

## **1. Measures Related to the WTO Agreement on Government Procurement (Reference Material III-1)**

### **(1) Current Status of the Number of Countries and Regions Participating in the WTO Agreement on Government Procurement**

Originally there were 23 countries and regions participating in the WTO Agreement on Government Procurement when it was first concluded in 1994. As of March 2019, parties to the Agreement were 46 countries and regions. (see note)

Of the parties to the Agreement, 45 countries and regions have concluded the Protocol Amending the Agreement on Government Procurement, with the exception of Switzerland.

(Note) Parties to the WTO Agreement on Government Procurement (as of 1 March 2019)

Japan, Armenia, Canada, European Union (EU), Austria, Belgium, Bulgaria Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom, Hong Kong China, Iceland, Israel, Korea, Liechtenstein, Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Taiwan, the United States, Ukraine and Republic of Moldova

### **(2) Discussions in WTO (Reference Material III-2)**

In 1976, the negotiations on the Agreement on Government Procurement were launched, with a view to compiling an agreement that would stipulate principles of national treatment, procedures for tendering and other matters in government procurement for goods and suppliers of the Parties to the Agreement. This first Agreement (the former Agreement) entered into force in 1981. Subsequently, Parties to the Agreement engaged in further negotiations, seeking to expand the coverage of the Agreement, and the former Agreement was revised in 1988, with the new Agreement (the 1994 Agreement) entering into force in 1996.

The 1994 Agreement expands the coverage of entities that are subject to the Agreement from only central government entities to include sub-central government entities and other governmental entities (i.e. incorporated administrative agencies, etc.), and also expands its scope by including specified services by the governmental bodies abovementioned. Furthermore, the 1994 Agreement stipulates that each Party shall enable suppliers to challenge alleged breaches of the 1994 Agreement arising in the context of procurements in which they have an interest, and have recourse to the provisions of the Understanding of Rules and Procedures Governing the Settlement of Disputes.

From 1997, the WTO Committee on Government Procurement initiated discussions on further expansion of the coverage of the 1994 Agreement. As a result of negotiations among Parties, it was agreed to: expand the scope of entities and services covered by the Agreement; give further special and differential treatment to developing countries seeking to accede to the Agreement; simplify procurement procedures using electronic procurement tools in the tendering process, and; introduce rules in the future to facilitate resolution of issues relating to notification of a proposed modification to the scope of the Agreement and the objections to it. Accordingly, in March 2012 the Protocol Amending the Agreement on Government Procurement was adopted.

On 7 March 2014, as instruments of acceptance of the Protocol were deposited by two-thirds of the GPA Parties, 30th day following this date, on 6 April 2014, the Protocol entered into force. The Protocol entered into force on 16 April 2014 in Japan and from this date the revised Agreement applies with respect to those Parties that have accepted the Protocol.

## **2. Related Provisions of Economic Partnership Agreement**

In many of the Economic Partnership Agreements (EPAs) that Japan has signed and concluded to date, an independent chapter is devoted to providing relevant rules for government procurement. While the WTO Agreement on Government Procurement has thus far been signed by 46 countries and regions, which are composed of mainly developed countries including Japan, it is meaningful to provide rules for government procurement in EPAs, especially when the other party has not signed the GPA. It is also meaningful to provide such rules even with a signatory of the GPA, with expected benefits including the lowering of the threshold applied under the GPA and the expansion of covered entities. The following are those EPAs already in effect that contain a chapter on government procurement (among the Parties of such EPAs, only Singapore and Switzerland are parties to the GPA).

### **(1) Japan-Singapore Economic Agreement for a New Age Partnership**

This is the Japan's first bilateral Economic Partnership Agreement, which entered into force in November 2002. While both Singapore and Japan have been parties of the GPA, this Economic Partnership Agreement includes obligations beyond the obligations of GPA in the area of goods and services procurement. Both countries agreed to provide suppliers of the other country with more opportunities for tendering by lowering the application threshold from 130,000 SDR under the GPA to 100,000 SDR.

### **(2) Japan-Mexico Economic Partnership Agreement**

This Agreement entered into force in April 2005. Regarding government procurement covered by the Agreement, both countries committed in the Agreement that the goods and services of the other Party as well as suppliers thereof are subject to such treatment no less favorable than that accorded to domestic goods, services and suppliers (known as "National Treatment"). Both Parties also agreed on the procedures related to post award information and challenge procedures, etc. Although there were cases in the past where Japanese companies were excluded from Mexico's government procurement on grounds that the Free Trade Agreement (FTA) had not been yet concluded (Mexico has not concluded the GPA), Japanese companies have been accorded national treatment in terms of government procurement in Mexico after the coming into force of the Agreement.

### **(3) Japan-Chile Economic Partnership Agreement**

This Agreement entered into force in September 2007. Chile is not a signatory of the GPA. Japan agreed with Chile, on the national treatment and non-discrimination, specific procurement procedures, post award information and challenge procedures, etc. In addition, the Agreement also contains provisions concerning the establishment of the Committee on Government Procurement.

### **(4) Japan-Philippines Economic Partnership Agreement**

This Agreement entered into force in December 2008. Philippines is not a signatory of the GPA. Japan agreed with the Philippines, on establishing the Sub-committee on Government Procurement. The two countries also agreed that if one of the Parties gives a favorable treatment to a third party country regarding government procurement, it will provide opportunities for negotiations with the other Party to obtain the same treatment. Furthermore, it is stipulated that

the two countries would enter into negotiations with the view of liberalizing the respective markets of government procurement within a maximum of five years after the Agreement's entry into force.

#### **(5) Japan- Peru Economic Partnership Agreement**

This Agreement entered into force in March 2012. Peru is not a signatory of the GPA. This Agreement includes the provision of national treatment and non-discrimination, procurement procedures such as tendering, the prohibition of offsets in government procurement, challenge procedures, ensuring transparency, in order to promote the participation in the government procurement markets of both Parties.

#### **(6) Japan-Australia Economic Partnership Agreement**

This Agreement entered into force in January 2015. Australia is not a signatory of the GPA. This Agreement includes the provisions of national treatment and non-discrimination, procurement procedures such as tendering, the prohibition of offsets in government procurement, ensuring transparency, in order to promote the participation in the government procurement markets of both Parties.

#### **(7) Comprehensive and Progressive Agreement for Trans-Pacific Partnership**

This Agreement entered into force in December 2018 (as of March 1, 2019, the Agreement is in effect for Mexico, Japan, Singapore, New Zealand, Canada, Australia and Vietnam).

Regarding government procurement covered by the Agreement, participating countries committed in the Agreement that the goods and services of the other Party as well as suppliers thereof are subject to open tendering, in principle, national treatment and non-discrimination in principle, fairness and openness in the procurement processes, and negotiations on the expansion of coverage of the Agreement, etc.

Malaysia, Vietnam and Brunei are not signatories of the GPA and their bilateral EPAs with Japan do not have the same level of provisions as the GPA. However, in the CPTPP, provision of national treatment and non-discrimination as well as establishment of detailed procurement procedures to ensure transparency have been stipulated for the first time as an international agreement with these three countries.

(Note) Signatories of the CPTPP

Eleven countries including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam

#### **(8) Japan-EU Economic Partnership Agreement**

This Agreement entered into force in April 2005. Regarding government procurement covered by the Agreement, both countries committed in the Agreement that the goods and services of the other Party as well as suppliers thereof are subject to such treatment no less favorable than that accorded to domestic goods, services and suppliers (known as "National Treatment"). Both Parties also agreed on the procedures related to post award information and challenge procedures, etc. Although there were cases in the past where Japanese companies were excluded from Mexico's government procurement on grounds that the Free Trade Agreement (FTA) had not been yet concluded (Mexico has not concluded the GPA), Japanese companies

have been accorded national treatment in terms of government procurement in Mexico after the coming into force of the Agreement.

#### **(9) Others**

As for the Japan-Thailand EPA (entered into force in November 2007) and the Japan-Indonesia EPA (entered into force in July 2008), each contains an independent chapter on government procurement, stipulating information exchange on government procurement and establishment of the Sub-committees for government procurement although neither of the Agreements contains obligations on the procedures of government procurement themselves.

The Japan-Switzerland EPA (entered into force in September 2009) confirms the rights and obligations of both countries under the GPA. This Agreement stipulates that both countries designate a contact point to facilitate communications between each other. The Agreement also includes provisions on additional negotiations.

The Japan-Brunei EPA (entered into force in July 2008) and the Japan-Vietnam EPA (entered into force in October 2009) have provisions about government procurement in the chapter on improvement of business environment.

The Japan-India EPA (entered into force August 2011) contains an independent chapter on government procurement, which provides for measures to ensure transparency and the exchange of information, as well as according treatment to the Parties to the Agreement that is no less advantageous in comparison to third parties.

(Thailand, Indonesia, Brunei, Vietnam and India are not the signatories of the GPA.)

### 3. Voluntary Measures on Government Procurement

#### (1) Government Procurement Seminar

The Ministry of Foreign Affairs holds a seminar on government procurement each year, based on the Action Program on Government Procurement and the Procedures for Government Procurement on Products (Operational Guidelines), and the Operational Guideline on Procedures for Government Procurement etc., which takes on the functions of these previous documents.

The voluntary measures on government procurement also call for the other ministries and agencies to hold seminars on government procurement as necessary. In 2018, the following seminars were held.

Table III-1 Government Procurement Seminars in Japanese Ministries and Agencies in 2016

Procurement Organization	Date	Content
Ministry of Education, Culture, Sports, Science and Technology	4 June 2018	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Medical Technology)
Ministry of Health, Labour and Welfare	18 May 2018	Government Procurement Seminar, Government Procurement Annual Meeting (Medical Technology)
National Public Safety Commission (National Police Agency)	23 May 2018	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Computers)
Ministry of Defense	29 July 2018	Government Procurement Seminar, Government Procurement Annual Meeting (Medical Technology)

#### (2) Voluntary Review Meeting

It is stipulated in the Procedures for Government Procurement on Products (Operational Guidelines), Measures on Japanese Public Sector Procurement of Telecommunications Products and Services, and Measures related to Japanese Public Sector Procurement of Medical Technology Products and Services, and in the Operational Guideline on Procedures for Government Procurement etc., which takes on the functions of these previous documents, that review and follow-up of voluntary measures on government procurement are to be implemented. Furthermore, it is also stipulated that when conducting a review the opinions and requests of domestic and foreign suppliers (companies and organizations) should be sought through hearings. Based on these stipulations, each year the Meeting of Related Ministries and Agencies Concerning Voluntary Measures on Government Procurement (composed of directors of accounts divisions, or their equivalent, in each ministry and agency concerned) engages in review and follow-up of voluntary measures.

In 2018, a questionnaire survey was implemented to seek the opinions of suppliers concerning the status of implementation and utilization of voluntary measures. In addition, the Meeting of Related Ministries and Agencies Concerning Voluntary Measures on Government

Procurement, a follow-up to the voluntary measures based on statistics, etc., was held on 26 February and gave consideration to the results of the survey (Reference Material III-3). The Meeting drew up the Government Initiative on Future Management of Government Procurement (Reference Material III-4) based upon the reviews above.

From FY2001, among the opinions and requests gathered by the questionnaire survey, the government picked up those ① from many respondents, ② considered important to improve the current measures, and ③ considered necessary information to the public, and released responses from the government on the website of Prime Minister of Japan and His Cabinet (Reference Material III-5).

### **(3) Thresholds**

Thresholds, which vary according to types of contract specified in the WTO Agreement on Government Procurement, are obtained by converting the applied standard values (in SDR) into the national currency, and the notifications are published in the official gazette (kanpo) (The Standard Values are revised every two fiscal years.).

The thresholds in the voluntary measures related to government procurement are revised according to the notifications. The current thresholds applicable are in Reference Material III-6.