Committee on Government Procurement

Status

The WTO Government Procurement Agreement (GPA), which entered into force on January 1, 1996, is a plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking and its membership is limited to WTO Members that specifically signed it in Marrakesh or that subsequently acceded to it. The GPA's current membership includes the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), Aruba, Canada, Hong Kong, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore and Switzerland. Iceland, Kyrgyz Republic, Latvia, and Panama are in the process of negotiating accession to the GPA; Chinese Taipei, as a part of its broader WTO accession package, has initiated negotiations for membership.

Assessment of the First Five Years of Operation

The conclusion of the expanded Government Procurement Agreement (GPA) opened up tremendous new opportunities for U.S. exporters to compete on a level playing field for foreign governments' procurement contracts. Consistent with the United States' broader Uruguay Round objective to bring services within the rules based international trading system, the Parties agreed that the GPA would cover procurement of a wide range of services and construction contracts – where U.S. suppliers often enjoy a significant competitive advantage in international markets. They also agreed, for the first time, to include procurement by designated sub-central authorities within the scope of the Agreement. As a result of these new commitments, the WTO estimates that the value of trade opportunities created by the GPA increased by ten times, to over $300 billion per year.

So that the expansion of trade in this sector will be balanced and fair, the United States has ensured that GPA coverage commitments are firmly based on the principle of reciprocity. For example, U.S. GPA commitments relating to the procurement of any particular category of services only apply to foreign suppliers whose governments have agreed to provide non-discriminatory treatment to U.S. suppliers competing for the same category of services in that country's own procurement markets. Similarly, the agreement by 37 U.S. states to participate in the GPA does not apply to countries that have not opened up their own sub-central government procurement markets to U.S. suppliers.

This emphasis on reciprocity provides an ongoing incentive for other countries to open up additional procurement markets to international competition. After the conclusion of the Uruguay Round negotiations, the Administration reached bilateral agreement with six other GPA Parties (Austria, Switzerland, Norway, Sweden, Finland and Japan) to open up major sub-central procurement markets in those countries (i.e., procurement by Swiss cantonal and Japanese prefectural governments) to U.S. exporters. In 1995, Singapore's interest in being able to continue participating in U.S. procurement markets was a key factor in its decision to re-join the GPA.

In October 1998, the European Union and Japan used the WTO dispute settlement procedures to challenge a Massachusetts statute which regulated participation in Massachusetts procurements by firms that do business in or with Myanmar (Burma). The Administration strongly opposed this action by the EU and Japan, and pledged to vigorously defend the Massachusetts statute in the WTO, if necessary.
In response to an unrelated domestic suit, however, the U.S. District Court of Massachusetts found the Massachusetts statute to be unconstitutional and, in December 1998, issued an injunction against its implementation. In June 1999, this decision was upheld by the U.S. First Circuit Court of Appeals. In

November 1999, the Supreme Court agreed to review the Circuit Court's decision, and scheduled oral argument for March 22, 2000. However, because the EU and Japan did not reinitiate proceedings within 12 months, the authority of the panel lapsed in February 2000.

It is important to note that, like other WTO and NAFTA agreements, the GPA *cannot* preempt or invalidate state or local laws – even if a dispute settlement panel were to find a state or local measure inconsistent with such an agreement. The United States is free to determine how it will conform with those agreements at the national or sub-national level.

Major Issues in 1999

In its Report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an "early review" of the GPA starting in 1997. The review would be aimed at the implementation of Article XXIV:7(b) and (c) of the GPA, which call for further negotiations to achieve the following objectives:

< simplification and improvement of the GPA, including, where appropriate, adaptation of the rules to advances in the area of information technology and streamlined procurement methods;
< expansion of coverage of the GPA; and
< elimination of discriminatory measures and practices which distort open procurement.

The Parties to the Agreement have also agreed that an additional objective of the review is to promote expanded membership of the GPA by making it more accessible to non-members.

In 1998, the Committee approved a provisional time-table for this review process, including "a target of the third WTO Ministerial for the completion of the negotiations, at least on the simplification and improvement of the Agreement." However, as the review proceeded in 1999, the Committee became aware that more time would be required in order to adequately address a number of complex issues that have been raised, such as the growing use of certain types of procurement procedures that were not in widespread use at the time the GPA was originally negotiated. The Committee also continued to consider the potential simplification of GPA statistical reporting requirements, an issue that is of particular interest to members' sub-central procurement authorities and to other countries that may potentially be interested in acceding to the GPA.

In 1999, some delegations continued to press for progress on the simplification of the GPA annexes, particularly through the removal of reciprocity reservations and product- or program- specific exceptions. The United States and other delegations noted that these issues were inextricably linked to the overall balance of negotiated coverage commitments, and would have to be addressed in that context.

As provided for in the GPA, the Committee continued the process of monitoring members' implementing legislation. This included follow-up discussions on issues raised during the review of the EU's and Korea's implementing legislation in 1998, and the initiation of discussions relating to the implementing legislation of the United States, Canada and Switzerland.

Work for 2000

In 2000, the Committee will continue its review of the text of the GPA, focusing on the Parties' efforts to "streamline" the Agreement, where appropriate, and ensure that it addresses the types of procurement procedures, including those that make use of modern telecommunications and information technologies, that are commonly used by the Parties' procuring entities today. In addition, the Parties are likely to step up their efforts to resolve issues that have led them to include reciprocity-based reservations to their coverage

commitments in the Annexes to the Agreement, and to explore other opportunities for expanding the Agreement's coverage.