

JAPAN'S VIEW ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Communication from Japan

The following communication, dated 10 October 2002, has been received from the Permanent Mission of Japan with the request that it be distributed to all Members.

I. OVERVIEW

The Working Group on Transparency in Government Procurement was established in 1996, with a view to ensuring transparent, open and appropriate procedures in government procurement, thereby combating corruption, which is an impediment against competition. The Working Group held 14 meetings in the last six years.

(Reference)

Singapore Ministerial Declaration (December 1996)

21. We further agree to establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement.

Doha Ministerial Declaration (November 2001)

26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity-building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

Japan's position towards an agreement on transparency in government procurement

1. The Working Group has made considerable progress in examining elements for inclusion in a transparency agreement, and discussing main issues and options as to how to deal with those issues. With regard to the mandates stated in the Singapore Ministerial Declaration, Japan recognizes that the Working Group has largely accomplished "a study on transparency in government procurement practices" and made fundamental progress to "develop elements for inclusion in an appropriate agreement", during the last six years.

2. As for an appropriate agreement on transparency in government procurement, Japan attaches a great importance to the following:

- (1) Since the transparency provisions in the Agreement on Government Procurement in Annex IV of the WTO Agreement are difficult for developing country Members to follow as it stands, the provisions of a transparency agreement should be flexible enough, so that all WTO Members could accept them.
- (2) A transparency agreement should be legally binding and effective.
- (3) It is a prerequisite that all WTO Members participate in a transparency agreement. Therefore, the framework of such an agreement should be simple, focusing on core principles such as transparency in procurement opportunities (see paragraph 4 below). For example, details of tendering procedures should be dealt with in each Member's domestic laws, and a transparency agreement should ensure that such procedures are transparent.

3. Japan wishes to contribute to establishing a "flexible, effective, and simple" framework for a transparency agreement. In 1999, Japan tabled a draft framework for a transparency agreement and updated it twice (JOB(99)/5239).

4. Elements of a transparency agreement:

Japan considers that important elements are, *inter alia*, the following:

- (1) Non-discrimination in transparency.
 - (2) Definition and scope.
 - (3) Core transparency principles:
 - preparation and publication of procurement rules and enquiry point;
 - publication of procurement opportunities;
 - transparency in decisions on contract awards.
 - (4) Domestic review.
 - (5) Consultations and dispute settlement.
 - (6) Technical cooperation and special and differential treatment for developing countries.
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