

## **1. Measures related to the WTO Agreement on Government Procurement (Reference Materials 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. As of January 1, 2005, parties to the Agreement were 38 countries and regions.

(Note) Parties to the Agreement on Government Procurement (as of January 1, 2005)

Japan, Canada, European Community (EC), Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Hong Kong China, Iceland, Israel, Korea, Liechtenstein Netherlands with respect to Aruba, Norway, Singapore Switzerland United States

### **(2) The Working Group on Transparency in Government Procurement (Reference Materials III-2)**

In December 1996, the first Ministerial Conference since the founding of the World Trade Organization (WTO) was held in Singapore, with ministers and officials from 127 countries participating. At this first Ministerial Conference, it was decided to establish a Working Group on Transparency in Government Procurement.

In response to this, since the first meeting was held in May 1997, further formal meetings, a number of informal meetings and friends meetings have taken place.

The Working Group on Transparency in Government Procurement is a forum to carry out studies on transparency in government procurement in a way designed to be conducive to the policies of each country, and since it is positioned to specify elements that each country could agree to on government procurement, countries other than the signatory nations (as mentioned above) to the WTO Agreement on Government Procurement have also become members of the Working Group.

At the third WTO Ministerial Conference in Seattle, discussions were conducted on launching negotiations towards forming an agreement concerning transparency in government procurement, based on the discussions of such working groups.

In addition, at the fourth WTO Ministerial Conference in Doha (Qatar) in November 2001, the Ministerial Declaration decided that parties would keep studying on transparency in government procurement and negotiate about multilateral rules after the fifth Conference. However, the General Council on July, 2004 decided that negotiation will not be initiated in this Doha Round.

## **2. Japan-Singapore Economic Agreement for a New Age Partnership**

In January 2002, in Singapore the prime minister of Japan, Junichiro Koizumi, signed Japan Singapore Economic Agreement for a New Age Partnership, which entered into force in

November 30, with the prime minister of Singapore, Goh Chok Tong, to build up a closer economic connection in a wider area than trade and investment. This is the first bilateral free trade agreement for Japan, and it is anticipated that economic activity between Japan and Singapore will be further promoted through the agreement.

The agreement includes more obligations than WTO Agreement on Government Procurement; GPA, in the area of goods and services procurement. To be specific, each country agreed to give suppliers in the other country more opportunity to tender by lowering the application threshold for GPA from 130,000 SDR to 100,000 SDR.

### **3. Action Program measures**

#### **(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 adopted at the 20th Meeting of the Action Program Committee in February 1994 and on the Procedures for Government Procurement on Products (Operational Guidelines) adopted at the 21st Meeting of the Action Program Committee held in March 1994. In 2004, the seminar was held on 27 April (with 84 domestic and 20 foreign suppliers participating).

The above two voluntary measures also call for the other ministries and agencies to hold seminars on government procurement as necessary. In 2004, the following seminars were held.

Table III-1 Government Procurement Seminars in Japanese Ministries and Agencies in 2003

Procurement Organization	Date	Content
National Public Safety Commission (National Police Agency)	13 May 2004	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications)
Defense Agency	27 May 2004	Government Procurement Seminar, Government Procurement Annual Meeting (Medical Technology)
Ministry of Internal Affairs and Communications	26 May 2004	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Medical Technology)
Ministry of Education, Culture, Sports, Science and Technology	19 May 2004	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Medical Technology)
Ministry of Health, labor, and Welfare	19 May 2004	Government Procurement Seminar, Government Procurement Annual Meeting (Medical Technology)
Ministry of Land, Infrastructure, and Transport	19 May 2004	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications)

## **(2) Voluntary Review Meeting**

In 2003, by means of questionnaire survey, the opinions of suppliers were solicited concerning implementation and utilization of voluntary measures. In addition, a voluntary review, a follow-up to the voluntary measures based on statistics, etc., was held on 6 November and gave consideration to the results of the survey (Reference Materials III-4). The Voluntary Review Meeting drew up the Government Initiative on Future Management of Government Procurement (Reference Materials III-5) based upon the reviews above.

From 2001, among the opinions and requests gathered by the questionnaire survey, the government picked up those from many respondents, considered important to improve the current measures, and considered necessary information to the public, and release their answers to them on the website of the prime minister: <http://www.kantei.go.jp/> (Reference Material III-6).

## **(3) Action Program Committee**

In the 35 Action Program Committee held on 10 December 2004, the state of the implementation of the voluntary measures reviewed at the voluntary review meeting was confirmed, and the Government Initiative on Future Management of Government Procurement drawn by the voluntary review committee was approved.

## **(4) 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 (The Standard Values are revised every two fiscal years.).

The thresholds in the voluntary measures related to government procurement as formulated by the Action Program Committee are revised according to these notifications. The current thresholds applicable are in Reference Material III-7.

**Reference Material III-1:**  
**World Trade Organization Agreement on Government Procurement**

The Marrakesh Agreement Establishing the World Trade Organization (WTO Founding Agreement)

Attached Document I

Attached Document IA: Multilateral Agreements on Trade in Goods

- (1) General Agreement on Tariffs and Trade 1994 (GATT 1994)
- (2) Agreement on Agriculture
- (3) Agreement on the Application of Sanitary and Phytosanitary Measures
- (4) Agreement on Textiles and Clothing (ATC)
- (5) Agreement on Technical Barriers to Trade (Standard Agreement)
- (6) Agreement on Trade-Related Investment Measures
- (7) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)
- (8) Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)
- (9) Agreement on Preshipment Inspection
- (10) Agreement on Rules of Origin
- (11) Agreement on Import Licensing Procedures
- (12) Agreement on Subsidies and Countervailing Measures
- (13) Agreement on Safeguards

Attached Document IB: General Agreement on Trade in Services

Attached Document IC: Agreement on Trade-Related Aspects of Intellectual Property Rights

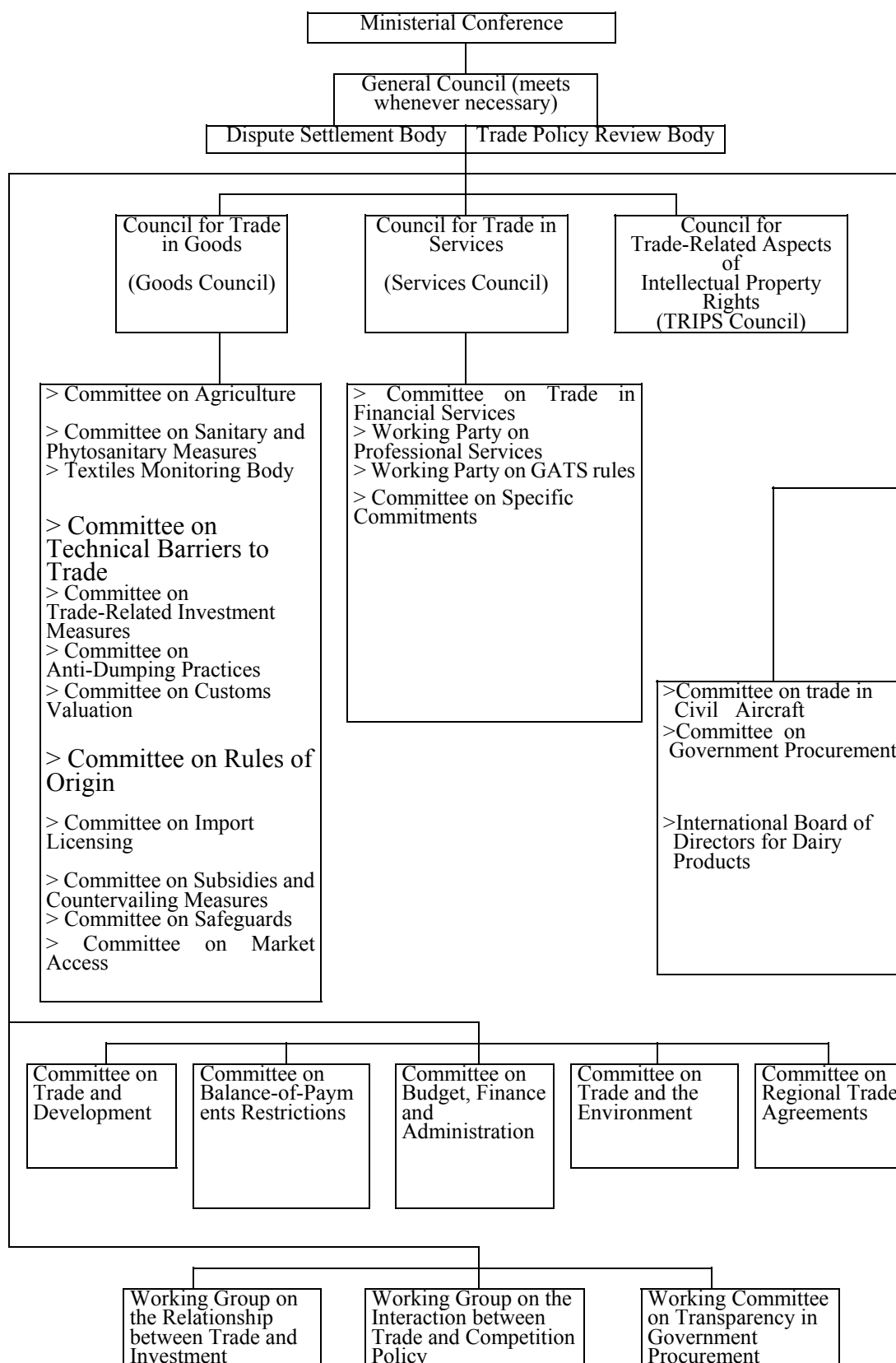
Attached Document II: Understanding on Rules and Procedures Governing the Settlement of Disputes

Attached Document III: Trade Policy Review Mechanism

Attached Document IV: Plurilateral Trade Agreements

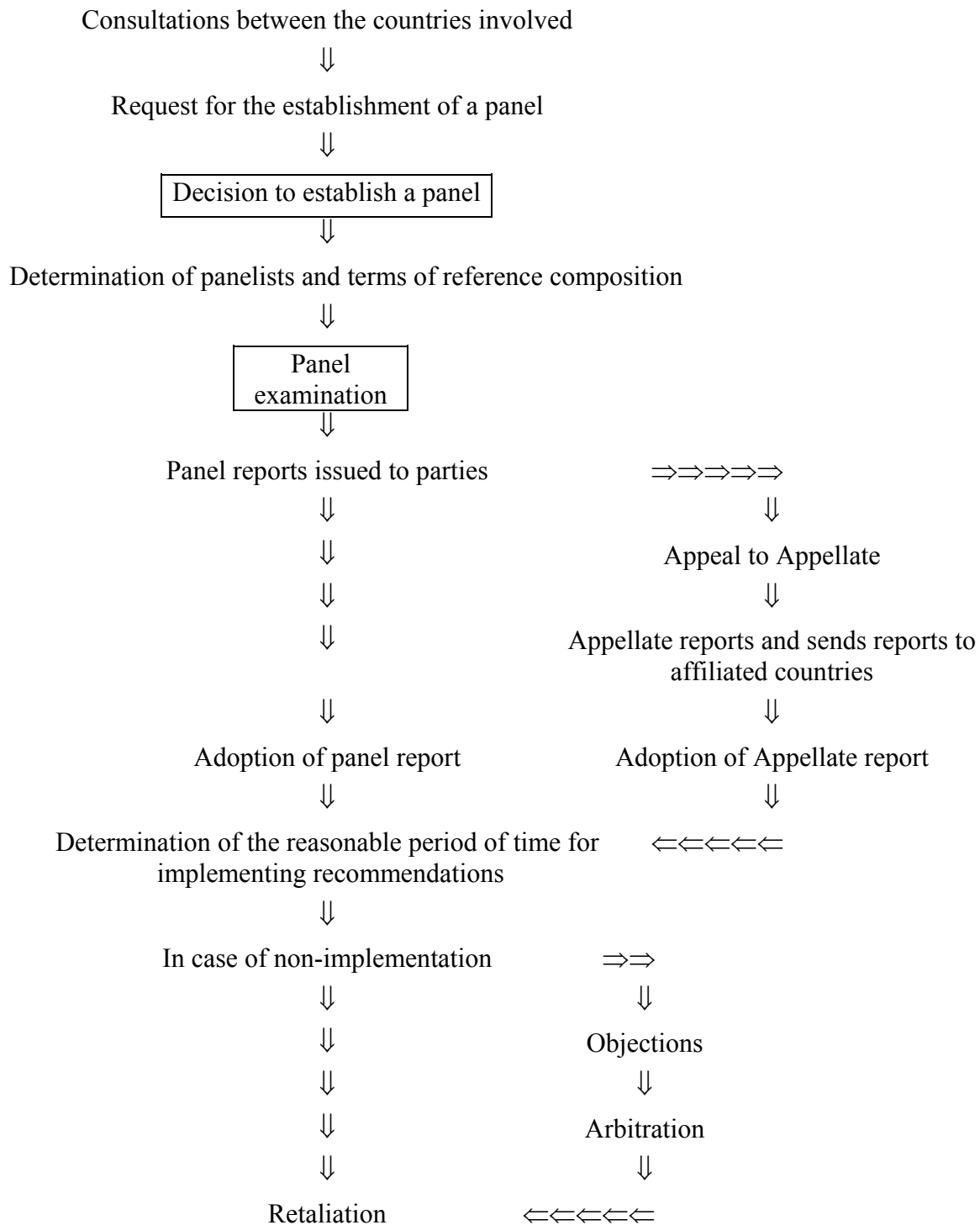
- (1) Agreement on Trade in Civil Aircraft
- (2) **Agreement on Government Procurement**
- (3) International Dairy Agreement (lapsed at the end of 1997)
- (4) International Bovine Meat Agreement (lapsed at the end of 1997)

## Reference Material III-2: Organizational Diagram of the WTO (as of December 2003)



Note: The International Board of Directors for Dairy Products and the International Board of Directors for Meat were abolished when the International Dairy Agreement and the International Bovine Meat Agreement lapsed at the end of 1997.

### Reference Material III-3: Flow Chart for Dispute Settlement Procedure



### Reference Material III-4: Results of the Inquiries to Suppliers (2004)

Questionnaire Items	Ratio (%)
In all fields	
Use of the information on government procurements offered at the beginning of each fiscal year: a) Frequently b) Occasionally c) Never	41.5 26.8 31.7
Usefulness of individual pieces of information on government procurements a) Good b) Fair c) Unsatisfactory	16.2 76.6 7.2
Annual Report ("Japan's Government Procurement: Policy and Achievements") a) Satisfied b) Generally satisfied c) Not satisfied or Never using of it	5.0 57.5 37.5
Publicizing award list on website a) Satisfied b) Generally satisfied c) Not satisfied d) Never using of it	10.3 35.9 5.1 48.7
Securing competitiveness and transparency through the reduction of single tendering and selective tendering a) Well secured. b) Secured, but not sufficiently. c) Not secured.	21.1 65.8 13.2
Implementation status of the overall-greatest-value evaluation method a) The method has well promoted reasonable assessments b) The method has promoted reasonable assessments to a certain extent c) The method has not worked well	19.0 81.0 0.0
Complaint review system a) Considered using the system. b) Never considered using the system. c) Did not know the system	12.5 62.5 25.0
Threshold for overall-greatest value evaluation method (800,000 SDRs) a) Reasonable b) Needs to be reduced c) Needs to be raised	58.8 41.2 0.0

In telecommunication and medical technology fields	
Evaluation method in the Standard Guide to the Overall-greatest-value methodology a) Reasonable b) Reasonable in many cases c) Not reasonable	31.8 68.2 0.0
Evaluation method in the Standard Guide to the Government Procurement of Information Systems a) Reasonable b) Reasonable in many cases c) Not reasonable	26.7 73.3 0.0
Threshold for overall-greatest value evaluation method (385,000 SDRs) a) Reasonable b) Needs to be reduced c) Not reasonable	75.0 12.5 12.5
Fairness of technical specifications a) Specified in accordance with the measures. b) Specified largely in accordance with the measures c) Specified not in accordance with the measures	6.1 84.8 9.1

\* Forty-one respondents answered to the questionnaire.

\* Due to rounding of figures, the totals do not add up to 100% in some cases.



**Initiative on Future Management of Government Procurement**

November 24, 2004  
Voluntary Review Meeting

The Voluntary Review Meeting reports the following Initiative on Future Management of Government Procurement to the Committee for Drawing Up and Promoting the Action Program, considering the results of the follow-up on implementation of voluntary measures on government procurement and the hearing of requests and opinions from suppliers.

1. Efforts will be made to more strictly apply of the conditions in the Article 15 of the WTO Agreement, considering the fact that the ratio of single tendering has not reduced.
2. Efforts will also be made to implement the publication of information on awarding of contracts in the official gazette ("Kanpo") as quickly as possible for suppliers' convenience.
3. Efforts will be made to notify suppliers cancellation or change of procurement schedule or bidding announcement in the official gazette ("Kanpo") or website without delay or omission., considering their convenience

## Reference Material III - 6

### Answers to Opinions and Requests about the Voluntary Measures on Government Procurement

The Japanese government has listened to suppliers' opinions and requests about our voluntary measures on government procurement by conducting a questionnaire survey every year. On this website, among the opinions and requests gathered by the survey in 2001 and 2002, we pick up those from many respondents, considered important to improve the current measures, and considered necessary information to the public, and release our answers to them.

- We welcome the fact that the unification of the license to tender between the central government agencies has reduced our labor for bidding. However, because of the unification, in some cases, for example, computer system procurement, we were not allowed to tender for it even though we used to bid for similar-scale procurement. We would like the government to revise the current graduated licensing system.

#### Response from the Government of Japan

The government is aware of the request aforementioned. At the Inter-Ministerial Council for Government Procurement on Information System, Cabinet Office and ministries agreed on “Towards Improvement of Government Procurement of Information Systems” in March 2002 (revised in April 2002, March 2003, and March 2004). This agreement includes flexible application of the licensing system considering technical criteria such as suppliers' line up of advanced IT engineers or contract records in private procurement. It also authorizes collective enterprises, e.g., a joint venture, to get the license to tender. Through these measures, the government intends to expand opportunities of participation in procurement for technically competitive suppliers, regardless of their business scale.

- To make appropriate tenders for requests of buyers, it is very important for suppliers, such as suppliers of computer systems, to get information about procurement before the public notice for it. We would like the government to promptly provide the information of extra procurement plans, for example, ones added by a supplementary budget.

#### Response from the Government of Japan

Based on such requests aforementioned, the government has striven for quicker release of procurement information. In fact, at the contact points of the central government, we release information as much as possible, for example, by providing the latest list of procurement plans for public reading before release in the official gazette. On the other hand, we provide information carefully, considering that uncertain information might disadvantage suppliers in their business.

If you are interested in getting more information at an earlier stage, please feel free to get in touch with each contact point.

- We insist that the government should introduce the minimum award price rule as a countermeasure against the recent controversial ultra-low-price bid.

#### Response from the Government of Japan

The government makes it a principle to procure “goods in high quality” at “the lowest price possible” since our financial source is the people’s precious assets.

While maintaining this principle, we have an exception that we can avoid contracting with a supplier who offers the lowest price. This rule is called “enquiry for abnormally low tenders” system. On contracts for construction and manufacturing, the enquiry has been conducted based on this system. In 2001 we expanded the subject of the enquiry to contracts for other services, such as procurement of software. We consider that full application of this system can be an effective countermeasure against ultra-low-price bids.

In addition, the system is well in line with the Agreement on Government Procurement, of which Japan is one of many member states, while the agreement does not endorse the introduction of the minimum award price rule.

- There was a case in which the period for the receipt of tenders for procurement was about two weeks, the products and services for which were valued at hundreds million yen. Do we have a margin of time to bid?

#### Response from the Government of Japan

Under rules including the WTO Agreement on Government Procurement (GPA), a procuring entity publishes a notice for the invitation to tender at least 40 days in advance of the closing date of receipt for tenders for procurement of products and services valued at above 100,000 SDR (16 million yen as of January 1, 2005). As a voluntary measure, the Government of Japan extends the period to 50 days, unless there are exceptional circumstances.

If you have any questions concerning a specific case or the period for receipt of tenders, please feel free to get in touch with the designated contact point.

- In Overall-Greatest-Value Evaluation method (OGV) for procurement of information systems, the valuation ratio of technical point to price point is 1:1. Price point is still the main means of evaluation in some cases. Can the point allocation be changed in procurement?

#### Response from the Government of Japan

To procure high-quality information systems at a reasonable rate, a new evaluation method entered into force on August 1, 2002. This new method evaluates tenders by adding up technical and pricing points calculated on the tender price, when an information system is procured using the Overall-Greatest-Value Evaluation method. Given that the weighting of the technical points in the whole evaluation remain unchanged regardless of price, we consider that full application of this evaluation method can be an effective countermeasure against ultra-low-price bids.

Total procurement items through this evaluation method were 78 in FY 2002 and FY2003.

With an eye to adopting this evaluation on a wider basis in the future, where necessary, we will examine improved methods of evaluation.

- There was a specification which was considered to be advantageous to a particular enterprise. It is to be hoped that specifications will be examined and remedied strictly in the light of fairness.

#### Response from the Government of Japan

Under the WTO Agreement on Government Procurement (GPA), technical specifications shall not be adopted with the effect of creating unnecessary obstacles to international trade.

Voluntary measures taken by procuring sectors in regard to the Action Program also stipulate that technical specifications should be made in an impartial manner. Any supplier can file a complaint about technical specifications that are considered to be in violation of these rules.

In such a case, the supplier is recommended to first confer with the procuring entity and to reach a settlement. If you have any other questions about the system, feel free to contact the Office for Government Procurement Challenge System at the Cabinet Office (Tel: 03-3581-0262).

- For procurement of information systems, to clarify the sharing of responsibility between public and private, I hope to use a contract document which clearly place limits on the coverage of compensation for damage.

#### Response from the Government of Japan

The Government of Japan will clarify the liability for damage in appropriate cases, adding to a contract a clause to the effect that developers shall be liable for compensation or damage up to the limit of the contract price equivalent of the software which directly causes the damage. We will make efforts to clarify the sharing of responsibility between public and private entities through a follow-up survey to identify the degree to which each procuring entity shares the responsibility in the contract document.

The specific coverage of the liability is determined by taking into consideration the content of services, or the extent of prospective damage and impact on people's lives incurred by malfunction of the information systems. As it is difficult to designate specific coverage on a uniform basis, each procuring entity determines it on a case-by-case basis.

- I call for the early implementation of “legislating attribution of intellectual property to bailee or contractor in software development for government.”

#### Response from the Government of Japan

As described in Intellectual Property Strategic Program 2004 (May 27, 2004); “In FY 2004 and beyond, the GOJ will ensure that intellectual property rights also belong to the persons who actually carried out projects under contract regarding software development projects for government use, and will submit related bills to the Diet.” (Chapter 1, 3, (6), 2) Expanding the utilization of the Japanese Bayh-Dole system), we will carry out the necessary study to implement this measure forthwith.

## Reference Material III-7

### Standard SDR Values and Yen Conversion for Government Procurement (Action Program)

The standard values for all types of voluntary measures determined in the Committee for Drawing Up and Promoting the Action Program, based on Notification No. 31 of the Ministry of Finance as published in the official gazette (*Kanpo*) dated 23 January 2004, have been set as follows: (Applying to procurement contracts awarded between 1 April 2004 and 31 March 2006)

#### Note

SDR 500	equivalent to 80,000 yen
SDR 100,000	equivalent to 16 million yen
SDR 385,000	equivalent to 62 million yen
SDR 800,000	equivalent to 130 million yen
SDR 2 million	equivalent to 320 million yen
SDR 5 million	equivalent to 800 million yen

## Reference Material III-8: Overview of the Thresholds Applied to the WTO Agreement on Government Procurement

### 1. Thresholds

#### (1) Thresholds for the WTO Agreement on Government Procurement

Classification	Central government	Local government	Public corporations and Independent administrative institutions
Products	21 million yen (SDR 130,000)	32 million yen (SDR 200,000)	21 million yen (SDR 130,000)
Services	21 million yen (SDR 130,000)	32 million yen (SDR 200,000)	21 million yen (SDR 130,000)
Construction services	730 million yen (SDR 4.5 million)	2.43 billion yen (SDR 15 million)	2.43 billion yen (SDR 15 million)
Design consulting services	73 million yen (SDR 450,000)	240 million yen (SDR 1.5 million)	73 million yen (SDR 450,000)

(Note) The above values converted to Japanese currency are applicable from 1 April, 2004 to 31 March, 2006.

#### (2) Threshold for Voluntary Measures

In the voluntary measures or the Action Program on government procurement, the threshold for procurement of products and services (except procurement by local government), is lowered from SDR 130,000 (19 million yen) to SDR 100,000 (14 million yen).

#### (3) Threshold in the Japan-Singapore Economic Agreement for a New Age Partnership

From November 30, 2002, in which the Agreement entered into force, the threshold for the procurement of goods and services by the central government, public corporations and independent administrative institutions became lowered to 100,000 SDR (14 mil. Yen).

### 2. International comparison of thresholds

(Units: thousands of SDR)

Classification	Japan	United States	European Community	Canada	Republic of Korea
Central government:					
Goods	130	130	130	130	130
Services	130	130	130	130	130
Construction services	4,500	5,000	5,000	5,000	5,000
Design consulting services	450	130	130	130	130
Local government:	Prefectures and Designated cities	37 states	All regional self-governing bodies		9 provinces, Seoul, 5 cities
Goods	200	355	200	355	200
Services	200	355	200	355	200
Construction services	15,000	5,000	5,000	5,000	15,000
Design consulting services	1,500	355	200	355	200
Public corporations and Independent administrative institutions:	70 entities	7 entities	waterways, transport, energy		23 organizations
Goods	130	400	400	355	450
Services	130	400	400	355	-
Construction services	15,000	5,000	5,000	5,000	15,000
Design consulting services	450	400	400	355	450