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**Committee on Government Procurement
Negotiations under Article XXIV:7
of the Agreement on Government Procurement**

24 November 2011

附件
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**REVISION OF THE AGREEMENT ON GOVERNMENT PROCUREMENT:
THE STATE OF WORK ON ARTICLE XXII WITH RELATED DRAFT DECISIONS
AND PROTOCOL OF AMENDMENT ILLUSTRATING POSSIBILITIES FOR
GIVING LEGAL EFFECT TO THE REVISED AGREEMENT,
AS AT 18 OCTOBER 2011**

Joint Submission by Canada, Japan, Korea, and the United States

The following joint submission, dated 23 November 2011, is being circulated at the request of the Delegations of Canada, Japan, Korea, and the United States.

* In English only.

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TEXT OF ARTICLE XXII

[N.B.: This Article will need to be reconsidered in light of decisions to be taken regarding the giving of legal effect to the revised GPA. The Parties are still reviewing the entire Article and may propose additional changes to this Article.]

Article XXII Final Provisions

Acceptance and Entry into Force

1. This Agreement shall enter into force on {1 January 1996}^{US} [...]} for those WTO Members governments whose agreed coverage is set out contained in the Annexes 1 through 5 of to Appendix I of this Agreement, and that which have, by signature, accepted thise Agreement on {15 April 1994}^{US} [...]}, or have, by ~~or~~ on that date, signed thise Agreement subject to ratification and have subsequently ratified thise Agreement before {1 January 1996}^{US} [...]}.

[N.B.: If the revision is given legal effect as an amendment, the original paragraph 1 from the 1994 GPA needs to be retained without any these changes would be necessary to restore the language of the original provision.

Transitional Arrangements

2. ~~Between the Parties to this Agreement that are also Parties to the Agreement on Government Procurement dated 15 April 1994 ("1994 Agreement"), the 1994 Agreement shall cease to apply on the date of entry into force of this Agreement for those Parties. When all Parties to the 1994 Agreement have accepted this Agreement, the 1994 Agreement shall be terminated.~~

3. ~~The provisions of Articles XVIII and XX of this Agreement shall apply to covered procurement for which a notice of intended procurement pursuant to Article VII:1 and 2 or a notice of planned procurement pursuant to Article VII:5 has been published after the entry into force of this Agreement. For covered procurements where no such notice has been published, the provisions of Articles XVIII and XX of this Agreement shall apply when a supplier or suppliers has been contacted after the entry into force of this Agreement.~~

[N.B.: If the revised Agreement is given legal effect as a new Agreement, this paragraph may not be needed.] ~~[If the revision is given legal effect as an amendment, paragraphs 2 and 3 should be deleted as unnecessary.]~~

Accession

42. Any Member of the WTO may accede to this Agreement on terms to be agreed between that Member and the Parties, as set out in a decision of the Committee. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for a Member acceding to it on the 30th day following the deposit of its instrument of accession.

Reservations

53. No Party may enter a reservation in respect of any provision of this Agreement.

Domestic Legislation

64. Each Party shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by its procuring entities, with the provisions of this Agreement.

75. Each Party shall inform the Committee of any changes ~~in to~~ its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

[Reciprocal Market Access Commitments]

86. Notwithstanding Article IV:1 and 2 (Non-Discrimination) of this Agreement, the Parties may maintain and make commitments with respect to covered procurement on the basis of mutual reciprocity, including commitments made as a result of negotiations undertaken by the Parties to expand the scope of covered procurement and negotiations on accession to this Agreement. Such commitments shall be specified in a Party's Annexes to Appendix I.]^{US}

Review of Market Access Commitments

97. Each Party shall [seek to] avoid introducing [or continuing] discriminatory measures that distort open procurement.

[N.B.: The US, Israel, Korea and Japan support deleting "or continuing".] [The EU; Norway; Switzerland; Hong Kong, China; Singapore; and Canada support deleting "seek to".]

108. [Further to Article IV:1 and 2 (Non-Discrimination), each Party shall provide, without prejudice to its rights and obligations under the Agreement, a list of:

- (a) country-specific exclusions it maintains; and
- (b) any measure that has the effect of restricting access to procurement otherwise covered by the Agreement.]^{EU,NOR,SWI,CDA,SGP,HKC}

[Each Party shall provide a list of:

- (a) country-specific exclusions it maintains in its Annexes to Appendix I; and
- (b) any note or provision listed in its Annexes to Appendix I that restricts access to procurement covered by the Agreement.]^{US,ISR,JPN,KOR}

Each Party shall submit its list no later than [X] months following the [date of entry into force of the Protocol, or on [X] months following the Party's deposit of its instrument of acceptance, whichever date is later] [completion of the negotiations undertaken by the Parties pursuant to Article XXIV:7(b) and (c) of the 1994 Agreement]. In addition, any Party may add to the consolidated list any [other note or provision in another Party's Annexes to Appendix I that excludes procurement from the Agreement][measure that has the effect of restricting the access to procurement otherwise covered by the Agreement]. The Secretariat shall prepare a consolidated list and circulate it to the Parties. The Committee on Government Procurement shall review and discuss the need to maintain the exclusions [and measures referred to in (a) and (b) above]^{EU,CDA,SWI,NOR} [, notes and provisions set out in the consolidated list]^{US,ISR,JPN,KOR} at the annual meeting of the Committee provided for in Article XXI:3(a) with a view to progressively reducing and eliminating discriminatory measures and expanding the scope of covered procurement under this Agreement. In addition, the Committee shall use this list for

the purposes of future negotiations under paragraph [11]. A new Party that accedes to the Agreement shall provide a list as set out in this paragraph within one year of its accession.

Future Negotiations

~~119.~~ Not later than the end of three years from the date of entry into force of ~~[this Agreement]~~ ~~[this Agreement as amended]~~ the Protocol amending this Agreement on Government Procurement, adopted on [DATE], and periodically thereafter, the Parties shall undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, taking into consideration the needs of developing countries^{US,CDA,KOR,JPN,CT}; and seeking to progressively reduce and eliminate discriminatory measures^{US,CDA,KOR,JPN,CT}.

Future Work Programmes

~~1210.~~ (a) The Committee shall undertake further work to facilitate the negotiations provided for in paragraph [11] and the implementation of the Agreement, through the adoption of work programmes for the following items:

- (i) the treatment of small and medium-sized enterprises (SMEs);
- (ii) the collection and dissemination of statistical data; [and]
- (iii) the treatment of sustainable procurement^{US,CDA,KOR,JPN,CT}; and
- (iv) safety standards in international procurement^{EU,SWI,NOR,LIE,KOR,CT}.

(b) The Committee ~~shall~~ may adopt:

- (i) a decision ~~with that contains~~ a list of additional work programmes on additional items, which shall be reviewed and updated periodically; and
- (ii) a decision setting out the work to be undertaken on a particular work programme under subparagraph (a) or (b)(i).

[N.B.: Japan is of the view that the Parties shall adopt, only by consensus, the work programmes referred to in subparagraph (a) and decisions with the list of additional work programmes referred to in subparagraph (b)(i).]

~~1311.~~ Following the conclusion of the work programme to harmonize rules of origin for goods being undertaken under the Agreement on Rules of Origin in Annex 1A of the WTO Agreement and negotiations regarding trade in services, the Parties shall take the results of that work programme and those negotiations into account in amending Article IV:5, as appropriate.

~~1412.~~ Not later than the end of the fifth year from the date of entry into force of this Agreement, the Committee shall examine the applicability of Article XX:2(b).

Amendments

~~1513.~~ The Parties may amend this Agreement. The decision to approve an amendment shall be made by consensus. An amendment shall become effective as follows:

- (a) {except as provided for in subparagraph (b),} an amendment shall take effect, in respect of those Parties that accept it, upon acceptance by [2/3 or 3/4] of the Parties and thereafter for each other Party upon acceptance by it;
- (b) {an amendment that the Committee by consensus has determined to be of a nature that would not alter the rights and obligations of the Parties shall take effect for all Parties upon acceptance by [2/3 or 3/4] of the Parties.}

[N.B.: Singapore is reflecting on the bracketed language in paragraph 15.]

Withdrawal

~~16~~14. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date the Director-General of the WTO receives written notice of the withdrawal. Any Party may upon such notification request an immediate meeting of the Committee.

~~17~~15. Where a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect on the date on which it ceases to be a Member of the WTO.

Non-application of this Agreement between Particular Parties

~~18~~16. This Agreement shall not apply as between any two Parties where either Party, at the time it accepts or accedes to this Agreement, does not consent to such application.

Appendices

~~19~~17. The Appendices to this Agreement constitute an integral part thereof.

Secretariat

~~20~~18. This Agreement shall be serviced by the WTO Secretariat.

Deposit

~~21~~19. This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to Article XIX and of each amendment pursuant to paragraphs 16 or 17, and a notification of each accession thereto pursuant to paragraph 4 and of each withdrawal pursuant to paragraph 18.

Registration

~~22~~20. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at {Marrakesh}^{US} [...] this {fifteenth}^{US} [...] day of {April one thousand nine hundred and ninety-four}^{US} [...] in a single copy{,}^{US} in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices to this Agreement hereto.

[N.B.: If the revision is given legal effect as an amendment, the original text should be retained.]

**DECISION AND PROTOCOL OF AMENDMENT IF THE REVISED TEXT IS GIVEN
EFFECT AS AN AMENDMENT TO THE EXISTING (1994) AGREEMENT¹**

**DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT
ON ADOPTION OF "THE PROTOCOL AMENDING THE AGREEMENT ON
GOVERNMENT PROCUREMENT"**

[DRAFT DECISION]

Decision of [day/month/year]

The Committee on Government Procurement,

Having regard to paragraph 9 of Article XXIV of the WTO Agreement on Government Procurement done at Marrakesh on 15 April 1994 ("the 1994 Agreement");

Having undertaken further negotiations pursuant to Article XXIV:7(b) [and (c)]^{SGP} of the 1994 Agreement and reached agreement on amendments to improve the 1994 Agreement;

Noting the consensus among the Parties to the 1994 Agreement, all of whom are participating in this Decision, to adopt the Protocol Amending the Agreement on Government Procurement ("the Protocol") attached to this Decision and to submit the Protocol to their respective Governments for acceptance;

Considering that not all the Parties to the 1994 Agreement may be able to conclude their domestic procedures for acceptance of the Protocol by the time the Protocol has entered into force and that therefore, there may be a period when not all the Parties to the 1994 Agreement are Parties to the Protocol;

Decides as follows:

1. The Protocol Amending the Agreement on Government Procurement attached to this Decision is hereby adopted, and open for acceptance by Parties to the 1994 Agreement.
2. Pursuant to paragraph 3 of the Protocol and consistent with paragraph 9 of Article XXIV of the 1994 Agreement, the Protocol shall enter into force for those Parties to the 1994 Agreement that have deposited their respective instruments of acceptance thereof, on the 30th day following such deposit by [2/3 or 3/4] of the Parties to the 1994 Agreement. Thereafter the Protocol shall enter into force for each Party to the 1994 Agreement which ~~that~~ has deposited its instrument of acceptance thereof, on the 30th day following the date of such deposit.
3. Upon the entry into force of the Protocol,
 - (a) as between a Party to the 1994 Agreement, which is also a Party to the Protocol, and a Party only to the 1994 Agreement, the 1994 Agreement shall apply, including Appendix I of the 1994 Agreement;
 - (b) notwithstanding subparagraph (a), a Party to the 1994 Agreement for which the Protocol has entered into force may maintain or adopt any measure consistent with the Protocol, even if that measure is inconsistent with the 1994 Agreement and even

¹ Negotiators' Note: The Parties are still considering the need for and the content of this Decision, Protocol and textual amendment.

with respect to a Party to the 1994 Agreement for which the Protocol has not entered into force; and

- (c) a Party that has accepted the Protocol shall only be required to provide access to the procurement that it covers under Appendix I attached to the Protocol to the other Parties that have accepted the Protocol.

4. ~~Upon entry into force of the Protocol, a~~Any terms of accession to the 1994 Agreement agreed after the date of this Decision, pursuant to paragraph 2 of Article XXIV of the 1994 Agreement, shall provide that, upon entry into force of the Protocol:

- (a) the acceding WTO Member shall be bound by the Protocol;
- (b) as between such acceding WTO Member and a Party only to the 1994 Agreement, the 1994 Agreement shall apply, including the Party's Annexes to Appendix I of the 1994 Agreement;
- (c) notwithstanding subparagraph (b), the acceding WTO Member may maintain or adopt any measure consistent with the Protocol, even if that measure is inconsistent with the 1994 Agreement and even with respect to a Party only to the 1994 Agreement; ~~and~~

[N.B.: The addition in (b) and (c) has been added for purpose of clarification of what was in subparagraph (e).]

- (d) notwithstanding subparagraphs ~~(b) and (c)~~ ~~and (b)~~, the acceding WTO Member shall ~~extend coverage of its~~ provide access to the procurement that it covers in its Annexes to Appendix I to all Parties to the 1994 Agreement, including those Parties that have not accepted the Protocol; ~~and~~
- ~~(e) the terms of paragraph 3 shall apply to such WTO Member once it becomes a Party to the 1994 Agreement].~~

N.B.: Israel proposes the deletion of sub-paragraph (e) in light of sub-paragraphs (b) and (c).

**PROTOCOL AMENDING THE AGREEMENT ON GOVERNMENT PROCUREMENT
{DRAFT}**

The Parties to the Agreement on Government Procurement, done at Marrakesh on 15 April 1994, (hereinafter referred to as "the 1994 Agreement"),

Having undertaken further negotiations pursuant to Article XXIV:7(b) ~~and (c)~~ ^{SGP} of the 1994 Agreement;

Hereby *agree* as follows:

1. The Preamble, Articles I through XXIV, and Appendices of the 1994 Agreement shall be deleted and replaced by the provisions as set forth in the Annex hereto.
2. This Protocol shall be open for acceptance by the Parties to the 1994 Agreement.
3. This Protocol shall enter into force for those Parties to the 1994 Agreement that have deposited their respective instruments of acceptance thereof, on the 30th day following such deposit by

[2/3 or 3/4] of the Parties to the 1994 Agreement. Thereafter this Protocol shall enter into force for each Party to the 1994 Agreement which has deposited its instrument of acceptance thereof, on the 30th day following the date of such deposit.

4. This Protocol shall be deposited with the Director-General of the World Trade Organization, who shall promptly furnish to each Party to the 1994 Agreement a certified true copy of this Protocol, and a notification of each acceptance thereof.

5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this [...] day of [...] two thousand and [...] in a single copy, in the English, French and Spanish languages, each text being authentic.

**[INSERTION OF PREAMBLE, ARTICLES I-XXII OF THE REVISED TEXT AND
APPENDICES]**

12 December 2011

**LOGISTICAL ARRANGEMENTS FOR MINISTERIAL-LEVEL MEETING
OF THE COMMITTEE,
15 DECEMBER 2011 AT 11 A.M.***

1. Security and Registration Procedures

- Entry to the Centre William Rappard (WTO headquarters), where the meeting will be held, will be possible with either regular WTO/mission identification or the special badge for the Ministerial.
- Delegates intending to proceed to the CICG building should note that entry to that building will be possible only with the special badge for the Ministerial. In addition, 10 minutes may be needed to complete security procedures at the CICG.

2. Size and seating of delegations

- Parties to the GPA will be entitled to a total of 10 seats per delegation at the delegations' table, with extra space available in the galleries.
- EU member States will be entitled to six seats per delegation at the delegations' table.
- Observers to the Committee on Government Procurement will be entitled to four seats per delegation at the delegations' table.

N.B. All delegations are asked to notify the names and titles of their delegates to the WTO Conference Office (conference.office@wto.org) and to Ms Audrey Long (audrey.long@wto.org).

3. Time-limits and order of delegations' statements

- Delegations' statements should be limited to a maximum of 4 minutes in duration.
- Delegations led by Ministers will be given the floor first. Afterwards, any other delegations are welcome to speak.

4. Group photograph for Ministers

- A group photograph of all Ministers present will be taken at the conclusion of the meeting.

5. Transportation to the CICG following conclusion of the meeting

- Following conclusion of the meeting at 1 p.m., buses will be available for delegates wishing to proceed to the CICG.

* In English only.

6. Press briefing facilities

- Facilities for press briefing will be available at the CICG (details available through the Geneva missions of delegations).
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**MINISTERIAL-LEVEL MEETING OF THE PARTIES TO THE
WTO AGREEMENT ON GOVERNMENT PROCUREMENT
(15 DECEMBER 2011, 11:00 - 13:00)**

***DECISION ON THE OUTCOMES OF THE NEGOTIATIONS UNDER ARTICLE XXIV:7
OF THE AGREEMENT ON GOVERNMENT PROCUREMENT***

1. We, the Parties to the WTO Agreement on Government Procurement ("the Agreement")¹, meeting at Ministerial level in Geneva, are pleased to confirm that we have reached agreement in principle on a revised Agreement, building on comprehensive negotiations conducted over a number of years and encompassing both the text and coverage of the Agreement.
2. We have undertaken this revision in furtherance of our common objectives to modernize the Agreement, expand access to government procurement markets, promote good governance and deter corruption, and facilitate the effective management of public resources, particularly in the present economic environment. The revision recognizes the crucial importance of government procurement as a dimension of economic activity, and its significance for international trade facilitation and development.
3. We equally wish to encourage and facilitate accession to the Agreement by WTO Members that are not yet Parties to it, noting that developing and least developed country Members can benefit from the improved transitional measures in the revised Agreement. In addition, we have developed a number of Future Work Programmes in order to facilitate mutual understanding of Parties' approaches to the implementation of the revised Agreement, and to improve the administration of the Agreement over time.
4. We confirm that the results of the negotiations under Article XXIV:7 of the Agreement comprise the following items set out in Attachments to this Decision, subject to technical verification and legal review:
 - a. [Draft Decision of the Committee on Government Procurement on Adoption of "The Protocol Amending the Agreement on Government Procurement"] **OR** [Draft Decision on Arrangement for the Period of Coexistence of the 1994 Agreement on Government Procurement and the [2012] Agreement on Government Procurement] ("Attachment 1");
 - b. Articles I-XXII of the Revised Text of the Agreement and its Appendices, including each Party's Appendix I Annexes ("Attachment 2");
 - c. Proposed Decision of the Committee on Government Procurement on Notification Requirements under Articles XIX And XXII of the Revised Agreement ("Attachment 3");

¹ The Parties to the Agreement comprise Armenia; Canada; the European Union, including its 27 member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei); and the United States.

- d. Proposed Decision of the Committee on Government Procurement on Adoption of Work Programmes, Pursuant to Article XXII of the Revised Agreement on Government Procurement ("Attachment 4");
 - e. Proposed Decision of the Committee on Government Procurement on the Initiation of the First Work Programme, Pursuant to Article XXII: [Future Work Programmes] of the Revised Agreement on Government Procurement (SMEs Work Program) ("Attachment 5");
 - f. Proposed Decision of the Committee on Government Procurement on the Collection and Reporting of Statistical Data under Article XVI:4 of the Revised Agreement on Government Procurement ("Attachment 6"); and
 - g. Proposed Decision of the Committee on Government Procurement on a Work Programme on Sustainable Procurement ("Attachment 7").
5. We instruct our officials to work expeditiously to complete the technical verification and legal review of the text and annexes to the revised Agreement to reflect this Decision, in order that the Committee on Government Procurement can then adopt the elements referred to in paragraph 4 above no later than 31 March 2012.
6. We will seek prompt acceptance and implementation of the revised Agreement within our respective jurisdictions.
7. We invite all WTO Members that are not Parties to the Agreement to become Observers to the Committee on Government Procurement in order to become familiar with the opportunities that membership can provide, and to consider joining the revised Agreement.
8. We recognize and support the efforts of the WTO Secretariat to provide appropriate technical assistance for developing and least developed economy WTO Members considering joining the revised Agreement.
9. Finally, we fully support the Future Work Programmes of the Committee listed above.
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