

1. The WTO Agreement on Government Procurement (Reference Material III-1)

(1) Current Status of the Number of the Parties to the WTO Agreement on Government Procurement

At the time of entry into force, Parties to the WTO Agreement on Government Procurement signed in 1994 were 23 countries and regions. As of March 2022, Parties to the Agreement were 48 countries and regions. (see note)

(Note) Parties to the WTO Agreement on Government Procurement (as of 1 March 2022)

Japan, Armenia, Australia, Canada, European Union and its member states (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, Slovak Republic, Slovenia, Spain and Sweden), Hong Kong China, Iceland, Israel, Republic of Korea, Liechtenstein, Republic of Moldova, Montenegro, Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, the United Kingdom and the United States

(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, tendering procedures and other matters in government procurement for goods and suppliers of the Parties to the Agreement. This first Agreement (the GATT Tokyo Round Agreement on Government Procurement (Treaty No.14 of 1980) (hereinafter referred to as the "Tokyo Round Code")) entered into force in 1981. Subsequently, Parties to the Agreement engaged in further negotiations, seeking to expand the coverage of the Agreement, and the Tokyo Round Code was revised in 1988, with the Agreement on Government Procurement (Treaty No.23 of 1995) (hereinafter referred to as the "GPA 1994") entering into force in 1996.

The GPA 1994 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 GPA 1994 stipulates that each Party shall enable suppliers to challenge alleged breaches of the GPA 1994 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 Committee on Government Procurement initiated discussions on further expansion of the coverage of the GPA 1994. 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 6 April 2014, the Protocol came into force for all those Parties to the GPA 1994 that had ratified the revised Agreement, and it entered into force for Japan on 16 April 2014. Upon the entry into force of the Protocol, the revised Agreement has applied to those Parties that have accepted the Protocol. With the acceptance of the revised Agreement by Switzerland, the revised Agreement applied to all Parties on 1 January 2021.

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 (GPA) has thus far been signed by 48 countries and regions, which are composed of mainly developed countries including Japan, it is meaningful to set rules for government procurement in EPAs, especially when the other Party has not signed the GPA. It also provides significance to stipulate such rules with a Signatory of the GPA, due to expected benefits such as the lowering of the threshold applied under the GPA and the expansion of covered entities. The following are those EPAs already in force that contain a chapter on government procurement (Singapore, Switzerland, EU Australia and the United Kingdom are Parties to the GPA among the Parties of such EPAs).

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

This is the first bilateral Economic Partnership Agreement for Japan, 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 GPA in the area of goods and services procurement. Both Parties agreed to provide suppliers of the other Party with more opportunities for tendering, by lowering the threshold for a procurement 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 in the Agreement, both Parties committed 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, challenge procedures, and others. Although there were cases in the past where Japanese companies were excluded from Mexico’s government procurement on the grounds that the Free Trade Agreement (FTA) had not yet been concluded (Mexico has not concluded the GPA), Japanese companies have been accorded national treatment in terms of government procurement in Mexico after the entry into force of the Agreement.

(3) Japan-Chile Economic Partnership Agreement

This Agreement entered into force in September 2007. While Chile is not a Signatory of the GPA, Japan and Chile agreed on the national treatment and non-discrimination, other specific procurement procedures, post award information, challenge procedures and others. In addition, the Agreement 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. While the Philippines is not a Signatory of the GPA, Japan and the Philippines agreed on establishing the Sub-Committee on Government Procurement. The Parties also agreed that if one of the Parties gives a favorable treatment to a third party country regarding government procurement, it will provide the other Party with opportunities for negotiations 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 entry into force of the Agreement.

(5) Japan-Peru Economic Partnership Agreement

This Agreement entered into force in March 2012. Although 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, and 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. This Agreement includes the provisions of national treatment and non-discrimination, procurement procedures such as tendering, the prohibition of offsets in government procurement, and 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 (CPTPP Agreement)

This Agreement entered into force in December 2018 (as of March 1, 2022, the Agreement is in effect for Mexico, Japan, Singapore, New Zealand, Canada, Australia, Vietnam and Peru).

Regarding government procurement in the Agreement, the Parties committed to open tendering to the goods and services of the other Parties as well as suppliers thereof in principle, national treatment and non-discrimination, fairness and impartiality of the procurement processes, negotiations on the expansion of coverage of the Agreement, and others.

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 Agreement, provisions 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 Agreement

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 February 2019. As both Japan and the EU are Signatories of the GPA, this Agreement has realized the improvement of each other's market access based on their commitments under the GPA in order to encourage the suppliers of Japan and the EU to participate in the government procurement market. As for the rules on government procurement, this Agreement includes provisions beyond those of the GPA, such as establishing a single point of access on the Internet where notices of intended procurement are accessible by electronic means free of charge.

(9) Japan-UK Comprehensive Economic Partnership Agreement

This agreement entered into force in January 2021 which stipulates a new framework for trade and investment with the UK as a replacement for the Japan-EU Economic Partnership Agreement after UK's withdrawal from the EU. Incorporating the GPA, this Agreement reaffirms the principle of non-discrimination and specifies a tendering procedure, mechanisms to ensure transparency and impartiality in procurement procedures, as well as the modification and rectification of the coverage.

(10) Regional Comprehensive Economic Partnership

This agreement entered into force in January 2022. (As of April 1, 2022, the Agreement is in effect for Japan, Brunei, Cambodia, Laos, Singapore, Thailand, Vietnam, Australia, China, New Zealand, South Korea, and Malaysia). This Agreement applies to the laws, regulations, and procedures of government procurement implemented by its central government entities. The

Agreement stipulates the transparency of relevant laws, regulations, and procedures, the development of cooperation among the Parties, the review for the improvement of this Chapter in the future, and so forth.

(11) 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 Agreement contains an independent chapter on government procurement, stipulating information exchange on government procurement and establishment of the Sub-Committees on 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 Parties under the GPA. This Agreement stipulates that each party designates a contract point to facilitate communications between the Parties. The Agreement also includes provisions on further 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 the Improvement of the Business Environment.

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

The Japan-Mongolia EPA (entered into force in June 2016) has an independent chapter on government procurement. It stipulates information exchange on government procurement, establishment of the Sub-Committees on Government Procurement, and opportunities entering into negotiations for revision of the chapter when Mongolia expresses its intention to accede the GPA. The agreement also gives provision that if one of the Parties provides a favorable treatment to a third party country regarding government procurement, it shall provide opportunities for negotiation to the other Party to obtain the same treatment.

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, the Procedures for Government Procurement on Products (Operational Guidelines), and the Operational Guideline on Procedures for Government Procurement etc. that takes on the former two documents.

The voluntary measures on government procurement also call for the other ministries and agencies to hold seminars on government procurement as necessary. In 2021, the following seminars were held.

Table III-1 Government Procurement Seminars in Japanese Ministries and Agencies in 2021

Procurement Organization	Date	Content
National Public Safety Commission (National Police Agency)	17-30 June 2021	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Computers)
Ministry of Land, Infrastructure, Transport and Tourism	12 May 2021	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Computers)
Ministry of Health, Labour and Welfare	20 May 2021	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Medical Technology, Computers)
Ministry of Education, Culture, Sports, Science and Technology	21 May 2021	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Medical Technology)
Ministry of Defense	23 June 2021	Government Procurement Seminar, Government Procurement Annual Meeting (Medical Technology)

(2) Review Meeting

Regular review and follow-up of voluntary measures on government procurement is stipulated in the Procedures for Government Procurement on Products (Operational Guidelines), Measures on Japanese Public Sector Procurement of Telecommunications Products and

Services, Measures related to Japanese Public Sector Procurement of Medical Technology Products and Services, and the Operational Guideline on Procedures for Government Procurement etc. that takes on the former three documents. Furthermore, the documents also stipulated that in the review, the government should seek opinions and requests from domestic and foreign suppliers (companies and organizations). 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 2021, 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 23 June 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 review.

Since FY2001, the government has released responses to the opinions and requests that are ① asked from many respondents, ② considered important in order to improve the current measures, and ③ considered necessary for the response to be publicized, on the website of Prime Minister of Japan and His Cabinet (Reference Material III-5).

(3) Thresholds in Government Procurement

Thresholds of the applied standard values (SDR) specified in Appendix I of the GPA, are converted into the national currency value, and they are published in the official gazette (kanpō) (The thresholds in the national currency are reviewed every two fiscal years.).

The thresholds in the voluntary measures related to government procurement are reviewed with the aforementioned threshold values revision. The current thresholds applicable are in Reference Material III-6.