

**Working Group on Transparency  
in Government Procurement**

**REPORT ON THE MEETING OF 10-11 OCTOBER 2002**

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its fifteenth meeting on 10-11 October 2002 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).
2. The agenda for the meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) technical assistance and capacity building; (iii) observer status of international intergovernmental organizations; and (iv) date of the next meeting. The Working Group agreed to adopt the agenda as proposed.
  - A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES
3. By way of general comments under this agenda item, the representative of China said that transparent procurement procedures enabled governments to obtain the greatest value for expenditure, contributed to a predictable and stable investment environment and to reducing and eliminating corruption. As part of its WTO accession process, China had made commitments to ensure transparency in its government procurement system. Since its accession to the WTO, China had promulgated the National Procurement Law on 29 June 2002 which would enter into effect on 1 January 2003. The Law stipulated the transparency principle both in the general chapters and under specific chapters relating to qualification of suppliers, contract awards, bid challenge and supervision. China believed that the new Law and the detailed implementing regulations had ensured the establishment of a fully open and predictable procurement environment. All laws and regulations relating to government procurement procedures had been published in the Gazette and on the Internet. Turning to the work of the Working Group, he said that the discussions should be limited to the transparency aspects of government procurement as per the Doha Ministerial Declaration. Considering that transparency was a complicated issue and that the obligations on transparency in other WTO areas entailed a heavy burden on developing countries, the Working Group should be cautious in defining the scope and coverage of future transparency obligations. The Group's current work should focus on agreeing on general principles of transparency rather than on developing detailed provisions.
4. The representative of Japan introduced the communication from her delegation stating Japan's position with respect to an agreement on transparency in government procurement contained in document WT/WGTGP/W/37.
5. The representative of Malaysia disagreed with the view expressed in the communication by Japan that the Working Group had largely accomplished the study mandated by the Singapore Ministerial Conference which implied that the Group's work could move into the next phase without a consensus. The Group should continue its study of elements based on the "List of Issues Raised and

Points Made". The representative of the Philippines said that it would be premature to discuss a framework agreement at the present stage.

6. The representatives of the European Community, Switzerland and Australia said that their delegations supported the thrust of the views expressed by Japan in its communication.

7. The representative of the European Community said that the Group had exhausted the discussion of the items in the List of Issues. The work should now focus on identifying the elements to be included in a transparency agreement even though the matter of how those issues could be reflected in a future agreement should be left aside for the time being. Developing countries should be provided flexibility in the application of the future obligations but how this should be done was a matter that should be addressed in the negotiations.

8. With regard to the six elements suggested by Japan, the representative of Switzerland said that some additional elements could be considered. The representative of Pakistan asked how the elements proposed by Japan fitted in with the twelve elements under discussion in the Group. The representative of Korea supported the elements listed by Japan.

9. Referring to the non-discrimination principle listed by Japan as being an important element of a future agreement, the representative of Malaysia asked how Japan saw the relationship of this principle to transparency. The representative of Egypt asked how the non-discrimination principle could be made compatible with the future provisions on special and differential treatment. In response, the representative of Japan said that foreign suppliers should be granted non-discriminatory treatment in the application of transparency rules and procedures. However, this should not preclude the right of countries to give preferences to domestic suppliers.

10. The representative of the United States introduced the communication by her delegation setting forth its ideas regarding the organization of the work of the Group over the period leading up to the Cancún Ministerial Conference contained in document WT/WGTGP/W/35. She said that the proposed organization of the discussion under four categories of elements would help to refine the debate on the outstanding issues and could provide a basis for the identification of the elements that could be included in a future agreement.

11. The representatives of Korea; Brazil; Hungary; the European Community; Israel; Canada; Switzerland; Australia; and Hong Kong, China supported the suggestion of the United States as a basis for moving the Group's work forward.

12. The representative of Brazil said that the work should focus on the Group's mandate to identify the elements of an agreement although it might be difficult to agree on the appropriateness of including certain elements.

13. The representative of Malaysia said that, while a convergence of views seemed to be emerging in some areas, it was premature to begin the categorization of issues at this stage. The Group had yet to conclude its work on the clarification of certain issues before it could reach consensus on any of the elements pursuant to the Doha Ministerial mandate. Developing countries had difficulties essentially with two elements, namely domestic review procedures and the application of WTO dispute settlement procedures. Although the details of some of the other elements might also cause some difficulties, by and large, they were acceptable. The categorization of elements could only be feasible if there were an explicit consensus to proceed with the negotiations at the Cancún Ministerial meeting built on the progress achieved by that time.

14. The representative of the Philippines said that the submissions by the United States and Japan sought to introduce a qualitative change in the discussion of the twelve elements.

15. The representative of Singapore said that a transparency agreement would benefit all countries including developing countries. The application of transparency principles to procurement helped to achieve the objective of better value for money in government procurement and improved procurement decisions. However, the Group would need to take into account developing country concerns on certain issues. For instance, the application of the WTO Dispute Settlement Understanding (DSU) to a transparency agreement needed to be carefully considered. Supported by the representative of Egypt, she added that any reference to the issue of corruption in public procurement might not be helpful to the process under way.

16. The representative of the European Community said that the time had come to build consensus in the Group around the basic principles that should be included in a future transparency agreement and to identify the elements to be negotiated. The work plan proposed by the United States was in line with the reference to the modalities for negotiations in the Doha mandate. It was crucial to use the time-period until the Cancún Ministerial Conference to address the issues before the Group. If the discussion in the Group were left open-ended, the Ministers would not be able to reach a decision on modalities of negotiations, such as the content of the future discussions and the time-frame for the negotiations. Basic transparency principles included, among others, subjecting national rules and practices to domestic review procedures.

17. The representative of Canada said that the United States suggestion to pursue the discussion of the elements under four categories would help to reach a better understanding of the progress made in the Group on the study of these elements. The final form and the contents of an agreement could only be refined through negotiations.

18. The representative of Switzerland said that the approach suggested by the United States would enable the Group to have a more in-depth examination of any outstanding issues. The Group should consider the modalities of future negotiations, which could include a time-frame for negotiations and the possible elements.

19. The representative of Australia said that the Group's work should be speeded up. The suggested categorization of the elements would enable a more substantive discussion of the items in the List of Issues.

20. The representative of Hong Kong, China said that transparency in government procurement fostered competition. Her delegation supported the early conclusion of a multilateral agreement.

21. The representative of Egypt said that the Group's mandate excluded any commitments on market access. Supported by the representatives of Pakistan and the Philippines, he said that, although the issues before the Group had been discussed several times, there was no convergence of views among delegations on certain issues, for instance relating to definition and scope, procurement methods, time-periods, domestic review procedures and the application of WTO dispute settlement procedures.

22. The representative of India said that the categorization of elements was premature. The Group's main task was to achieve a better understanding of what transparency in government procurement meant. Matters relating to administration of domestic laws and regulations did not fall within the purview of transparency. The Working Group should address any burden that future requirements might incur on developing countries. One question with respect to the benefits of transparency was whether the additional cost of a transparent procurement system could be justified by its incremental benefits. Transparency could not be the overriding priority in all procurement cases. It might have to be balanced against certain other objectives, for example providing local manufacturers with certain advantages under employment-generating programmes or better utilising locally available factors of production. The Group's work should focus on the type of information that should be provided to suppliers on a Member's government procurement system. On the other

hand, the need for transparency in specific procurements would depend on the purpose of the procurement and the policy objectives sought. While the information provided in tender notices would have to be adequate for the preparation of responsive bids and should be uniformly provided to all suppliers, the provision of information on who should be eligible to respond to a particular tender should take into account policies targeting certain suppliers. As to the ramifications of transparency beyond government procurement, the fight against corruption required better policing, a matter which went beyond the concern of the WTO. Finally, Members generally agreed to the benefits of transparency but several elements discussed in the Group did not pertain to transparency at all and some only to the extent that the future requirements would be limited to provision of information. Whether a future agreement would be a binding agreement or a principle-based one could be decided once Members had a clearer view of what transparency meant. Her delegation was not convinced of the need for any linkage to the WTO Dispute Settlement Understanding given that only transparency in government procurement was under consideration.

23. The representative of Cuba said that, in order to comply with the Doha mandate which referred to development priorities, the Group should carry out its work on the basis of the List of Issues. If the discussions were to be speeded up, the Group would find itself with the same problems that it had faced with the proposals that had been tabled prior to the Seattle Ministerial Conference. At that time, a number of developing country Members had not been in a position to go along with the proposals that had gone beyond the Singapore mandate.

24. The representative of the United States said that, under the mandates of both the Singapore and the Doha Ministerial Declarations, the Group was not required to decide on how the specific details of the elements under discussion would be reflected in a future agreement. The Group was still carrying out its work under the Singapore Ministerial mandate. Members would only be able to build on the progress made in the Working Group as per the Doha Ministerial mandate if the Group could examine in more detail those issues that were of particular concern to developing countries, for instance the linkage to the WTO Dispute Settlement Understanding. Her delegation believed that any agreement had to be a legally binding one in order to fit into the overall WTO system. However, a special mechanism could be envisaged to address any developing country issues before invoking WTO dispute settlement procedures. The Group's work should be geared to developing a constructive approach aimed at accommodating the concerns of developing countries in the negotiations.

25. The Working Group took up items VI-XII in the informal note by the Chairman "List of Issues Raised and Points Made" contained in JOB(99)6782 of November 1999, commenting on each item in turn and using the summary note by the Secretariat "Work of the Working Group on Matters Related to Items VI-XII of the List of Issues Raised and Points Made" contained in document WT/WGTGP/W/33. The Group also had before it a communication by Canada on contract awards contained in document WT/WGTGP/W/36 and a note by the United States on capacity-building considerations relating to transparency in government procurement contained in document WT/WGTGP/W/34. In addition, a non-paper was presented by Australia on the transparency of decisions on qualification contained in JOB(02)/142.

#### Transparency of Decisions on Qualification

26. The representative of Canada introduced the communication by her delegation on transparency of contract award decisions which also addressed the issue of transparency of qualification decisions contained in document WT/WGTGP/W/36. She said that a transparency agreement should allow for flexibility in respect of the establishment of the criteria for qualification and registration processes.

27. The representative of the European Community, joined by the representatives of Switzerland and Brazil, said that, notwithstanding entities' rights to define the evaluation criteria, a future agreement should ensure that decisions on qualification and contract awards were taken based on

clear and objective criteria that were pre-disclosed and made known to all interested suppliers well in advance.

28. The representative of the European Community said that time-limits were an important aspect of transparency and they should be taken into account in the qualification process, for instance in relation to transmission and receipt of certificates related to qualification and other relevant documents.

29. The representative of Japan said that transparency in qualification and in contract award decisions was among the core transparency principles in the area of government procurement.

30. The representative of the United States, joined by the representatives of Canada, Switzerland, Australia, Japan and Brazil, supported the views expressed in Canada's submission. The representative of Switzerland said that transparency in decisions at the qualification stage was important. Procuring entities should be required to declare any limitations to participation on the basis of nationality and any new information should be made available in a non-discriminatory manner. The procedures for qualification and the basis for selecting suppliers in the lists of qualification systems should be made available to all interested parties. Participation in qualification lists should not be exclusive and should be regularly updated with new suppliers meeting the qualification criteria.

31. The representative of Australia introduced the non-paper recently submitted by his delegation on qualification decisions contained in JOB(02)/142.

32. The representative of Brazil said that the provisions on qualification in a transparency agreement should be limited to setting out general principles and criteria and should not be overly prescriptive. While it should be up to national legislation to define the general criteria for the qualification of potential suppliers, such criteria should not have the effect of restricting access of any supplier who demonstrated capability to fulfil the requirements of the tender. The main objective of qualification procedures was to facilitate the work of procuring entities in identifying suitable suppliers for their needs. Maintenance of qualification systems was not incompatible with the general concept of transparency as long as related decisions were not used as barriers to access by interested suppliers. While it may be desirable to have a common national system for qualification, this should not exclude the possibility of setting forth specific criteria in individual tenders. There was no need to address the issue of time-periods that applied to the different stages of administrative procedures. Under the draft procurement Bill that was before the Brazilian Congress, tendering procedures could occur before the stage of qualification procedures as a way of speeding up the tendering process and making it less burdensome for the procuring entities.

33. The representative of Thailand said that his delegation had questions regarding the extent to which information on qualification criteria could be made available since confidential information would not be disclosed under a transparency agreement, and also on how confidential information related to government policies would be treated.

#### Transparency of Contract Award Decisions

34. Referring to her delegation's communication contained in document WT/WGTGP/W/36, the representative of Canada said that the transparency of contract award decisions was one of the main elements of a future agreement. The award criteria expressed the government's needs and priorities as they were to be carried out in a procurement process. Members therefore needed the flexibility to establish the appropriate criteria, such as price, the preferred characteristics of the product and other preferences. The Doha Ministerial mandate made it clear that Members had flexibility to establish criteria for the award of a contract. The transparency agreement would not restrict the scope of Members to give preferences to domestic supplies and suppliers as per the Doha Declaration. The

Working Group should address the means by which such flexibility could be implemented while ensuring transparency of decisions. There should be provisions assuring that transparency of award decisions be achieved by specifying the award criteria and other requirements in the tender documents; taking award decisions solely on the basis of the criteria provided; and making award decision information available to suppliers and other parties. There was general agreement that governments should not have to disclose confidential information. Turning to the question of benefits, she said that transparency of award decisions was consistent with the rules-based trading environment embodied in the international trading system. The importance of transparency, predictability and consistency in the application of measures relating to international trade had been recognized since the inception of the GATT 1947. The benefits of the transparency of award decisions included economic efficiency for procuring entities, taxpayers and suppliers as well as predictability and confidence in the procurement system.

35. The representative of Switzerland said that Members should have flexibility in choosing the criteria but full transparency should be provided of the chosen criteria. The possibility of changing the criteria during an ongoing procurement process should be allowed only under limited conditions and in clearly defined circumstances. The criteria should be made available to all involved in the procurement process. Any new information, for instance any negotiations foreseen or clarification given during the process, should be made known to all interested parties.

36. With respect to *ex post* information, the representative of Switzerland said that decisions of procurement entities should be made public or, at least, made known to interested parties. The representative of the European Community, joined by the representative of the United States, said that a future transparency agreement should have a provision requiring that unsuccessful bidders be informed of the rejection of their bid, and, on request, be given information as to the reasons why their bid had been rejected and the winning bid had been chosen.

37. The representative of Malaysia said his country responded to requests for information from unsuccessful bidders. However, a mandatory requirement in a multilateral agreement in this respect should be should be drafted in such a way as to avoid burden on developing countries.

38. The representative of Canada said the Working Group seemed close to reaching a consensus on the value of making information on award decisions available to suppliers and other interested parties. Future requirements in this respect should cover both successful and unsuccessful suppliers, as the information provided was helpful to both.

39. The representative of Brazil said that, in order to allow flexibility in the application of the agreement, the provisions in respect of contract award decisions should be limited to general principles and criteria, leaving more detailed regulation to national legislation.

40. Referring to the issue of negotiations in the procurement process, the representative of Brazil said that a transparency agreement should not preclude the use of negotiations in accordance with national legislation subject to conditions of transparency. This method was used to great effect in his country as a means of achieving enhanced conditions, in both technical and financial terms, in tenders. The representative of the United States said that it was important that suppliers were made aware of the possibility of negotiations in advance, for instance by stating this in tender documents.

### Domestic Review Procedures

41. The representative of the European Community said that a transparency agreement should have provisions to ensure the existence of an independent domestic review body which could either be a judicial or an administrative body. Members should have flexibility regarding the way in which they would implement domestic review procedures. The purpose of the provisions would not be to address the substance of the decisions made by a procurement entity but to set out certain principles for access to reviews by bidders. Since many Members appeared to have domestic review systems in place, complying with a requirement to ensure the independence of the review bodies should not entail any additional burden on them.

42. The representative of Singapore considered that a bid challenge mechanism was an integral part of national procurement systems.

43. The representative of Brazil said the Group should avoid adopting an overly prescriptive approach to domestic review procedures. Since the agreement would be limited to transparency, there should not be any presumption or indication that it was creating commitments between Members in this respect. There was no need for provisions prescribing a common system of review for Members. However, it was essential to have a provision requiring the existence of review mechanisms and setting forth some general principles that should be respected, such as transparency, legality and equality of treatment. It was important to ensure that national legislation established appropriate mechanisms for reviews of complaints by suppliers. Further, recourse to an administrative review body should not preclude suppliers who felt that their complaint had not been adequately addressed from having recourse to judicial review. Foreign suppliers should have the same access to national administrative and judicial reviews as national suppliers. In the case of tenders limited to national suppliers, only those national suppliers that were entitled to take part in the tender should be eligible for an administrative or judicial review.

44. The representative of India said that most WTO Members had reasonably adequate domestic administrative audit and judicial mechanisms to ensure that actions of all parties involved in a procurement process complied with the relevant rules and procedures. The primacy of domestic laws and procedures should be preserved, and there should be no requirements to change such laws and procedures. Given that the Group's work was on the transparency aspects of procurement, the existence of domestic mechanisms should be adequate to satisfy any transparency requirements. The development of a uniform review mechanism would involve an administrative burden for developing countries. The cost of challenge procedures and obtaining remedies would outweigh the benefits of the *ex post* information that this mechanism provided to suppliers. In addition to the availability of recourse to national courts or independent surveillance bodies, entities had in place audit teams for large procurements. The establishment of separate review bodies may be far too expensive and impractical.

45. The representative of China said that many Members had review mechanisms in place under their domestic laws or regulations. The creation of a uniform mechanism under the agreement would go beyond transparency.

46. The representative of Cuba said that transparency in this respect should mean providing information to suppliers on the existence and operation of Members' domestic review procedures. The type of review mechanisms and procedures to be used should be left up to each Member on the understanding that the mechanism itself was transparent.

47. The representative of Malaysia said that the issue of domestic review procedures delved into the realm of market access. Questioning the procurement decisions of a procurement authority went beyond transparency.

48. The representative of Pakistan said that Members had their own domestic legislation and administrative arrangements to guarantee that aggrieved parties had the possibility of seeking redress. It would be counterproductive to go beyond transparency-related issues into the realm of sovereign decisions by governments.

49. The representative of the United States said that domestic review procedures could be an important means of ensuring compliance with the basic obligations of an agreement. However, there should be flexibility to implement the procedures in accordance with Members' own domestic systems provided that they met certain basic standards which should be negotiated as part of the transparency agreement. Meanwhile, all Members needed to agree that a domestic review procedure was an important element of the future agreement.

#### Other Matters Related to Transparency

##### *(i) Maintenance of records*

50. The representative of Brazil, joined by the representatives of China, Morocco and India, said that, while it was important to maintain records of procurement proceedings, any provisions in a future agreement should allow domestic legislation to determine the periods and the means of maintaining the records.

51. The representative of the European Community said maintenance of records by procuring entities and domestic review bodies was essential to facilitating access to information by unsuccessful suppliers about how the procurement had been carried out.

52. The representative of the United States, joined by the representative of Japan, noted that, though an important requirement, at this stage the maintenance of records needed only to be recognized as one of the elements of an agreement, leaving details such as time-periods to be addressed in the negotiations.

##### *(ii) Information technology*

53. The representative of Switzerland said his delegation had been impressed by the presentations made by the speakers from Singapore and Brazil in the Symposium held the previous day on the benefits of information technology in promoting transparency. Supported by the representative of China, he suggested that a future agreement should incorporate, at least, a best-efforts clause in relation to the use of information technology. The representative of Brazil said that his country considered information technology to be very useful for increasing transparency, reducing costs, and for the speeding up of procurement processes. However, since Members were at different levels of development, rather than setting forth any prescriptive provisions in this area, the future agreement could encourage the application of information technology. Brazil would be willing to extend technical cooperation in this area, within its means, to interested parties.

54. The representative of India said that procuring agencies in a great number of Members provided information electronically through websites. This improved efficiency of the system, added value to its users and also helped in controlling bribery. However any international rules in this respect should take into account local conditions in developing countries.

55. The representatives of the European Community, the United States, Rwanda, China and Morocco supported a best-efforts type obligation in respect of application of information technology to government procurement.



56. The representatives of Rwanda, Mali and China said that, although the application of information technology to government procurement was cost effective and enabled the dissemination of information widely, developing countries lacked capacity, both in terms of human resources and technology, to apply the new systems. To be on the same footing with the systems in developed countries would require technical assistance.

(iii) *Language*

57. The representative of Brazil, joined by the representatives of the United States and China, said that the national language should prevail in procurement-related matters. Any requirements to provide information in one of the WTO official languages would impose overly burdensome obligations on those Members whose national language was not a WTO language. This would not preclude any Member that had an interest in attracting foreign suppliers from issuing tenders in foreign languages. The representative of the United States said that suppliers wishing to operate in foreign markets needed to have language capability.

58. The representative of the European Community said that, although it may be burdensome, Members should be encouraged to use at least one of the WTO languages in order to make those tenders that might be of interest to foreign bidders widely accessible.

59. The representatives of Japan, Korea and Morocco said that, notwithstanding the need for flexibility in this regard, certain types of information, such as the notification of enquiry points, and matters to do with dispute settlement or consultations, should be made available in a WTO official language.

60. The representative of Korea, joined by the representative of the European Community, said that at least a list of national laws and regulations should be notified and made public in a WTO official language.

(iv) *Fight against bribery and corruption*

61. The representative of the European Community, joined by the representative of the United States, said that the issue of bribery and corruption did not need to be dealt with in a transparency agreement, notwithstanding the fact that a meaningful transparency agreement would indirectly contribute to the fight against bribery and corruption.

62. The representative of Mali said that the President of his country had urged the entire administration to fight financial corruption and financial offences, factors that were directly related to transparency in government procurement.

Information to be Provided to Other Governments (Notification)

63. The representative of the European Community said that, as was the case with other WTO agreements, Members should promptly notify laws and regulations relating to transparency to the WTO Secretariat in one of the original languages and, if available, in other languages. Joined by the representative of the United States, he said that, since the submission of legislation in a WTO language might be too burdensome, at least a list of the relevant laws and regulations should be made available in a WTO language. The representative of the United States, supported by the representative of Pakistan, said that a balance should be found between the need for improved understanding of the procurement systems of Members and the burden of providing the necessary information. The representative of Pakistan said that there was a need to balance future obligations with Members' capacity to meet them.

64. The representative of Brazil noted that the principle of ensuring transparency of legislation applicable to procurement was broadly accepted. Though notification was useful, providing translations of legislation could be unduly burdensome. Supported by the representatives of the United States and Switzerland, he suggested that an alternative approach could be envisaged such as the use of a questionnaire or a checklist of points to allow Members to broadly describe their systems. A similar approach was applied in the Trade Policy Review process and in the FTAA context.

65. The representative of Switzerland said that notification of national legislation remained one of the cornerstones of a future transparency agreement. The representative of Japan said that notification should be an element in a future agreement but the discussion of the details of the relevant provisions should be left to a later stage.

66. The representative of India said that the requirement to provide information on national legislation was widely accepted as a transparency issue. However, any requirements to provide full and complete information should be tempered with practicality, and should take into account the capacity of Members to provide such information. Any examination of the national rules and laws in view of prescribing amendments to laws would go beyond the mandate of the Working Group.

67. The representative of Pakistan said the Working Group could base its work on this matter on the provisions of GATT 1994 Article X, noting that any provisions which went beyond those provisions would be burdensome to developing countries.

68. The representative of the European Community said that Members should provide explanations of laws, regulations, procedures and practices on request by other Members. With regard to requirements on the establishment of enquiry points, the representative of Switzerland said that his delegation considered enquiry points an important element of transparency especially for small countries. The representative of Korea said that there should be a single access point in each country for obtaining information. The difficulties associated with obtaining appropriate information in advance could become a barrier to suppliers' access to the international government procurement market.

69. The representative of Brazil said that the practice of accessing information through enquiry points was not new to the Parties to the Agreement on Government Procurement or to APEC Members and should be encouraged. The representative of the United States supported the establishment of enquiry points in individual Members. The representative of Japan said that the requirements on the establishment of enquiry points could be similar to the obligations under the Agreement on Technical Barriers to Trade and, therefore, would not be too burdensome. The representative of Pakistan said that, in the case of Pakistan, and possibly other countries, the involvement of various government departments in the tendering process imposed practical difficulties that made it virtually impossible to set up enquiry points. In response to the representative of Pakistan, the representative of Switzerland said that an enquiry point should not have to answer all technical questions, but should be the gateway to ensuring questions went to the right place and answers came back within a suitable time-period. The representative of Korea said that the use of electronic media could be one way of overcoming the difficulties of coordination between agencies and departments, in particular in Members with decentralized systems.

70. On notification of procurement statistics, the representatives of Brazil, Cuba and Malaysia said that any requirement for notification of statistical data on individual procurement processes would be burdensome and would go beyond the mandate of the Working Group. The representative of the United States said that statistical reporting had not been particularly effective under the Agreement on Government Procurement. Her delegation did not anticipate that a transparency agreement would include requirements in this respect. The representative of Switzerland said that, although it might be burdensome, statistical reporting was an important tool to show the effectiveness

of a procurement system and therefore, if the information was available, it would be useful to share it with WTO Members on a voluntary basis.

#### WTO Dispute Settlement Procedures

71. The representatives of the European Community, Switzerland and the United States said that the WTO DSU should apply to a future agreement in order to ensure the consistency of the overall WTO system.

72. The representative of Brazil said that, notwithstanding the systemic importance of a transparency agreement, his delegation had doubts about the efficiency of the linkage between a transparency agreement and the DSU. Any disputes would have to be limited to issues of compliance with the requirements of a transparency agreement. However, he did not see how subjecting an agreement to the DSU would ensure the enforceability of the rules, for instance through recourse to compensation or retaliation, in the absence of market trade interests.

73. The representative of the European Community said that the DSU should only apply to ensure compliance with basic transparency principles. While his delegation recognized that the absence of market access obligations made it more difficult to conceive application of dispute settlement, the existence of the dispute settlement mechanism in itself had some value-added in a transparency agreement. The DSU should apply in order to respect the integrity of the WTO system. The fact that the DSU could apply to the agreement could contribute towards establishing confidence in its application and operability. It would also help to ensure uniform interpretation of the obligations under the Agreement.

74. The representative of Switzerland said that the possibility of being taken before the DSB was a sufficient deterrent against any breach of transparency obligations.

75. The representative of Hungary said that her delegation considered that the application of dispute settlement procedures was an important component of a future agreement on transparency in government procurement.

76. The representative of the United States said that application of the DSU was an issue that required special consideration within the Working Group. For instance, the types of disputes that would arise under a transparency agreement, appropriate remedies and the possibility for cross-retaliation needed further discussion. Her delegation suggested that this issue be the subject of focused discussions at the next meeting of the Working Group based on submissions by Members.

77. The representative of Japan said that a future transparency agreement should contain provisions on dispute settlement including provisions on consultations and the application of additional and specific procedures. However, the application of those procedures could not be discussed in detail before the framework of the future transparency agreement and its specific obligations were known.

78. The representative of India, joined by the representatives of Egypt, Malaysia, China and Pakistan, said that transparency-related provisions would not call for a linkage to the DSU and there was no need for further work in the Working Group on this issue.

79. Commenting on the implications of the application of the DSU to a transparency agreement, the representative of Egypt said that the absence of market access commitments in itself was not a safeguard against a threat of cross-retaliation. His delegation had reservations on leaving the details of this issue to negotiations, and was convinced that the proper way would be to reach consensus beforehand.

80. The representative of Canada said that the issue of how the application of the DSU could work in the context of a transparency agreement should be explored further.

81. The representative of Pakistan said that Members should rethink the usefulness of applying dispute settlement to a future agreement, as the issue, being contentious, could prove to be a deal-breaker.

82. The representative of Nigeria said that his delegation remained unconvinced about the relevance of dispute settlement to transparency-related issues. Members should look at the possibility of developing generally acceptable principles and guidelines that could facilitate transparency.

83. The representative of Malaysia said that his delegation remained unconvinced of the need to have a linkage to the DSU since it would not apply to individual procurement decisions but to transparency practices. Whether or not an element on enforcement would be necessary would depend on the nature of the future agreement. The future provisions could be in the form of a declaration, an understanding among Members or an agreement with no linkage to the DSU. In his delegation's view, there was no need to have a binding agreement in the WTO on this subject.

84. The representative of the European Community said that the Singapore Ministerial Conference mandated the development of elements to be included in an appropriate agreement and not in an understanding. The transparency agreement would be an agreement that would fit within the WTO system. There was no reason to treat this agreement differently from all other WTO agreements which were subject to the DSU. How would compliance with the future agreement be assured without the possibility of recourse to the DSU?

#### Technical Cooperation and Special and Differential Treatment

85. On special and differential treatment, the representative of Brazil, joined by the representatives of the United States and Japan, said that the concept was important but the detailed examination of specific provisions should take place at an appropriate stage. The representative of the United States said that transitional periods rather than exclusions from obligations should be considered.

86. The representatives of Jordan, Morocco and China supported special and differential treatment for developing countries including transitional periods for the implementation of the obligations.

87. The representative of Malaysia said that the structure of a future agreement on transparency should reflect the developmental needs of developing countries, noting that transitional provisions for compliance with the obligations were no longer sufficient.

88. The representative of Rwanda, referring to economic, human resource and technical capacity constraints in some developing countries, underscored the need for capacity building to assist such countries to attain a good standard of transparency in their procurement systems. He called on donor agencies and other countries which had developed systems to help build capacity to ensure transparency.

89. The representative of Brazil said that his country had put considerable effort into improving its government procurement system. In addition to the achievements in the application of information technology, other key areas of progress had included legislative reform, capacity and institution building and human resource development. Brazil would be available to provide technical cooperation and capacity building within its limited resources. Interested Members could contact his authorities to determine the areas of cooperation.

90. The representative of China said that technical assistance should be provided to enhance the competitiveness of suppliers from developing countries in procurement markets of developed countries. Furthermore, cooperation among international agencies should be enhanced.

91. The representative of the European Community identified two key areas where technical cooperation was required: first, to address any potential conflict between a future agreement and domestic legislation of Members; and second, to build institutional capacity to comply with the provisions of a future agreement. The guiding principles of technical cooperation in these two areas should be, concerning the first area, the promotion of good governance and the rule of law, and, concerning the second, the development and strengthening of a modern and effective public administration. The European Community was open to specific requests for advice and assistance in this area.

#### B. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

92. The representative of the United States introduced her delegation's communication entitled "Capacity Building Considerations relating to Transparency in Government Procurement" contained in document WT/WGTGP/W/34.

93. The representative of Brazil said that the United States communication underscored the important role technical cooperation could play in the process embarked upon in the Working Group. In Brazil's experience, developing capacity in government procurement, including legislation, development and information technology aspects, required time and considerable effort. Brazil therefore considered the issue of technical assistance and capacity building to be both a vital and urgent requirement, noting that the sooner that this could be embarked upon, the greater would be the ease in working in the Working Group. The work that the WTO was doing was very important but it was limited to the aspect of building awareness. It should also have a complement of getting technical cooperation working on the ground. Joined by the representative of India, he suggested that the stakeholders in this area, including the multilateral agencies, donors and recipients should be brought together. It could be a useful contribution to the work of this Group if the Secretariat could build in a component on technical cooperation in the Symposium planned for next year to allow discussion on possible ways and solutions to enhance cooperation among the bilateral and multilateral donors and interested recipients.

94. The representative of Canada said that her delegation encouraged all Members to consider the answers to the practical questions raised in the United States paper related to implementation within their own economies. Many of these questions had also been identified in the communication by Canada on transparency of contract awards contained in document WT/WGTGP/W/36.

95. The representative of the Secretariat provided information on the technical assistance activities that it had been engaged in since the May 2002 meeting. A sub-regional workshop for the Central American countries had been organized jointly with the Inter-American Development Bank in San José, Costa Rica on 5-6 September 2002. Twenty-five participants from the seven countries in the region, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic, and representatives from Ecuador and Colombia had participated in the Workshop. The Secretariat would hold a similar workshop for the Caribbean countries in Kingston, Jamaica on 12-14 November 2002 with the funding provided by the Inter-American Development Bank through its affiliate INTAL. Furthermore, the Secretariat had organized a Symposium in Geneva for Geneva-based delegations on 9-10 October 2002. A considerable number of capital-based delegates had also taken advantage of this activity, and to facilitate the participation of such delegates from least-developed countries the Secretariat had been able to draw upon the Global Trust Fund for Technical Cooperation. The Secretariat was exploring the possibility of organizing a couple of national workshops before the end of 2002 for the countries which were on the list of the Secretariat's Coordinated Plan for 2002. Turning to the plans for 2003, he said that the Secretariat had four types

of activities in mind. Probably the most important were regional workshops. The Secretariat's intention was that before Cancún there would have been one regional workshop in each of the developing country regions. The Secretariat would do this, wherever possible, in cooperation with other intergovernmental organizations, in particular with the World Bank and the regional development banks who had the expertise in this area. In the first quarter of 2003, the Secretariat would have two regional events in Africa, one in mid-January for the English-speaking African countries, and another one in April for French-speaking African countries. In the second quarter of 2003, the Secretariat would have a regional event in the Asia-Pacific region, and a regional seminar for the Latin American countries that had not already been covered by the sub-regional events in 2002. The Secretariat would also like to have a regional event for the Central and Eastern European countries and the Central Asian countries, which had expressed their interest. This event would probably have to be held after the Cancún Meeting. The second line of activity of the Secretariat would be national events. The Secretariat had a number of countries inscribed in the plan for 2003. Thirdly, the Secretariat was planning to hold a further Geneva symposium in July 2003 which would be held back-to-back with a meeting of the Working Group, so as to facilitate the participation of as many interested people as possible. Fourthly, there were a large and quite rapidly increasing number of general Secretariat training activities of a national or regional kind, both in Geneva and in developing countries. These covered either WTO issues as a whole or Singapore issues, and the Secretariat would be contributing to these activities with regard to government procurement matters. Finally, in response to the point that had been raised by Brazil, he recalled that, precisely for the reasons identified by the representative of Brazil, in March 2002 the Secretariat had had an inter-agency meeting in Washington in order to try to maximize coordination and cooperation, and to seek the assistance of other intergovernmental organizations who were active in this area to help in responding to the terms of the Doha Declaration. That had been an inter-Secretariat event, which was not in itself a replacement for the broader concept referred to by the representative of Brazil. If there were an interest in organizing an event of that sort, the Secretariat would be ready to help in organizing it.

96. The representative of Korea said that more efforts should be devoted to strengthening developing countries' capacity through symposia and regional seminars. In parallel with this effort, a more systematic way to help build transparency into their procurement systems should also be considered. In this vein, efforts were also needed by developing countries to identify their specific needs because a demand-driven approach for capacity building was more effective.

97. The representative of Morocco said that capacity building and technical assistance would be crucial to enable governments to benefit from transparency. Technical assistance could focus on certain specific issues, such as the application of information technology to government procurement, the training of procurement professionals, the preparation of handbooks and management guides.

98. The representative of Lesotho said that the Symposium had come at a time when Lesotho was actively engaged in a rigorous and comprehensive programme to reform government procurement. He requested further assistance for Lesotho in terms of pursuing that reform initiative which his government was deeply committed to.

99. The representative of Malawi said that his country had recently embarked on procurement reforms with the assistance of the World Bank. Capacity building was an important element of that reform. He therefore called on the WTO and developed country Members to provide the necessary assistance, for instance to train procurement officials to carry out procurement transparently. Malawi viewed capacity building as an important tool not only for promoting transparency in government procurement, but also for the successful implementation of an eventual transparency agreement. Not all developing countries were at the same level of development and those developing countries that were advanced in their government procurement reforms could assist Malawi in this area.

100. The representative of Australia said that his delegation was encouraged by the positive reports on the range of technical assistance activities undertaken by the WTO. Australia acknowledged the important role of technical assistance and capacity building but also believed that developing and least-developed countries were best placed to assess their own technical assistance and capacity-building needs. Therefore, he encouraged those countries to articulate and communicate their specific needs and priorities to both the Secretariat and to the Working Group. Technical assistance should stay focused on WTO-specific issues, particularly enhancing Members' understanding of the implications of a multilateral agreement on transparency in government procurement. The Working Group should focus on issues directly related to decisions that would be taken at the Fifth Ministerial Conference.

101. The representative of Canada expressed his delegation's satisfaction with the collaborative efforts of the WTO with the Inter-American Development Bank. She encouraged the Secretariat's plans for further inter-agency collaboration to ensure that human and financial resources dedicated to technical assistance and capacity building be fully and effectively utilised. Further, she agreed that developing and least-developed countries were best placed to identify their technical assistance and capacity-building needs. Canada remained ready to contribute to the collective effort to address those needs as they were identified by developing and least-developed countries.

102. The representative of Mali said that human resources development was important to ensure sufficient capacity for seeking as well as awarding government contracts. Therefore, it was desirable to strengthen companies' capacity. In Mali there was a gap between the information available for awarding contracts and the ability of enterprises and companies to use that information. Appropriate ways should be developed to bridge that gap for the small and medium enterprises and local communities.

103. The representative of the European Community said that the United States submission was a useful contribution to the debate on technical assistance and capacity building. The organization of the Symposium back to back with the meeting of the Working Group was welcome because the discussions in the Working Group also had a pedagogic component, which was very useful for many countries that often did not have the opportunity to attend the meetings of the Group. He hoped that capital-based participants would be able to continue attending the meetings of the Working Group.

104. The representative of Nigeria said that the communication by the United States had raised thought-provoking issues and showed that the United States was really taking time to look at technical assistance and capacity building. Notwithstanding the question raised by the representative of India about measuring the benefits of transparency, his delegation believed that the benefits were tangible and enormous. The problem lay with the transparency of the procurement rules and procedures, and obtaining information on specific procurements. Referring to the issues raised in the session on technical cooperation and capacity building at the Symposium the previous day, he said that there was a mismatch between the commitments to be undertaken and the capabilities that were available. Furthermore, resource shortage, limited expertise, weak public administrations and the lack of supporting institutions were all critical issues that went beyond the kind of technical assistance that the WTO could provide. The issues related to infrastructures in place in capitals were crucial and should be addressed in cooperation with multilateral development banks.

105. The representative of Brazil said that, although he agreed with the view that enhancing awareness of the benefits of an agreement on transparency in government procurement was a fundamental aspect of technical assistance, he could not agree that technical assistance should be limited to that, for the following reasons. First, in light of the experience of the Uruguay Round, there were still several developing and least-developed countries requesting assistance to understand the agreements they had signed up to and to implement the commitments they had undertaken. Whatever measure one took, seven-and-a-half years to get things working could only be described as a failure of the negotiating process, and Members should avoid repeating the same mistake in the forthcoming

Round. Second, Members needed to be more ambitious in technical cooperation because awareness gave Members a theoretical, abstract knowledge of the issues. In contrast, technical cooperation would give them a hands-on experience of the issues being dealt with. There was nothing that contributed to hesitation more than lack of knowledge. Therefore, the best service to the work of the Group would be to get concrete and practical knowledge into all developing and least-developed countries as to the mechanics of transparency in government procurement.

C. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

106. The Chairman said that, at its past meetings, the Working Group had considered requests for observer status from three international intergovernmental organizations (OECD, SELA and the Organization of the Islamic Conference) and agreed to revert to these requests in the light of the ongoing consultations in the framework of the General Council. Given the overall status in the WTO regarding this matter, he suggested that the Working Group revert to this matter at its next meeting in the light of developments in those consultations.

D. DATE OF THE NEXT MEETING

107. The Chairman said that, as agreed at the informal meeting held in March, the third meeting of the Working Group would be held on 29 November 2002. The meeting would be primarily for the purpose of approving the Group's Report to the General Council on its activities in 2002.

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