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ANNEX

to the

Proposal for a COUNCIL DECISION

establishing the position to be taken by the European Union within the Committee on Government Procurement with respect to decisions implementing certain provisions of the Protocol Amending the Agreement on Government Procurement

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ANNEX A

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON NOTIFICATION REQUIREMENTS UNDER ARTICLES XIX AND XXII OF THE AGREEMENT

Decision of 30 March 2012

The Committee on Government Procurement,

Considering the importance of transparency of laws and regulations relevant to this Agreement, including changes thereto as required by Article XXII:5 of the Agreement;

Considering also the importance of maintaining accurate lists of entities covered under a Party's Annexes to Appendix I of the Agreement, in accordance with Article XIX of the Agreement;

Acknowledging the challenges to Parties of submitting timely notifications to the Committee of changes to their laws and regulations relevant to the Agreement, as required by Article XXII:5 of the Agreement, and of proposed rectifications to its Annexes to Appendix I, as required by Article XIX:1 of the Agreement;

Considering that the provisions of Article XIX of the Agreement distinguish between notifications of proposed rectifications that do not change the mutually agreed coverage provided for in the Agreement and other types of proposed modifications of its Annexes to Appendix I;

Recognizing that technological changes have allowed many Parties to make use of electronic means to provide information on their government procurement regimes and to notify Parties of changes to that regime;

Hereby decides as follows:

Annual Notifications of Changes in Laws and Regulations

1. Where a Party maintains officially designated electronic media that provide links to its current laws and regulations relevant to this Agreement and its laws and regulations are available in one of the WTO official languages, and such media are listed in Appendix II, the Party may fulfil the requirement in Article XXII:5 by notifying the Committee annually, at the end of the year, of any changes unless such changes are substantive, that is, they may affect the Party's obligations under the Agreement; and in such cases, a notification shall be made immediately.

2. The Parties shall have an opportunity to discuss the annual notification of a Party during the first informal meeting of the Committee in the following year.

Proposed Rectifications of a Party's Annexes to Appendix 1

3. The following changes to a Party's Annexes to Appendix I shall be considered a rectification under Article XIX of the Agreement:

(a) a change in the name of an entity;

(b) merger of two or more entities listed within an Annex; and

(c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

4. In the case of proposed rectifications to a Party's Annexes under Appendix I covered under paragraph 3, the Party shall notify the Committee every two years, commencing with the entry into force of the Protocol of Amendment to the Existing (1994) Agreement.

5. A Party may notify the Committee of an objection to a proposed rectification within 45 days from the date of the circulation to the Parties of the notification. In accordance with Article XIX:2, where a Party submits an objection, it shall set out the reasons for the objection, including the reasons why it believes the proposed rectification would affect the mutually agreed coverage under the Agreement and therefore the proposed rectification is not subject to paragraph 3. If there is no written objection, the proposed rectifications become effective 45 days after the circulation of the notification, as provided for in Article XIX:5(a).

6. Within four years of the adoption of this Decision, the Parties shall review its operation and effectiveness, and make any necessary adjustments.

ANNEX B

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON ADOPTION OF WORK PROGRAMMES

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that pursuant to Article XXII:8(b), the Committee may adopt a decision listing additional work programmes, which the Committee shall undertake to facilitate the implementation of the Agreement and the negotiations provided for in Article XXII:7 of the Agreement;

Decides as follows:

1. The following work programmes are added to the list of work programmes on which the Committee shall conduct future work:

(a) a review of the use, transparency and the legal frameworks of public-private partnerships, and their relationship to covered procurement;

(b) the advantages and disadvantages of developing common nomenclature for goods and services; and

(c) the advantages and disadvantages of developing standardized notices.

2. The Committee shall develop the scope and timetable for each such work programme at a later date.

3. The Committee shall periodically review this list of programmes and make appropriate adjustments.

ANNEX C

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON SMEs

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on small and medium-sized enterprises (SMEs);

Recognizing the importance of facilitating the participation of SMEs in government procurement; and

Recognizing that Parties have agreed in Article XXII:6 to seek to avoid introducing or continuing discriminatory measures that distort open procurement;

Hereby adopts the following work programme with respect to SMEs:

1. **Initiation of Work Programme on SMEs:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on SMEs. The Committee shall review measures and policies for SMEs that the Parties use to assist, promote, encourage, or facilitate participation by SMEs in government procurement and prepare a report of the results of the review.

2. **Avoidance of Discriminatory SME Measures:** The Parties shall avoid introducing discriminatory measures that favour only domestic SMEs and shall discourage the introduction of such measures and policies by acceding Parties.

3. **Transparency Programme and SME Survey**

3.1 **Transparency Programme**

Upon entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Parties that maintain in their Appendix I specific provisions on SMEs, including set-asides, shall notify the Committee of such measures and policies. The notification should include a full description of the measures and policies, their relevant legal framework together with their operation and the value of the procurement subject to such measures. In addition, those Parties shall notify the Committee of any substantial change in such measures and policies, in accordance with Article XXII:5 of the Agreement.

3.2 **SME Survey**

(a) The Committee shall survey the Parties, through the use of a questionnaire seeking information regarding the measures and polices used to assist, promote, encourage, or facilitate participation by SMEs in government procurement. The questionnaire should seek information from each Party regarding:

(i) a description of the measures and policies used by the Party, including the economic, social, and other goals of the measures and policies and how they are administered;

(ii) how the Party defines SMEs;

(iii) the extent to which the Party has specialized agencies or institutions to assist SMEs with respect to government procurement;

(iv) the level of participation in government procurement in terms of both value and number of contracts awarded to SMEs;

(v) a description of SME subcontracting measures and policies, including subcontracting goals, guarantees, and incentives;

(vi) facilitation of SMEs participation in joint bidding (with other large or small suppliers);

(vii) measures and policies focused on providing opportunities for SMEs to participate in government procurement (such as enhanced transparency and availability of government procurement information to SMEs; simplifying qualifications for participation in tendering; reducing contract sizes; and ensuring timely payments for deliveries of goods and services); and

(viii) the use of government procurement measures and policies to stimulate SME innovation.

(b) Compilation of SME Survey by WTO Secretariat: The WTO Secretariat shall fix a deadline for the transmission of the responses to the questionnaire by all Parties to the WTO Secretariat. Upon receipt of the responses, the Secretariat shall prepare a compilation of the responses and circulate the responses and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding responses.

(c) Exchanges among Parties on Responses to SME Questionnaires: On the basis of the document prepared by the WTO Secretariat, the Committee shall establish a period for the exchange of questions, requests for additional information, and comments on the responses of the other Parties.

4. Assessment of the Results of SME Survey and Implementation of Its Outcome

4.1 Assessment of the Results of SME Survey

The Committee shall identify the measures and policies that it considers to be best practices for promoting and facilitating the participation of SMEs of the Parties in government procurement and prepare a report that includes the best practices of the measures and policies and a list of the other measures.

4.2 Implementation of the Outcome of the SME Survey

(a) The Parties shall promote the adoption of the best practices identified in the assessment of the survey to encourage and facilitate participation of SMEs of the Parties in government procurement.

(b) With respect to other measures, the Committee shall encourage the Parties that maintain such measures to review them with a view to eliminating them or applying them to the SMEs of the other Parties. These Parties shall inform the Committee about the outcome of the review.

(c) The Parties that maintain other measures shall include the value of the procurement subject to such measures in the statistics that they submit to the Committee pursuant to Article XVI:4 of the Agreement.

(d) Parties may request the inclusion of such other measures in future negotiations under Article XXII:7 of the Agreement, and such requests shall be favorably considered by the Party maintaining such measures.

5. **Review**

Two years after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall review the effect of the best practices on expanding the participation of SMEs of the Parties in government procurement, and consider whether other practices would further enhance participation by SMEs. It may also consider the effect of other measures on the participation by SMEs of the other Parties in the government procurement of the Parties maintaining such measures.

ANNEX D

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON THE COLLECTION AND REPORTING OF STATISTICAL DATA

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on the collection and reporting of statistical data;

Considering the importance of the collection and reporting of statistical data, as required by Article XVI:4 of the Agreement on Government Procurement (Agreement), in providing transparency of procurement covered under the Agreement;

Considering that statistical data that illustrate the extent to which the Parties procure goods and services covered by the Agreement from other Parties to the Agreement could be an important tool in encouraging other WTO Members to accede to the Agreement;

Recognizing the overall challenges of Parties to the Agreement in collecting data in the area of government procurement and in particular in determining the country of origin of the goods and services that they procure under the Agreement; and

Recognizing that Parties use different methodologies in their collection of statistics to meet the reporting requirements in Article XVI:4 of the Agreement, and may use different methodologies in the collection of data for central government entities and sub-central government entities;

Hereby adopts the following work programme with respect to the collection and reporting of statistical data:

1. **Initiation of Work Programme on the Collection and Reporting of Statistical Data**: At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on the Collection and Reporting of Statistical Data. The Committee shall review the collection and reporting of statistical data by the Parties, consider the potential of harmonizing them, and prepare a report of the results.

2. **Submission of Data by the Parties**: The Committee shall agree on a date by which each Party shall submit to the Committee the following information with respect to statistical data on procurement covered by the Agreement:

(a) a description of the methodology that it uses to collect, evaluate, and report statistical data, above and below Agreement thresholds and for procurement described in paragraph 4.2(c) of the SME Work Programme, including whether it bases the data on procurement covered by the Agreement on the full value of awarded contracts or the total expenditure for procurement in a given time-frame;

(b) whether the statistical data that it collects includes the country of origin of the goods or services that are procured, and if so, how it determines or estimates the country of origin, and the technical impediments in collecting country of origin data;

(c) an explanation of the classifications used in statistical reports; and

(d) a description of the sources of data.

3. **Compilation of Submissions**: The Secretariat shall prepare a compilation of the submissions and circulate the submissions and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding submissions.

4. **Recommendations**: The Committee shall review the submissions of the Parties and make recommendations on:

(a) whether the Parties should adopt a common method for collection of statistics;

(b) whether the Parties are able to standardize the classifications in the statistical data reported to the Committee;

(c) means for facilitating the collection of country of origin of goods and services covered by the Agreement; and

(d) other technical issues in government procurement data reporting raised by any Party.

5. The Committee shall develop, as appropriate, recommendations relating to:

(a) potential harmonization of statistical reporting with the aim of including government procurement statistics in the annual reporting of the WTO;

(b) the Secretariat's provision of technical assistance relating to statistical reporting to WTO Members that are in the process of acceding to the Agreement; and

(c) means of ensuring that WTO Members that are acceding to the Agreement have the appropriate means for complying with statistical data collection and reporting requirements.

6. **Analysis of data**: The Committee shall consider how the statistical data submitted to the Secretariat annually by Parties may be used for further analyses to facilitate greater understanding of the economic importance of the Agreement, including the impact of thresholds on the performance of the Agreement.

ANNEX E

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON SUSTAINABLE PROCUREMENT

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on sustainable procurement;

Recognizing that several Parties have developed national and sub-national sustainable procurement policies;

Affirming the importance of ensuring that all procurement is undertaken in accordance with the principles of non-discrimination and transparency as reflected in the Agreement;

Hereby adopts a work programme with respect to sustainable procurement:

1. **Initiation of Work Programme on Sustainable Procurement**: At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Sustainable Procurement.

2. The work programme shall examine topics that include:

   (a) the objectives of sustainable procurement;

   (b) the ways in which the concept of sustainable procurement is integrated into national and sub-national procurement policies;

   (c) the ways in which sustainable procurement can be practiced in a manner consistent with the principle of "best value for money"; and

   (d) the ways in which sustainable procurement can be practiced in a manner consistent with Parties' international trade obligations.

3. The Committee shall identify measures and policies that it considers to be sustainable procurement practiced in a manner consistent with the principle of "best value for money" and with Parties' international trade obligations and prepare a report that lists the best practices of the measures and policies.

ANNEX F

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON EXCLUSIONS AND RESTRICTIONS IN PARTIES' ANNEXES

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on exclusions and restrictions in Parties' Annexes;

Recognizing that Parties have included exclusions and restrictions in their respective Annexes to Appendix I of the Agreement (exclusions and restrictions);

Recognizing the importance of transparent measures regarding government procurement; and

Considering the importance of progressively reducing and eliminating exclusions and restrictions in future negotiations provided for in Article XXII:7 of the Agreement;

Hereby adopts the following work programme with respect to exclusions and restrictions in Parties' Annexes:

1. **Initiation of Work Programme on Exclusions and Restrictions:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Exclusions and Restrictions in Parties' Annexes with the objectives of:

   (a) enhancing transparency with respect to the scope and effect of exclusions and restrictions specified in Parties' Annexes to Appendix I to the Agreement; and

   (b) providing information relating to exclusions and restrictions to facilitate negotiations provided for in Article XXII:7 of the Agreement.

2. **Transparency Programme:** Each Party shall submit to the Committee, no later than six months following the initiation of the Work Programme, a list of:

   (a) country specific exclusions it maintains in its Annexes to Appendix I to the Agreement; and

   (b) any other exclusion or restriction specified in its Annexes to Appendix I to the Agreement that falls within the scope of Article II:2(e) of the Agreement, except for exclusions or restrictions under review in the Work Programme on SMEs or where a Party has a commitment to phase out an exclusion or restriction in an Annex to Appendix I to the Agreement.

3. **Compilation of Submissions**: The Secretariat shall prepare a compilation of the submissions and circulate the submissions and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding submissions.

4. **Requests for Additional Information**: Any Party may periodically request additional information concerning any exclusion or restriction within the scope of paragraph 2(a) and (b), including measures that fall within the scope of any exclusion or restriction, their legal framework, implementation policies and practices and the value of the procurement subject to such measures. A Party receiving such a request shall promptly provide the requested information.

5. **Compilation of Additional Information**: The Secretariat shall prepare a compilation of the additional information in respect of any Party and shall circulate it to the Parties.

6. **Review by the Committee**: At the annual meeting provided for in Article XXI:3(a) of the Agreement, the Committee shall review the information submitted by Parties with the view to determining whether it provides:

(a) the fullest possible degree of transparency with respect to the exclusions and restrictions specified in Parties' Annexes to Appendix I to the Agreement; and

(b) satisfactory information to facilitate the negotiations provided for in Article XXII:7 of the Agreement.

7. **New Party Acceding to the Agreement**: A new Party that accedes to the Agreement shall submit to the Committee the list in paragraph 2 within six months of its accession.

ANNEX G

DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON SAFETY STANDARDS IN INTERNATIONAL PROCUREMENT

Decision of 30 March 2012

The Committee on Government Procurement,

Noting that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on safety standards in international procurement;

Noting that Article X:1 of the Agreement provides that procuring entities "shall not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to international trade";

Noting that Article III:2(a) of the Agreement does not prevent Parties from imposing or enforcing measures necessary to protect of public safety, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustified discrimination or a disguised restriction on international trade;

Recognizing the need for a balanced approach between public safety and unnecessary obstacles to international trade;

Recognizing that diverging practices among the Parties as regards public safety may have an adverse effect on the performance of the Agreement;

Hereby adopts the following work programme with respect to safety standards:

1. **Initiation of Work Programme on Safety Standards in International Procurement**: At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Safety Standards in International Procurement.

2. The Work Programme shall examine topics with the view to sharing best practices on items that include:

   (a) The manner in which public safety concerns are addressed in legislation, regulations and practices of the Parties and guidelines relating to the implementation of the Agreement by procuring entities;

   (b) The relationship between the technical specifications provisions in Article X and protection of public safety in Article III of the Agreement and in the Parties' Annexes to Appendix 1;

   (c) The best practices that may be adopted to protect public safety in light of the provisions on technical specifications and tender documentation in Article X.

3. The Committee shall develop the scope and timetable for the examination of each topic identified in paragraph 2. The Committee shall prepare a report that summarizes the outcome of its examination of these issues and lists the best practices identified in paragraph 2(c).