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NEW GATT PROCUREMENT AGREEMENT GIVES INTERNATIONAL ACCESS TO HUNDREDS OF BILLIONS OF DOLLARS OF GOVERNMENT PURCHASES

In parallel with the conclusion of the Uruguay Round, negotiators agreed this morning on a new Agreement on Government Procurement which will open up to international competition government purchases worth several hundred billion dollars each year.

The new Agreement on Government Procurement will supersede the existing Agreement which has been in force since 1979. It will greatly extend the scope of international competition in this area, covering, for the first time, services, including construction services, procurement at the sub-central level, for example States, Provinces, Departments and Prefectures and procurement by public utilities. In all the coverage will be expanded by some ten-fold in comparison to that under the old Agreement.

In addition, the Agreement will reinforce the rules applying in this area aimed at guaranteeing fair and non-discriminatory conditions of international competition. It will, for example, require governments to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event that such decisions are made inconsistently with the requirements of the Agreement.

The cornerstone of the rules is national treatment: foreign suppliers and foreign goods and services must be given no less favourable treatment in government procurement than national suppliers and goods and services. In order to ensure that this basic principle is followed and that foreign suppliers have an equal opportunity to compete, the Agreement deals in some detail with tendering procedures, the use of technical specifications in invitations to bid, the conditions on the qualification of suppliers eligible to bid, the publication of invitations to tender, time limits for tendering and delivery, the contents of tender documentation provided to potential suppliers, the submission, receipt and opening of tenders and awarding of contracts and *ex post* information regarding the award of contracts.

In addition to the thirty-five or so pages containing these rules to secure open and non-discriminatory procurement, the Agreement contains in some two hundred pages of Annexes lists of

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the procuring entities of participating governments which will be subject to the rules of the Agreement. Annex 1 lists central government entities. Annex 2 lists covered entities at the sub-central government level and Annex 3 other entities subject to the rules of the Agreement, such as public utilities. Annexes 4 and 5 define the services and construction services whose procurement by the covered entities is subject to the Agreement's rules.

The Agreement applies to contracts which are above certain thresholds in value. In the case of central government purchases of goods and services, the threshold is SDR 130,000 (some \$176,000). For purchases of goods and services by sub-central government entities, the threshold varies but is generally in the region of SDR 200,000. In regard to utilities, the threshold for goods and services is generally in the area of SDR 400,000. As regards construction contracts, in general the threshold value is SDR 5,000,000.

The effect of the Agreement will be that the great majority of central government procurement above the threshold is opened to international competition. The same applies to sub-central government procurement where participants have offered all or most of the first level of sub-central government as well as, in most cases, their municipalities or major cities. In regard to public utilities and parastatals, such areas as ports, airports, water and electricity are widely covered.

Although the Agreement is considered a balanced package as it stands, participants intend to further expand the coverage of commitments prior to its signature in April next year and subsequently prior to its entry into force at the beginning of 1996. This applies in particular to a negotiated settlement between the US and the EC outside central government, which would enable these participants to apply commitments to each other in these areas. Improvements would be applied on a non-discriminatory basis to all participants.

The new Government Procurement Agreement will constitute part of the Multilateral Trade Organization, being a plurilateral agreement that not all MTO Members will be asked to accept. The countries that have participated in and concluded the negotiations are: Austria, Canada, the European Communities, Finland, Hong Kong, Israel, Japan, the Republic of Korea, Norway, Sweden, Switzerland and the United States of America. Other governments will of course be able to negotiate their accession to the new procurement Agreement.