

## **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 2020, 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 2020)

Japan, Armenia, Canada, European Union (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, ) Hong Kong China, Iceland, Israel, Korea, Liechtenstein, Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Taiwan, the United States, Ukraine, Republic of Moldova and Australia

### **(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 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 (GPA) has thus far been signed by 46 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 as well, 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 (among the Parties of such EPAs, Singapore, Switzerland, Australia and EU are Parties to the GPA).

### **(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. 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, 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. The Philippines is not a Signatory of the GPA. Japan agreed with the Philippines, 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. 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. Australia became the parties to the GPA in 2019. 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 (TPP11 Agreement)**

This Agreement entered into force in December 2018 (as of March 1, 2020, the Agreement is in effect for Mexico, Japan, Singapore, New Zealand, Canada, Australia and Vietnam).

Regarding government procurement in the Agreement, the Parties committed in the Agreement to open tendering to the goods and services of the other Party as well as suppliers thereof in principle, national treatment and non-discrimination in principle, fairness and openness in 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 TPP11 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 TPP11 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 directly accessible by electronic means free of charge.

## **(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 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 contact point to facilitate communications between the Parties. 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 not disadvantageous in comparison to third parties.

The Japan-Mongolia EPA (entered into force 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 provision of 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 the Party provides a favorable treatment to a third party, it shall provide an opportunity 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 2019, the following seminars were held.

Table III-1 Government Procurement Seminars in Japanese Ministries and Agencies in 2019

Procurement Organization	Date	Content
National Public Safety Commission (National Police Agency)	5 June 2019	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Computers)
Ministry of Education, Culture, Sports, Science and Technology	17 May 2019	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Medical Technology)
Ministry of Health, Labour and Welfare	17 May 2019	Government Procurement Seminar, Government Procurement Annual Meeting (Medical Technology, Computers)
Ministry of Land, Infrastructure, Transport and Tourism	22 May 2019	Government Procurement Seminar, Government Procurement Annual Meeting (Telecommunications, Computers)
Ministry of Defense	4 June 2019	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 2019, 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 20 December 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.