Centres  
 Central Council for Agricultural and Horticultural Co-operation  
 Plant Pathology Laboratory  
 Plant Variety Rights Office  
 Royal Botanic Gardens, Kew

Ministry of Defence (1)

Procurement Executive

Meteorological Office

Ministry of Overseas Development

Centre for Overseas Pest Research  
 Directorate of Overseas Surveys  
 Land Resources Division  
 Tropical Products Institute

(1) Non-warlike materials contained in Part II of this list

National Debt Office and Pensions Commutation Board  
National Gallery  
National Galleries of Scotland  
National Library of Scotland  
National Maritime Museum  
National Museum of Antiquities of Scotland  
National Portrait Gallery  
Northern Ireland Government Departments and Public Authorities  
    Department of the Civil Service  
    Department of Agriculture  
    Department of Commerce  
    Department of Education  
    Department of the Environment  
    Department of Finance  
    Department of Health and Social Security  
    Department of Manpower Services  
    Northern Ireland Police Authority  
Northern Ireland Office  
    Coroners Courts  
    County Courts  
    Crown Solicitor's Office  
    Department of the Director of Public Prosecutions  
    Enforcement of Judgements Office  
    Forensic Science Service  
    Magistrates Courts  
    Pensions Appeal Tribunals  
    Probation Service  
    Registration of Electors and Conduct of Elections  
    State Pathologist Service  
    Supreme Court of Judicature and Court of Criminal Appeal of  
        Northern Ireland  
Office of Fair Trading  
Office of Population Censuses and Surveys  
    National Health Service Central Register  
Office of the Parliamentary Commissioner for Administration and  
    Health Service Commissioners

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Paymaster General's Office  
The Post Office<sup>1</sup>  
Privy Council Office  
Public Record Office  
Public Trustee Office  
Public Works Loan Commission  
Queen's and Lord Treasurer's Remembrancer  
    Crown Office  
    Department of Procurators Fiscal  
    Lord Advocate's Department  
    Lands Tribunal  
Registrar General's Office, Scotland  
    National Health Service Central Register  
Registry of Friendly Societies  
Royal Commission, etc. (see references under Civil Service Department)  
    Commission on the Constitution  
    Royal Commission on the National Health Service  
    Royal Commission on Gambling  
Royal Hospital, Chelsea  
Royal Mint  
Royal Scottish Museum  
Science Museum  
Scottish Courts Administration  
    Court of Session  
    Court of Justiciary  
    Accountant of Court's Office  
    Sheriff Courts  
    Scottish Land Court  
    Scottish Law Commission  
    Pensions Appeal Tribunals  
Scottish Development Department  
    Local Government Reorganisation Commissions etc.  
    Rent Assessment Panel and Committees, etc.  
Scottish Economic Planning, Department  
    Scottish Electricity Consultative Councils  
Scottish Education Department  
    Royal Scottish Museum

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<sup>1</sup>Postal Business only.

## Scottish Home and Health Department

Common Services Agency

Council for the Education and Training of Health Visitors

Fire Service Training School

Inspectors of Constabulary

Local Health Councils

Mental Welfare Commission for Scotland

National Health Service

National Health Service authorities

Parole Board for Scotland and Local Review Committees

Planning Council

Scottish Antibody Production Unit

Scottish Crime Squad

Scottish Criminal Record Office

Scottish Council for Post-Graduate Medical Education and Training

Scottish Police College

Scottish Land Court

Scottish Office

Scottish Record Office

Stationery Office

Tate Gallery

Treasury

Exchequer Office, Scotland

National Economic Development Council

Rating of Government Property Department

Treasury Solicitor's Department

Department of the Director of Public Prosecutions

Law Officers' Department

Department of the Procurator-General and Treasury Solicitor

Victoria and Albert Museum

Wallace Collection

Welsh Office

Central Council for Education and Training in Social Work

Commons Commissioners

Council for the Education and Training of Health Visitors

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Dental Estimates Board

Local Government Boundary Commission

Local Valuation Panels and Courts

National Health Service

National Health Service authorities

Public Health Laboratory Service Board

Rent Control Tribunals and Rent Assessment Panels and Committees

PARTIE IILISTE DES MATERIELS ACHETES PAR LES MINISTERES DE LA DEFENSE ET  
SOUIS AU CODE "ACHATS GOUVERNEMENTAUX"

Chapitre 25: Sel; soufre; terres et pierres; plâtres, chaux et ciments

Chapitre 26: Minerais métallurgiques, scories et cendres

Chapitre 27: Combustibles minéraux, huiles minérales et produits de leur distillation; matières bitumineuses; cires minérales

à l'exception de:

ex 27.10 carburants spéciaux

Chapitre 28: Produits chimiques inorganiques; composés inorganiques ou organiques de métaux précieux, d'éléments radio-actifs, de métaux des terres rares et d'isotopes

à l'exception de:

ex 28.09 explosifs  
ex 28.13 explosifs  
ex 28.14 gaz lacrymogènes  
ex 28.28 explosifs  
ex 28.32 explosifs  
ex 28.39 explosifs  
ex 28.50 produits toxicologiques  
ex 28.51 produits toxicologiques  
ex 28.54 explosifs

Chapitre 29: Produits chimiques organiques

à l'exception de:

ex 29.03 explosifs  
ex 29.04 explosifs  
ex 29.07 explosifs  
ex 29.08 explosifs  
ex 29.11 explosifs  
ex 29.12 explosifs  
ex 29.13 produits toxicologiques  
ex 29.14 produits toxicologiques  
ex 29.15 produits toxicologiques  
ex 29.21 produits toxicologiques  
ex 29.22 produits toxicologiques  
ex 29.23 produits toxicologiques  
ex 29.26 explosifs  
ex 29.27 produits toxicologiques  
ex 29.29 explosifs

Chapitre 30: Produits pharmaceutiques

Chapitre 31: Engrais

Chapitre 32: Extraits tannants et tinctoriaux; tanins et leurs dérivés; matières colorantes, couleurs, peintures, vernis et teintures; mastics, encres.

- Chapitre 33: Huiles essentielles et résinoïdes; produits de parfumerie ou de toilette et cosmétiques
- Chapitre 34: Savons, produits organiques tensio-actifs, préparations pour lessives, préparations lubrifiantes, cires artificielles, cires préparées, produits d'entretien, bougies et articles similaires, pâtes à modeler et "cires pour l'art dentaire".
- Chapitre 35: Matières albuminoïdes; colles; enzymes
- Chapitre 37: Produits photographiques et cinématographiques
- Chapitre 38: Produits divers des industries chimiques  
à l'exclusion de:  
ex 38.19: produits toxicologiques
- Chapitre 39: Matières plastiques artificielles, éthers et esters de la cellulose, résines artificielles et ouvrages en ces matières  
à l'exception de:  
ex 39.03: explosifs
- Chapitre 40: Caoutchouc naturel ou synthétique, factice pour caoutchouc et ouvrages en caoutchouc  
à l'exception de:  
ex 40.11: pneus à l'épreuve des balles
- Chapitre 41: Peaux et cuirs
- Chapitre 42: Ouvrages en cuir; articles de bourrellerie et de sellerie; articles de voyage, sacs à main et contenants similaires; ouvrages en boyaux
- Chapitre 43: Pelleteries et fourrures; pelleteries factices
- Chapitre 44: Bois, charbon de bois et ouvrages en bois
- Chapitre 45: Liège et ouvrages en liège
- Chapitre 46: Ouvrages de sparterie et de vannerie
- Chapitre 47: Matières servant à la fabrication du papier
- Chapitre 48: Papiers et cartons; ouvrages en pâte de cellulose, en papier et en carton
- Chapitre 49: Articles de librairie et produits des arts graphiques
- Chapitre 65: Coiffures et parties de coiffures
- Chapitre 66: Parapluies, parasols, cannes, fouets, cravaches et leurs parties

- Chapitre 67: Plumes et duvet apprêtés et articles en plumes ou en duvet; fleurs artificielles; ouvrages en cheveux
- Chapitre 68: Ouvrages en pierres, plâtre, ciment, amiante, mica et matières analogues
- Chapitre 69: Produits céramiques
- Chapitre 70: Verre et ouvrages en verre
- Chapitre 71: Perles fines, pierres gemmes et similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie
- Chapitre 73: Fonte, fer et acier
- Chapitre 74: Cuivre
- Chapitre 75: Nickel
- Chapitre 76: Aluminium
- Chapitre 77: Magnésium, béryllium (glucinium)
- Chapitre 78: Plomb
- Chapitre 79: Zinc
- Chapitre 80: Etain
- Chapitre 81: Autres métaux communs
- Chapitre 82: Outillage; articles de coutellerie et couverts de table, en métaux communs
- à l'exception de:
- ex 82.05 : outillage  
ex 82.07 : pièces d'outillage
- Chapitre 83: Ouvrages divers en métaux communs
- Chapitre 84: Chaudières, machines, appareils et engins mécaniques
- à l'exception de:
- ex 84.06 : moteurs  
ex 84.08 : autres propulseurs  
ex 84.45 : machines  
ex 84.53 : machines automatiques de traitement de l'information  
ex 84.55 : pièces du 84.53  
ex 84.59 : réacteurs nucléaires

Chapitre 85: Machines et appareils électriques et objets servant à des usages électrotechniques

à l'exception de:

ex 85.13 : télécommunications  
ex 85.15 : appareils de transmission

Chapitre 86: Véhicules et matériel pour voies ferrées; appareils de signalisation non électriques pour voies de communication

à l'exception de:

ex 86.02 : locomotives blindées  
ex 86.03 : autres locoblindés  
ex 86.05 : wagons blindés  
ex 86.06 : wagons ateliers  
ex 86.07 : wagons

Chapitre 87: Voitures automobiles, tracteurs, cycles et autres véhicules terrestres

à l'exception de:

87.08 : chars et automobiles blindés  
ex 87.01 : tracteurs  
ex 87.02 : véhicules militaires  
ex 87.03 : voitures de dépannage  
ex 87.09 : motocycles  
ex 87.14 : remorques

Chapitre 89: Navigation maritime et fluviale

à l'exception de:

89.01A : bateaux de guerre

Chapitre 90: Instruments et appareils d'optique, de photographie et de cinématographie, de mesure, de vérification, de précision; instruments et appareils médico-chirurgicaux;

à l'exception de:

ex 90.05 : jumelles  
ex 90.13 : instruments divers, lasers  
ex 90.14 : télémètres  
ex 90.28 : instruments de mesure électriques ou électroniques  
ex 90.11 : microscopes  
ex 90.17 : instruments médicaux  
ex 90.18 : appareils de mécanothérapie  
ex 90.19 : appareils d'orthopédie  
ex 90.20 : appareils rayon X

Chapitre 91: Horlogerie

Chapitre 92: Instruments de musique; appareils d'enregistrement ou de reproduction du son; appareils d'enregistrement ou de reproduction des images et du son en télévision; parties et accessoires de ces instruments et appareils

Chapitre 94: Meubles; mobilier médico-chirurgical; articles de literie et similaires

à l'exception de:

ex 94.01A: sièges aérodynes

Chapitre 95: Matières à tailler et à mouler, à l'état travaillé (y compris les ouvrages)

Chapitre 96: Ouvrages de brosseerie et pinceaux, balais, houppes et articles de tamiserie

Chapitre 98: Ouvrages divers

FINLAND

1. Agricultural Research Centre
2. Board of Navigation
3. Finnish Meteorological Institute
4. Government Printing Centre
5. Ministry of Justice
6. Mint of Finland
7. National Board of Aviation
8. National Board of Forestry
9. National Board of Water Resources
10. National Board of Vocational Education
11. State Fuel Centre
12. State Margarine Factory
13. State Nourishment Centre
14. State Purchasing Centre
15. Technical Research Centre
16. General Headquarters\*

Note 1

The listed entities include regional and local subdivisions.

Note 2

When a specific procurement decision may impair important national policy objectives the Finnish Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Finnish cabinet level.

Note 3

Procurement by defence entities (marked with \*) covers the following products:

Motor vehicles

- delivery cars
- light trucks
- motorcycles
- buses
- ambulances

Spare parts

Foodstuffs

- coffee, tea
- rice
- frozen fish
- dried fruits
- spices

Machines

- office machines
- laundry machines

Miscellaneous

HONG KONG

Entity

Hong Kong Government Supplies Department.

INDIA

S. No.	Purchasing entity	Categories of goods
1.	Oil and Natural Gas Commission	Offshore oil well drilling and allied equipment
2.	All India Radio )	Radio and TV broadcasting and allied equipment
3.	Doordarshan )	
4.	Ministry of Railways	Parts of railway and tramway locomotives and rolling stock

- I. This Agreement is limited to the categories of goods stated in Column 3.
- II. Purchases on behalf of All India Radio and Doordarshan are made by the Director-General of Supplies and Disposal.
- III. Rail parts are at present being imported against credit from International Development Agency (IDA) and the procedures prescribed for IDA credit are followed.
- IV. This Agreement does not extend to purchases in the context of bilateral arrangements that provide for balanced trade through a clearing account system.

JAMAICA

Jamaica Building Materials  
(division of the Jamaican State Trading Company)

JAPAN

Entities covered by the Accounts Law including all their sub-divisions, local offices and affiliates, as listed below.<sup>1,2</sup>

House of Representatives  
House of Councillors  
Supreme Court of Justice  
Board of Audit  
Cabinet  
Prime Minister's Office  
Fair Trade Commission  
National Public Safety Commission (National Police Agency)  
Environmental Disputes Co-ordination Commission  
Imperial Household Agency  
Administrative Management Agency  
Hokkaido Development Agency  
Defence Agency<sup>3</sup>  
Economic Planning Agency  
Science and Technology Agency  
Environment Agency  
Okinawa Development Agency  
National Land Agency  
Ministry of Justice  
Ministry of Foreign Affairs  
Ministry of Finance  
Ministry of Education  
Ministry of Health and Welfare  
Ministry of Agriculture, Forestry and Fisheries  
Ministry of International Trade and Industry  
Ministry of Transport  
Ministry of Posts and Telecommunications  
Ministry of Labour  
Ministry of Construction  
Ministry of Home Affairs  
Japanese National Railways<sup>4</sup>  
Japan Tobacco and Salt Public Corporation  
Nippon Telegraph and Telephone Public Corporation<sup>5</sup>

Notes

<sup>1</sup>Products for resale or for the use in the production of goods for sale are not included.

<sup>2</sup>Where it is provided under the laws and regulations existing at the time of the entry into force of this Agreement for Japan, entities contained in this list may award contracts to specific co-operatives or associations thereof in accordance with the special procedures.

<sup>3</sup>Procurement by the Defence Agency cover the following items:

<u>FSC</u>	<u>Description</u>
22	Railway equipment
24	Tractors
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery
37	Agricultural machinery and equipment
38	Construction, mining, excavating and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration, air conditioning, and air-circulating equipment
43	Pumps and compressors
45	Plumbing, heating and sanitation equipment
46	Water purification and sewage treatment equipment
47	Pipe, tubing, hose and fitting
48	Valves
51	Hand tools
52	Measuring tools
55	Lumber, millwork, plywood and veneer
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
65	Medical, dental, and veterinary equipment and supplies
6630	Chemical analysis instruments
6635	Physical properties testing equipment

<u>FSC</u>	<u>Description</u>
6640	Laboratory equipment and supplies
6645	Time-measuring instruments
6650	Optical instruments
6655	Geophysical and astronomical instruments
6660	Meteorological instruments and apparatus
6670	Scales and balances
6675	Drafting, surveying and mapping instruments
6680	Liquid and gas flow, liquid level, and mechanical motion measuring instruments
6685	Pressure, temperature, and humidity measuring and controlling instruments
6695	Combination and miscellaneous instruments
67	Photographic equipment
68	Chemicals and chemical products
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines and visible record equipment
75	Office supplies and devices
76	Books, maps and other publications
77	Musical instruments, phonographs and home-type radios
79	Cleaning equipment and supplies
80	Brushes, paints, sealers and adhesives
8110	Drums and cans
8115	Boxes, cartons and crates
8125	Bottles and jars
8130	Reels and spools
8135	Packaging and packing bulk materials
85	Toiletries
87	Agricultural supplies
93	Non-metallic fabricated materials
94	Non-metallic crude materials
99	Miscellaneous

<sup>4</sup>Materials connected with operational safety of transportation are not included.

<sup>5</sup>Public telecommunications equipment is not included.

NIGERIA1. Nigeria National Supplies Company:For purchases of the following products:<sup>1</sup>

- (a) Power generating equipment
- (b) Telecommunications equipment
- (c) Railway and structural parts and equipment
- (d) Public clearing equipment
- (e) Contractors plant
- (f) Drilling equipment for water, oil and geological surveys
- (g) Scientific instruments for survey
- (h) Aircraft and equipment
- (i) Fire fighting vehicles and equipment
- (j) Petrol industrial engines.

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<sup>1</sup> Subject to confirmation and modification.

NORWAY

1. National Road Services
2. Central Government Purchasing Office
3. Postal Services Administration
4. State Hospital
5. University of Oslo
6. Police Services
7. Norwegian Broadcasting Corporation
8. University of Trondheim
9. University of Bergen
10. Coastal Directorate
11. University of Tromsø
12. State Pollution Control Authority
13. National Civil Aviation Administration
14. Ministry of Defence\*
15. Norwegian Defence Medical Service\*
16. Airforce Material Command\*
17. Army Material Command\*
18. Navy Material Command\*
19. Combined Defence Material Command\*

Note 1

The listed entities include regional and local subdivisions

Note 2

When a specific procurement decision may impair important national policy objectives the Norwegian Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Norwegian cabinet level.

Note 3

Procurement by defence entities (marked with \*) covers the following products:

Replenishment material

- office machines and equipment, furniture, material for education, sport, welfare and other non-technical material

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Running supplies

- technical consumption material
- medical and dental supplies and dressings
- kitchen and mess inventory
- stationary and office supply
- publications
- musical instruments

Fuels

- fuels, lubricants and other oil products.

Motor vehicles

- passenger cars and transport vehicles
- ambulances
- fire engines
- aircraft service vehicles
- special purpose vehicles

Other technical equipment

- pilot equipment
- parachute equipment
- rescue equipment
- photo equipment
- pyro-technical equipment
- emergency electricity aggregate
- base, workshop, hangar and store equipment
- chemical/radiological equipment
- abc-safety protection equipment, workshops and stores

Medical and dental instruments

Catering equipment

- permanent operational equipment for kitchens, canteens, conference rooms, catering workshops and stores

SUISSE

- 1) Division centrale fédérale du matériel
- 2) Bibliothèque centrale fédérale
- 3) Direction des constructions fédérales
- 4) Ecole polytechnique fédérale de Zurich
- 5) Ecole polytechnique fédérale de Lausanne
- 6) Institut fédéral de recherches en matière de réacteurs
- 7) Institut fédéral de recherches forestières
- 8) Institut pour l'étude de la neige et des avalanches
- 9) Institut suisse de recherches nucléaires
- 10) Institut suisse de météorologie
- 11) Institut pour l'aménagement, l'épuration et la protection de l'eau
- 12) Service fédéral de l'hygiène publique
- 13) Bibliothèque nationale
- 14) Office fédéral de la protection civile<sup>1</sup>
- 15) Administration fédérale des douanes<sup>2</sup>
- 16) Régie fédérale des alcools
- 17) Monnaie fédérale
- 18) Bureau fédéral des mesures
- 19) Division de l'agriculture
- 20) Office fédéral de l'air
- 21) Office fédéral de l'économie hydraulique
- 22) Division commerciale du groupement de l'armement<sup>1</sup>
- 23) Département de la poste

Si une décision particulière concernant un marché peut compromettre la réalisation d'importants objectifs de politique nationale, le gouvernement suisse pourra juger nécessaire de dévier, dans le cas de marchés déterminés, au principe du traitement national inscrit dans l'Accord. Une décision à cet effet sera prise à l'échelon du gouvernement suisse.

Note 1

pour les produits, voir liste de matériel civil de la défense et de la protection civile.

Note 2

pour le corps des gardes frontière et les douaniers, voir liste de matériel civil de la défense et de la protection civile.

LISTE DES MATERIELS CIVILS DE LA DEFENSE ET DE LA PROTECTION CIVILE  
SOUIS AU CODE "ACHATS GOUVERNEMENTAUX"

Chapitre 25: Sel; soufre; terres et pierres; plâtres; chaux et ciments

Chapitre 26: Minerai métallurgiques, scories et cendres

Chapitre 27: Combustibles minéraux, siles minérales et produits de leur distillation; matières bitumineuses; cires minérales

Chapitre 28: Produits chimiques inorganiques; composés inorganiques ou organiques de métaux précieux, d'éléments radioactifs, de métaux des terres rares et d'isotopes.

à l'exception de:

ex 28.09 : explosifs  
ex 28.13 : explosifs  
ex 28.14 : gaz lacrymogènes  
ex 28.28 : explosifs  
ex 28.32 : explosifs  
ex 28.39 : explosifs  
ex 28.50 : produits toxicologiques  
ex 28.51 : produits toxicologiques  
ex 28.54 : explosifs

Chapitre 29: Produits chimiques organiques

à l'exception de:

ex 29.03 : explosifs  
ex 29.04 : explosifs  
ex 29.07 : explosifs  
ex 29.08 : explosifs  
ex 29.11 : explosifs  
ex 29.12 : explosifs  
ex 29.13 : produits toxicologiques  
ex 29.14 : produits toxicologiques  
ex 29.15 : produits toxicologiques  
ex 29.21 : produits toxicologiques  
ex 29.22 : produits toxicologiques  
ex 29.23 : produits toxicologiques  
ex 29.26 : explosifs  
ex 29.27 : produits toxicologiques  
ex 29.29 : explosifs

Chapitre 30: Produits pharmaceutiques

Chapitre 31: Engrais

Chapitre 32: Extraits tannants et tinctoriaux; tanins et leurs dérivés; matières colorantes, couleurs, peintures, vernis et teintures; mastics; encres

- Chapitre 33: Huiles essentielles et résinoïdes; produits de parfumerie ou de toilette et cosmétiques
- Chapitre 34: Savons, produits organiques tensio-actifs, préparations pour lessives, préparations lubrifiantes, cires artificielles, cires préparées, produits d'entretien, bougies et articles similaires, pâtes à modeler et "cires pour l'art dentaire".
- Chapitre 35: Matières albuminoïdes; colles; enzymes
- Chapitre 36: Poudres et explosifs; articles de pyrotechnie; allumettes; alliages pyrophoriques; matières inflammables
- à l'exception de:
- ex 36.01: poudres
  - ex 36.02: explosifs préparés
  - ex 36.04: détonnants
  - ex 36.08: explosifs
- Chapitre 37: Produits photographiques et cinématographiques
- Chapitre 38: Produits divers des industries chimiques
- à l'exception de:
- ex 38.19: produits toxicologiques
- Chapitre 39: Matières plastiques artificielles, éthers et esters de la cellulose, résines artificielles et ouvrages en ces matières
- à l'exception de:
- ex 39.03: explosifs
- Chapitre 40: Caoutchouc naturel ou synthétique, factice pour caoutchouc et ouvrages en caoutchouc
- à l'exception de:
- ex 40.11: pneus
- Chapitre 43: Pelleteries et fourrures; pelleteries factices
- Chapitre 45: Liège et ouvrages en liège
- Chapitre 46: Ouvrages de sparterie et de vannerie

- Chapitre 47: Matières servant à la fabrication du papier
- Chapitre 65: Coiffures et parties de coiffures
- Chapitre 66: Parapluies, parasols, cannes, fouets, cravaches et leurs parties
- Chapitre 67: Plumes et duvet apprêtés et articles en plumes ou en duvet; fleurs artificielles; ouvrages en cheveux
- Chapitre 68: Ouvrages en pierres, plâtre, ciment, amiante, mica et matières analogues
- Chapitre 69: Produits céramiques
- Chapitre 70: Verre et ouvrages en verre
- Chapitre 71: Perles fines, pierres gemmes et similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie
- Chapitre 73: Fonte, fer et acier
- Chapitre 74: Cuivre
- Chapitre 75: Nickel
- Chapitre 76: Aluminium
- Chapitre 77: Magnésium, beryllium (glucinium)
- Chapitre 78: Plomb
- Chapitre 79: Zinc
- Chapitre 80: Etain
- Chapitre 81: Autres métaux communs
- Chapitre 82: Outillage; articles de coutellerie et couverts de table, en métaux communs
- Chapitre 83: Ouvrages divers en métaux communs
- Chapitre 84: Chaudières, machines, appareils et engins mécaniques

Chapitre 85: Machines et Appareils électriques et Objets servant à des Usages électroniques.

à l'exception de:

- ex 85.03: Piles électriques
- ex 85.13: Télécommunications
- ex 85.15: Appareils de transmission

Chapitre 86: Véhicules et Matériel pour Voies ferrées; Appareils de Signalisation non électriques pour Voies de communication

à l'exception de:

- ex 86.02: Locomotives blindées
- ex 86.03: Autres Locoblindés
- ex 86.05: Wagons blindés
- ex 86.06: Wagons Ateliers
- ex 86.07: Wagons

Chapitre 87: Voitures automobiles, Tracteurs, Cycles et autres Véhicules terrestres

à l'exception de:

- 87.08: Chars et Automobiles blindés
- ex 87.02: Camions lourds
- ex 87.09: Motocycles
- ex 87.14: Remorques

Chapitre 88: Navigation aérienne

à l'exception de:

- ex 88.02: Avions

Chapitre 89: Navigation maritime et fluviale

Chapitre 90: Instruments et Appareils d'Optique, de Rotographie et de Cinématographie, de Mesure, de Vérification, de Précision; Instruments et Appareils médico-chirurgicaux;

à l'exception de:

- ex 90.05: Jumelles
- ex 90.13: Instruments divers, Lasers
- ex 90.14: Télémètres
- ex 90.28: Instruments de Mesure électriques ou électroniques

Chapitre 91: Horlogerie

Chapitre 92: Instruments de Musique; Appareils d'Enregistrement ou de Reproduction du Son; Appareils d'Enregistrement ou de Reproduction des Images et du Son en Télévision; Parties et Accessoires de ces Instruments et Appareils

Chapitre 93: Armes et munitionsà l'exception de:

- ex 93.01: Armes blanches
- ex 93.02: Pistolets
- ex 93.03: Armes de guerre
- ex 93.04: Armes à feu
- ex 93.05: Autres armes
- ex 93.07: Projectiles et munitions

Chapitre 95: Matières à tailler et à mouler, à l'état travaillé  
(y compris les ouvrages)Chapitre 96: Ouvrages de broserie et pinceaux, balais, houppes et  
articles de tamiserieChapitre 98: Ouvrages divers

SWEDEN

1. Defence Material Administration\*
2. National Road Administration
3. National Board of Public Building
4. National Industries Corporation\*
5. Post Office Administration
6. Swedish Forest Service
7. National Civil Aviation Administration
8. Royal Fortifications Administration\*
9. National Board of Education
10. National Police Board
11. Agency for Administrative Development
12. National Prison and Probation Administration
13. National Administration of Shipping and Navigation
14. National Tax Board
15. National Board of Forestry
16. Medical Board of the Armed Forces\*
17. National Road Safety Office
18. Royal Civil Defence Board\*
19. National Industrial Board
20. National Board of Health and Welfare
21. Central Bureau of Statistics

Note 1

The listed entities include regional and local subdivisions.

Note 2

When a specific procurement decision may impair important national policy objectives the Swedish Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Swedish cabinet level.

Note 3

Procurement by defence entities (marked with a \*) covers products falling under the following BTN-chapters:

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<u>BTM chapters</u>	<u>Exceptions</u>	
25 - 26		
27	ex 27.10	special fuels
28	ex 28.09	explosives
	ex 28.13	explosives
	ex 28.14	tear gas
	ex 28.28	explosives
	ex 28.32	explosives
	ex 28.39	explosives
	ex 28.50	toxic products
	ex 28.51	toxic products
	ex 28.54	explosives
29	ex 29.03	explosives
	ex 29.04	explosives
	ex 29.07	explosives
	ex 29.08	explosives
	ex 29.11	explosives
	ex 29.12	explosives
	ex 29.13	toxic products
	ex 29.14	toxic products
	ex 29.15	toxic products
	ex 29.21	toxic products
	ex 29.22	toxic products
	ex 29.23	toxic products
	ex 29.26	explosives
	ex 29.27	toxic products
	ex 29.29	explosives
30 - 81		
82	ex 82.05	hand tools
	ex 82.07	hand tool parts
83		
84	ex 84.06	engines
	ex 84.08	other engines
	ex 84.45	machinery
	ex 84.53	ADP-machines
85	ex 85.13	telecommunication equipment
	ex 85.15	transmission apparatus

<u>BTN chapters</u>	<u>Exceptions</u>	
86	ex 86.02	armoured locomotives
	86.03	other armoured locos
	86.05	armoured wagons
	86.06	repair wagons
	86.07	wagons
87	87.08	tanks and armoured vehicles
	ex 87.01	tractors
	ex 87.02	military vehicles
	ex 87.03	break-down lorries
	ex 87.09	motorcycles
	ex 87.14	towing vehicles
89	ex 89.01	warships
90	ex 90.05	binoculars
	ex 90.13	misc. instruments, lasers
	ex 90.14	telemotors
	ex 90.28	electric and electronic measurement instruments
91 - 92		
94	ex 94.01	aerodynamic seats
95 - 98		

UNITED STATES

The following entities are included in the coverage of this Agreement by the United States.

1. Department of Agriculture (This Agreement does not apply to procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes.)
2. Department of Commerce
3. Department of Health, Education and Welfare
4. Department of Housing and Urban Development
5. Department of the Interior (excluding the Bureau of Reclamation)
6. Department of Justice
7. Department of Labour
8. Department of State
9. Department of the Treasury
10. General Services Administration (Purchases by the Automated Data and Telecommunications Service are not included; purchases by the National Tool Centre are not included; purchases by the Regional 9 Office of San Francisco, California are not included)
11. National Aeronautics and Space Administration
12. Veterans Administration
13. Environmental Protection Agency
14. United States International Communication Agency
15. National Science Foundation
16. Panama Canal Company and Canal Zone Government
17. Executive Office of the President
18. Farm Credit Administration
19. National Credit Union Administration
20. Merit Systems Protection Board
21. ACTION
22. United States Arms Control and Disarmament Agency
23. Civil Aeronautics Board
24. Federal Home Loan Bank Board
25. National Labour Relations Board
26. National Mediation Board

UNITED STATES (cont'd)

27. Railroad Retirement Board
28. American Battle Monuments Commission
29. Federal Communications Commission
30. Federal Trade Commission
31. Indian Claims Commission
32. Inter-State Commerce Commission
33. Securities and Exchange Commission
34. Office of Personnel Management
35. United States International Trade Commission
36. Export-Import Bank of the United States
37. Federal Mediation and Conciliation Service
38. Selective Service System
39. Smithsonian Institution
40. Federal Deposit Insurance Corporation
41. Consumer Product Safety Commission
42. Equal Employment Opportunity Commission
43. Federal Maritime Commission
44. National Transportation Safety Board
45. Nuclear Regulatory Commission
46. Overseas Private Investment Corporation
47. Renegotiation Board
48. Administrative Conference of the United States
49. Board for International Broadcasting
50. Commission on Civil Rights
51. Commodity Futures Trading Commission
52. Community Services Administration
53. Department of Defence (excluding Corps of Engineers)

This Agreement will not apply to the following purchases of the DOD:

- (a) Federal Supply Classification (FSC) 83 - all elements of this classification other than pins, needles, sewing kits, flagstaffs, flagpoles, and flagstaff trucks;
- (b) FSC 84 - all elements other than sub-class 8460 (luggage);
- (c) FSC 89 - all elements other than sub-class 8975 (tobacco products)

UNITED STATES (cont'd)

- (d) FSC 2310 - (buses only);
- (e) Specialty metals, defined as steels melted in steel manufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by DOD: (1) manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.06 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminium, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or, (4) zirconium base alloys;
- (f) FSC 19 and 20 - that part of these classifications defined as naval vessels or major components of the hull or superstructure thereof;
- (g) FSC 51
- (h) Following FSC categories are not generally covered due to application of Part VIII, paragraph 1:

10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 50, 59, 95

This Agreement will generally apply to purchases of the following FSC categories subject to United States Government determinations under the provisions of Part VIII, paragraph 1:

- 22. Railway Equipment
- 23. Motor Vehicles, Trailers, and Cycles (except buses in 2310)
- 24. Tractors
- 25. Vehicular Equipment Components
- 26. Tyres and Tubes
- 29. Engine Accessories
- 30. Mechanical Power Transmission Equipment
- 32. Woodworking Machinery and Equipment
- 34. Metalworking Machinery
- 35. Service and Trade Equipment

UNITED STATES (cont'd)

36. Special Industry Machinery
37. Agricultural Machinery and Equipment
38. Construction, Mining, Excavating, and Highway Maintenance Equipment
39. Materials Handling Equipment
40. Rope, Cable, Chain and Fittings
41. Refrigeration and Air Conditioning Equipment
42. Fire Fighting, Rescue and Safety Equipment
43. Pumps and Compressors
44. Furnace, Steam Plant, Drying Equipment and Nuclear Reactors
45. Plumbing, Heating and Sanitation Equipment
46. Water Purification and Sewage Treatment Equipment
47. Pipe, Tubing, Hose and Fittings
48. Valves
49. Maintenance and Repair Ship Equipment
52. Measuring Tools
53. Hardware and Abrasives
54. Prefabricated Structures and Scaffolding
55. Lumber, Millwork, Plywood and Veneer
56. Construction and Building Materials
61. Electric Wire, and Power and Distribution Equipment
62. Lighting Fixtures and Lamps
63. Alarm and Signal Systems
65. Medical, Dental, and Veterinary Equipment and Supplies
66. Instruments and Laboratory Equipment
67. Photographic Equipment
68. Chemicals and Chemical Products
69. Training Aids and Devices
70. General Purpose ADPE, Software, Supplies and Support Equipment
71. Furniture
72. Household and Commercial Furnishings and Appliances
73. Food Preparation and Serving Equipment
74. Office Machines, Visible Record Equipment and ADP Equipment
75. Office Supplies and Devices
76. Books, Maps and Other Publications

UNITED STATES (cont'd)

- 77. Musical Instruments, Phonographs, and Home Type Radios
- 78. Recreational and Athletic Equipment
- 79. Cleaning Equipment and Supplies
- 80. Brushes, Paints, Sealers and Adhesives
- 81. Containers, Packaging and Packing Supplies
- 85. Toiletries
- 87. Agricultural Supplies
- 88. Live Animals
- 91. Fuels, Lubricants, Oils and Waxes
- 93. Non-metallic Fabricated Materials
- 94. Non-metallic Crude Materials
- 96. Ores, Minerals and their Primary Products
- 99. Miscellaneous

General Notes

1. Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses.
2. Pursuant to Part I, paragraph 1(a), transportation is not included in services incidental to procurement contracts.

ANNEX II<sup>1</sup>PUBLICATIONS UTILIZED BY PARTIES TO THIS AGREEMENT FOR THE  
PUBLICATION OF NOTICES OF PROPOSED PURCHASES -  
PART V, PARAGRAPH 3EUROPEAN ECONOMIC COMMUNITY

- Belgium - Official Journal of the European Communities  
- Le Bulletin des Adjudications  
- Other publications in the specialized press
- Denmark - Official Journal of the European Communities
- France - Official Journal of the European Communities
- F.R. Germany - Official Journal of the European Communities  
- Bundesanzeiger  
Postfach 108006  
5000 Köln 1  
- Bundesausschreibungsblatt GmbH  
Poststrasse 13  
4000 Düsseldorf 1
- Ireland - Official Journal of the European Communities  
- Daily Press: "Irish Independent", "Irish Times",  
"Irish Press", "Cork Examiner"
- Italy - Official Journal of the European Communities
- Luxembourg - Official Journal of the European Communities  
- Daily Press
- Netherlands - Official Journal of the European Communities
- United Kingdom - Official Journal of the European Communities

FINLAND

Official Gazette of Finland

JAPAN

Kampō (Official Gazette)

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<sup>1</sup>To be completed.

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NORWAY

Official Gazette of Norway

SUISSE

. Feuille officielle suisse du commerce

SWEDEN

Gazette of Government

Contracts, supplement to the Official Gazette

UNITED STATES

Commerce Business Daily

ANNEX III<sup>1/</sup>

PUBLICATIONS UTILIZED BY PARTIES TO THIS AGREEMENT FOR THE  
PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT  
LISTS OF SUPPLIERS IN THE CASE OF SELECTIVE  
TENDERING PROCEDURES - PART V, PARAGRAPH 6

JAPAN

Kampō (Official Gazette)

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<sup>1/</sup>To be completed.

ANNEX IV<sup>1/</sup>

PUBLICATIONS UTILIZED BY PARTIES TO THIS AGREEMENT  
FOR THE PROMPT PUBLICATION OF LAWS, REGULATIONS, JUDICIAL  
DECISIONS, ADMINISTRATIVE RULINGS OF GENERAL APPLICATION AND ANY  
PROCEDURE REGARDING GOVERNMENT PROCUREMENT COVERED BY THIS  
AGREEMENT - PART VI, PARAGRAPH 1

EUROPEAN ECONOMIC COMMUNITY

- Belgium - Laws, royal regulations, ministerial regulations, main  
          circulants on government procurement - Le Moniteur Belge  
- Jurisprudence - pasicrisie
- Denmark - Laws and regulations - Lovtidende  
- Judicial decisions - Ugeskrift for retsvaesen  
- Administrative rulings and procedures - ministerialtidende
- France - Legislation - Bulletin officiel  
- Jurisprudence - no official publication
- Germany - Legislation - Bundesgesetzblatt  
          - Herausgeber: Der Bundesminister der Justiz  
          - Verlag: Bundesanzeiger  
          - Bundesanzeiger  
          Postfach 108006  
          5000 Köln 1.  
- Judicial and administrative rulings:  
  Entscheidungsammlungen des  
- Bundesverfassungsgerichts  
- Bundesgerichtshofs  
- Bundesverwaltungsgerichts  
- Bundesfinanzhofs sowie der Oberlandsgerichts
- Ireland - Legislation and regulations - Iris Oifigiuil (official Gazette  
          of the Irish Government)

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<sup>1/</sup>To be completed.

- Italy
- Legislation - Gazette Ufficiale
  - Jurisprudence - no official publication
- Luxembourg
- Legislation - memorial
  - Jurisprudence - Pasicrisie
- Netherlands
- Legislation - Nederlandse Staatscourant and/or Staatsblad
  - Jurisprudence - no official publication
- United Kingdom
- Legislation - no such legislation
  - Jurisprudence - Law Reports
  - Standard Contract conditions -  
Document GC/Stores/1 obtainable from the  
Ministry of Defence. It should be noted that  
special conditions may apply to some contracts:  
details may be obtained from the department  
concerned.

FINLAND

The Code of Statutes of Finland (Suomen Asetuskokoelma - Finlands  
Författningssamling)

JAPAN

Genkō-nihon-hōki (Compilation of Current Laws and Regulations of  
Japan), and/or Kampo (Official Gazette)

NORWAY

The Code of Statutes of Norway (Norsk Lovtidend)

SUISSE

Recueil officiel des lois et ordonnances de la Confédération suisse (RO)

SWEDEN

1. The Swedish Code of Statutes (Svensk författningssamling, SFS)
2. Instructions to the Royal proclamations on Government Procurement, issued by the National Audit Bureau. (Riksrevisionsverkets tillämpningsanvisningar till upphandlingskungorelsen)

UNITED STATES

All U.S. laws, regulations, judicial decisions, administrative rulings and procedures regarding government procurement covered by this Agreement are codified in the Defense Acquisitions Regulation (DAR) and the Federal Procurement Regulations (FPR), both of which are published as a part of the U.S. Code of Federal Regulations (CFR). The DAR is published in Title 32 of CFR and the FPR is in Title 41, Chapter 1 (CFR). Copies may be purchased from the Government Printing Office. These regulations are also published in loose leaf versions which are available by subscription from the Government Printing Office. Changes are provided to subscribers as they are issued.

For those who wish to consult original sources, the following published sources are provided:

<u>Material</u>	<u>Publication Name</u>
U.S. Laws	U.S. Statutes at Large
Decisions:	
- U.S. Supreme Court	U.S. Reports
- Circuit Court of Appeals	Federal Reporter - 2nd Series
- District Courts	Federal Supplement Reporter
- Court of Claims	Court of Claims Reports
Decisions:	
- Boards of Contract Appeals	Unofficial publication by Commerce Clearing House

## Decisions:

- Comptroller General of the U.S.

Those not officially published as decisions of the Comptroller General are published unofficially by Federal Publications, Inc.

GENERAL AGREEMENT  
ON TARIFFS AND  
TRADE

ACCORD GENERAL SUR  
LES TARIFS DOUANIERS  
ET LE COMMERCE

RESTRICTED

MTN/WTM/W/211/Rev.2/Add.1  
11 April 1979

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Group "Non-Tariff Measures"  
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AGREEMENT ON GOVERNMENT PROCUREMENT

Communication from Canada

Addendum

The following list of Canadian entities should be inserted after page 34 in Annex I of document MTN/WTM/W/211/Rev.2.

Négociations commerciales multilatérales

Groupe "Mesures non tarifaires"  
Sous-Groupe "Achats gouvernementaux"

ACCORD SUR LES MARCHES PUBLICS

Communication du Canada

Addendum

Il convient d'insérer après la page 34 de l'annexe I du document MTN/WTM/W/211/Rev.2 la liste suivante des entités canadiennes.

Negociaciones Comerciales Multilaterales

Grupo "Medidas no arancelarias"  
Subgrupo "Compras del Estado"

ACUERDO SOBRE COMPRAS DEL SECTOR PUBLICO

Comunicación del Canadá

Addendum

La siguiente lista de entidades del Canadá debe incluirse a continuación de la página 34, en el anexo I del documento MTN/WTM/W/211/Rev.2.

CANADA

1. Department of Agriculture
2. Department of Consumer and Corporate Affairs
3. Department of Energy, Mines and Resources
4. Department of Fisheries and Environment  
(except Fisheries and Marine Service)  
including: Fisheries Price Support Board
5. Department of External Affairs
6. Department of Finance  
including: Department of Insurance  
Anti-Inflation Board  
Anti-Dumping Tribunal  
Municipal Development and Loan Board  
Auditor General
7. Department of Indian Affairs and Northern Development
8. Department of Industry, Trade and Commerce  
including: Statistics Canada  
Machinery and Equipment Advisory Board
9. Department of Justice  
including: Canadian Human Rights Commission  
Criminal Code Revision Commission  
Statute Revision Commission
10. Department of Labour  
including: Canada Labour Relations Board
11. Department of Employment and Immigration  
including: Immigration Appeal Board  
Canada Employment and Immigration Commission
12. Department of National Defence\*  
including: Defence Construction (1951) Limited
13. Department of National Health and Welfare  
including: Medical Research Council  
Office of the Coordinator, Status of Women
14. Department of Post Office (1)

(1) The Department of the Post Office is on this list of entities on the understanding that, should it cease to be a government department, the provisions of Part IX, paragraph 5(b) would not apply.

15. Department of Public Works
16. Department of Regional Economic Expansion
17. Department of Secretary of State of Canada  
including: National Library  
National Museum  
Public Archives  
Public Service Commission  
Office of the Representation Commissioner
18. Department of Solicitor General  
including: Royal Canadian Mounted Police \*  
Canadian Penitentiary Service  
National Parole Board
19. Department of Supply and Services (on its own account)  
including: Canadian Government Specifications Board
20. Department of Veterans Affairs  
including: Director of Veterans Land Act
21. National Research Council
22. Privy Council Office  
including: Canada Intergovernmental Conference Secretariat  
Commissioner of Official Languages  
Economic Council  
Public Service Staff Relations Board  
Federal Provincial Relations Office  
Office of the Governor General's Secretary  
Task Force on Canadian Unity
23. National Capital Commission
24. Ministry of State for Science and Technology  
including: Science Council
25. National Battlefields Commission
26. Office of the Chief Electoral Officer
27. Treasury Board
28. Canadian International Development Agency (on its own account)

\* The following products purchased by the Department of National Defence and the RCMP are included in the coverage of this Agreement, subject to the application of paragraph 1 of Part VIII.

(Numbers refer to the Federal Supply Classification Code)

- 22. Railway equipment
- 2340. Motorcycles, motor scooters and bicycles
- 24. Tractors
- 25. Vehicular equipment components
- 26. Tires and tubes
- 29. Engine accessories
- 30. Mechanical power transmission equipment
- 32. Woodworking machinery and equipment
- 34. Metal working machinery
- 35. Service and trade equipment
- 36. Special industry machinery
- 37. Agricultural machinery and equipment
- 38. Construction, mining, excavating and highway maintenance equipment
- 39. Materials handling equipment
- 40. Rope; cable, chain and fittings
- 41. Refrigeration and air conditioning equipment
- 42. Fire fighting, rescue and safety equipment  
(except 4220 Marine lifesaving and diving equipment  
4230 Decontaminating and impregnating equipment)
- 43. Pumps and compressors
- 44. Furnace, steam plant, drying equipment and nuclear reactors
- 45. Plumbing, heating and sanitation equipment
- 46. Water purification and sewage treatment equipment

47. Pipe, tubing, hose and fittings
48. Valves
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and laboratory equipment  
(except 6615: Automatic pilot mechanisms and airborne Gyro components  
6665: Hazard-detecting instruments and apparatus)
67. Photographic equipment
68. Chemicals and chemical products
70. General purpose automatic data processing equipment, software,  
supplies and support equipment  
(except 7010 ADPE configurations)
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, visible record equipment and automatic data  
processing equipment
75. Office supplies and devices
76. Books, maps and other publications  
(except 7650: Drawings and specifications)
77. Musical instruments, phonographs and home-type radios

- 78. Recreational and athletic equipment
- 79. Cleaning equipment and supplies
- 80. Brushes, paints, sealers and adhesives
- 81. Containers, packaging and packing supplies
- 8460. Luggage
- 85. Toiletries
- 87. Agricultural supplies
- 88. Live animals
- 91. Fuels, lubricants, oils and waxes
- 93. Non-metallic fabricated materials
- 94. Non-metallic crude materials
- 96. Ores, minerals and their primary products
- 99. Miscellaneous

General Note:

Notwithstanding the above, this Agreement does not apply to contracts set aside for small businesses.

C A N A D A

1. Ministère de l'agriculture
2. Ministère de la consommation et des corporations
3. Ministère de l'énergie, des mines et des ressources
4. Ministère des pêches et de l'environnement  
(sauf le Service des pêches et de la mer)  
y inclus: Office des prix des produits de la pêche
5. Ministère des affaires extérieures
6. Ministère des finances  
y inclus: Département des assurances  
Commission de lutte contre l'inflation  
Tribunal anti-dumping  
Office du développement municipal et  
des prêts aux municipalités  
Vérificateur général
7. Ministère des affaires indiennes et du Nord
8. Ministère de l'industrie et du commerce  
y inclus: Statistiques Canada  
Conseil consultatif de la machinerie  
et de l'équipement
9. Ministère de la justice  
y inclus: Commission canadienne des droits de la personne  
Commission de révision du Code pénal  
Commission de révision des lois
10. Ministère du travail  
y inclus: Conseil canadien des relations du travail
11. Ministère de l'emploi et de l'immigration  
y inclus: Commission d'appel de l'immigration  
Commission de l'emploi et de l'immigration  
du Canada
12. Ministère de la défense nationale \*  
y inclus: Construction de défense (1951) limitée
13. Ministère de la santé nationale et du bien-être  
social  
y inclus: Conseil de recherches médicales  
Bureau du coordonnateur de la situation  
de la femme
14. Ministère des postes (1)

(1) Le Ministère des postes est inclus dans cette liste d'entités, étant entendu que les dispositions du paragraphe 5(b) de la partie IX ne s'appliqueraient pas, dans l'éventualité où cette entité consisterait d'être un ministère.

15. Ministère des travaux publics
16. Ministère de l'expansion économique régionale
17. Secrétariat d'Etat  
y inclus: Bibliothèque nationale  
Musées nationaux  
Archives publiques  
Commission de la fonction publique  
Bureau du commissaire à la représentation
18. Ministère du Solliciteur général  
y inclus: Gendarmerie royale du Canada\*  
Service canadien des pénitenciers  
Commission nationale des libérations  
conditionnelles
19. Ministère des approvisionnements et services (pour son propre compte)  
y inclus: Office des normes du gouvernement canadien
20. Ministère des affaires des anciens combattants  
y inclus: Office de l'établissement agricole des  
anciens combattants
21. Conseil national de recherches
22. Bureau du Conseil privé  
y inclus: Secrétariat des conférences intergouvernementales  
canadiennes  
Commissaire aux langues officielles  
Conseil économique  
Commission des relations de travail dans  
la fonction publique  
Bureau des relations fédérales-provinciales  
Bureau du secrétaire du Gouverneur-Général  
Commission sur l'unité canadienne
23. Commission de la capitale nationale
24. Ministère d'Etat aux sciences et à la technologie  
y inclus: Conseil des sciences du Canada
25. Commission des champs de bataille nationaux
26. Bureau du directeur général des élections
27. Conseil du trésor
28. Agence canadienne de développement international (pour son propre compte)

\* Les produits suivants achetés par le Ministère de la défense nationale et la GRC font partie du champ d'application de cet Accord, sous réserve de l'application du paragraphe 1 de la partie VIII.

(Les numéros sont ceux de la classification fédérale d'approvisionnement)

- 22. Matériel ferroviaire
- 2340. Motocyclettes, scooters et bicyclettes
- 24. Tracteurs
- 25. Organes de matériel véhiculaire
- 26. Pneus et chambres à air
- 29. Accessoires de moteurs
- 30. Matériel de transmission de force mécanique
- 32. Matériel et machines à bois
- 34. Machines-outils pour le travail des métaux
- 35. Equipement commercial et de service
- 36. Machinerie industrielle spéciale
- 37. Machines et équipement aratoires
- 38. Equipement pour la construction, les mines, le déblaiement et l'entretien des routes
- 39. Equipement de manutention des matériaux
- 40. Cordes, cables, chaines et raccords
- 41. Matériel de réfrigération et de climatisation
- 42. Equipement de sécurité, de secours et de lutte contre l'incendie  
(sauf 4220 Equipement de plongée et de secours marin  
4230 Equipement d'imprégnation et de décontamination)
- 43. Pompes et compresseurs
- 44. Matériel de fours, de machines à vapeur, de sécheurs et de réacteurs nucléaires
- 45. Matériel de plomberie, de chauffage et matériel sanitaire
- 46. Matériel d'épuration de l'eau et de traitement des eaux d'égouts

- 47. Tuyaux rigides, tubes, tuyaux flexibles et raccords
- 48. Soupapes
- 52. Instruments de mesure
- 53. Quincaillerie et abrasifs
- 54. Structures et échafaudages préfabriqués
- 55. Bois de construction, de menuiserie, contre-plaqué et placages
- 56. Matériaux de construction
- 61. Fils électriques et matériel d'alimentation et de distribution électrique
- 62. Lampes et accessoires électriques
- 63. Systèmes d'alarme et de signalisation
- 65. Equipement et approvisionnement médicaux, dentaires et vétérinaires
- 66. Instruments et équipement de laboratoire  
(sauf 6615 Mécanismes de pilote automatique et parties constituantes gyroscopiques aéroportées  
6665 Instruments et appareils de détection des dangers)
- 67. Equipement photographique
- 68. Produits chimiques
- 70. Equipement de traitement automatique des données de nature générale, logiciel, fournitures et matériel de soutien (sauf 7010 Configurations d'équipement de traitement automatique des données)
- 71. Ameublement
- 72. Fournitures et accessoires commerciaux et ménagers
- 73. Equipement de préparation et de services alimentaires
- 74. Machines de bureau, matériel d'enregistrement visuel et de traitement des données
- 75. Fournitures et matériel de bureau
- 76. Livres, cartes et publications diverses (sauf 7650 Plans et spécifications)
- 77. Instruments de musique, phonographes et postes de radio domestiques

- 78. Equipement d'athlétisme et de récréation
- 79. Matériel et fourniture de nettoyage
- 80. Pinceaux, peintures, matériel à sceller et adhésifs
- 81. Conteneurs, matériel d'emballage et d'empaquetage
- 8460. Bagages
- 85. Nécessaires de toilette
- 87. Provisions agricoles
- 88. Animaux vivants
- 91. Carburants, lubrifiants, huiles et cires
- 93. Matériel fabriqué non-métallique
- 94. Matériel brut non-métallique
- 96. Minerais, minéraux et leurs produits de base
- 99. Divers

Note de portée générale

Malgré ce qui précède, cet Accord ne s'applique pas aux marchés réservés aux petites entreprises.

