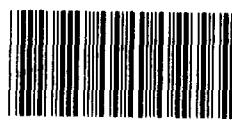


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International Government
Procurement Issues

Statement of
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Before the
Subcommittee on Legislation and National Security
Committee on Government Operations
House of Representatives



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Thank you Mr. Chairman for asking us to testify this morning on our work on international government procurement issues.

Governments are the largest single purchasers of goods and services in every major country creating a potential annual world market that is in the hundreds of billions of dollars. Most of this vast market has traditionally been closed to foreign businesses by means of formal and informal administrative systems of discrimination in favor of domestic firms. The successful elimination of such discrimination can create significant opportunities for international trade

GATT AGREEMENT ON GOVERNMENT PROCUREMENT

Countries wishing to eliminate the international trade barriers in government procurement worked toward this goal in the Agreement, or Code, on Government Procurement. The Code was negotiated during the GATT Tokyo Round of multilateral tariff talks and became effective January 1, 1981. Participation is voluntary, and the number of countries covered by the Code is limited. The signatories represent the major economic powers and a substantial portion of world government procurement.¹

¹The 12 signatories to the Agreement include 20 countries: the United States, Austria, Canada, Finland, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland, and under the EC - Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom and West Germany.

Code signatories are committed to non-discrimination against other signatories' products in covered procurement. Signatories are obligated to maintain open, transparent procedures that explain and provide full information on every stage of their procurement process. The Code establishes a procedure to settle disputes and calls for annual reporting of purchases, which help to ensure signatories' compliance. Concessions made under the Code are obligatory only for other signatories. The commitment to non-discriminate obligates the United States to lift its Buy American price preferences in purchasing decisions.²

During negotiations, it was estimated that the Code would cover \$17 billion of U.S. government procurement and over \$20 billion of foreign government procurement. These estimates were based on total procurement of supplies and equipment by designated central government agencies and were expected to represent about 10 percent of total central government procurements.

Under the final agreement, certain significant government agencies were not covered, including those that purchase large amounts of telecommunications equipment, heavy electrical machinery, and transportation equipment. Also, the Code did not cover purchases costing less than a minimum "threshold" value of 150,000 Special

²The United States also waives Buy American preferences for some non-signatory countries, including certain lesser developing and Caribbean Basin countries.

Drawing Rights³. Services were covered only when they were incidental to the procurement of supplies and equipment. In addition, the Code did not cover military weapons or purchases by state and local governments.

Exclusion of certain countries, entities, product sectors, and small procurements, limited the scope of the Code's coverage and, consequently, of government procurement opportunities for U.S. suppliers.

EXPERIENCE UNDER THE CODE

In 1984, we reported that the value of code coverage had not met expectations;⁴ as shown in appendix I, the estimate of over \$20 billion in anticipated foreign sales opportunities significantly overstated the actual \$4 billion in opportunities reported in 1981. We also reported problems in U.S. monitoring and enforcement efforts and a need to focus export assistance on U.S. firms that could take advantage of the opened markets. In addition, we found that deficiencies in the reported procurement

³Approximately \$177,000 in 1981 dollars. The Special Drawing Right is an international reserve asset which is the International Monetary Fund's official unit of account. Its value is based on a trade-weighted basket of major currencies.

⁴The International Agreement on Government Procurement: An Assessment of Its Commercial Value and U.S. Government Implementation (GAO/NSIAD-84-117) July 16, 1984.

information precluded assessment of the relative benefits of participation.

To enable monitoring of whether opportunities under the Code have been equitable, signatories are required to provide data on covered procurement and their annual purchases. However, statistics reported in the early years were considered unreliable because most countries lacked effective reporting systems. Over time, the quality of statistical reporting has improved as better systems have been developed and as formats have been standardized.

Therefore, the availability of more accurate data enables us to reassess the balance of opportunities under the Code. We have reviewed the signatories' data reported for 1985 through 1987⁵, which is the most recent available. Although we cannot provide a detailed analysis of the data because it is classified, we have some general observations:

Total procurement by Code-covered foreign entities in 1985, 1986, and 1987 continued to be far below the original estimates. On the negative side, over half of potential opportunities continued to fall below the Code's threshold. In fact, the proportion of foreign government procurement below the threshold rose slightly compared with 1981. However, the adoption of a lower threshold

⁵Data for 1987 is preliminary and subject to revision; for all 3 years, data for some signatories is not available.

value in 1988 may help to reverse this trend. On the positive side, there was a sizable decline in signatories' use of single-tendered procurement procedures. On balance, actual foreign country procurement opportunities open to competition appeared to have modestly declined in real terms compared with 1981.

The balance between U.S. and foreign opportunities remained quite skewed; as in 1981, the United States accounted for roughly 80 percent of all procurement opportunities under the Code. To put this share into perspective, we looked at total government procurement by signatory countries. While reliable statistics on total central government procurement are not available, we made rough estimates of those data from available government finance statistics. Based on these estimates (which are presented in Appendix 2), it is likely that total procurement by foreign signatories equals or exceeds that of the United States. Thus, the 80%-20% imbalance in opportunities appears to be very significant.

Although the persistence of this imbalance is disappointing, the statistics also indicate that certain countries have made considerable progress in reducing both the frequency of single tendering and the use of below-threshold contracts, resulting in a higher level of opportunities.

NEGOTIATIONS TO BROADEN CODE COVERAGE

The United States was disappointed with Code coverage but hoped that the renegotiations provided for in the original agreement would remedy the imbalance in opportunities between U.S. and foreign government procurement.

Phase one of these renegotiations concluded in November 1986 and resulted in amendments that improved Code procedures. Effective February 1988, Code coverage improved to some degree with the reduction of the threshold value to include smaller procurements and the inclusion of leasing contracts. In general, other amendments increased transparency and reduced discriminatory practices by bringing the Code more into line with current U.S. procurement practices. However, U.S. efforts to significantly broaden the Code's coverage during this phase were not successful. The persistent imbalance in procurement opportunities underscores the need for broadening opportunities covered under the Code.

The second phase of the renegotiations, which began in 1987, is to be concluded in 1990, and is now reaching a critical stage. This phase has focused on expanding coverage to services and to procurement by entities in major excluded sectors. These entities were not included in the Code's original coverage because the EC lacked jurisdiction over its member states' procurements in these sectors.

Procurement opportunities will also expand if more countries join the Code. However, the Code has attracted only one new member since its inception -- Israel in 1983. Many countries are not able to meet the Code's obligations, and attracting new members has been a concern.

BUY AMERICAN ACT OF 1988

When we testified in March 1987, many in Congress were disturbed by continued foreign government discrimination against U.S. suppliers and what they perceived as an inadequate multilateral enforcement mechanism. Thus, Congress sought a more forceful measure to encourage countries to open up government procurement, resulting in the Buy American Act of 1988, Title VII of the Omnibus Trade and Competitiveness Act of 1988.

Title VII requires the President to identify, in an annual report, countries that discriminate against the United States in their government procurement. The first such report is due April 30, 1990. The required investigation is to be comprehensive and include a determination of the extent of: signatories' compliance with the Code, discrimination by signatories in procurement not covered by the Code, and discrimination by non-signatories. Countries identified not in compliance or otherwise discriminatory are subject to sanctions that would limit their access to U.S.

procurements, if negotiations to correct the practices are unsuccessful.

Importantly, the scope of the Title VII goes beyond Code non-compliance to include discrimination in excluded sectors and services as well as procurement by non-signatory countries. In these situations, sanctions can be used as leverage to persuade signatories to increase covered opportunities and to encourage non-signatories to consider signing the Code. Greater Code compliance alone cannot yield the balance in export opportunities originally expected; such opportunities can come only through broadening the Code.

ADMINISTRATION'S EFFORTS TO IMPLEMENT TITLE VII

Concerns over the availability of the information necessary to identify discriminatory countries led to a recent request from the House Government Operations Committee that GAO assess the administration's implementation of Title VII. Although our review is in its preliminary stages, we have some interim observations to report today.

In August of this year, the Subcommittee on Government Procurement of the interagency Trade Policy Staff Committee approved a work program of steps necessary to submit the President's Report by April 30, 1990. This subcommittee is chaired by OUSTR. Progress

has been slower than expected and tasks to be completed in August and September are still underway; for example, writing of policy guidelines for handling information gathered in the investigation, publishing a Federal Register notice soliciting public comments, and briefing advisory groups and the many government officials needed to carry out the investigation have yet to occur.

Officials have told us they not been able to concentrate on implementing Title VII, because they have been focusing on procurement negotiations mandated by other provisions of the Trade Act and on the negotiations to broaden the Code. It remains to be seen whether the administration has dedicated enough resources both to carry on these negotiations and to conduct Title VII investigations, as currently envisioned.

While our work is still preliminary, some of the issues we are exploring include:

First, there is overlap between identification of discrimination in Title VII and other trade legislation requirements, such as the identification of significant foreign trade barriers or unfair trade practices and talks to open telecommunication procurements. We will examine how this overlap will be handled by the administration. For example, will discriminating countries be targeted more than once?

Second, the availability of the information necessary to identify discrimination has been a problem. For Code-covered procurements transparency and reporting requirements yield information, but there are significant delays in reporting. Furthermore, even with this information it takes significant time and effort to identify discrimination. For procurement not covered by the Code, where is no transparency or reporting, identifying discrimination is more difficult. Although in the United States discrimination takes the form of visible "Buy American" preferences or legislated prohibitions against foreign purchases, in other countries the methods of discrimination are often not known.

Third, we will be looking at interagency coordination. Different parts of several agencies must be relied on to carry out the annual Title VII investigation. Given the many overlapping trade priorities and the difficulties in monitoring compliance we identified in 1984, implementation may be uneven. Also, Title VII investigations and possible sanctioning includes the examination of discrimination in military procurement covered under Department of Defense Memoranda of Understanding (MOUs). These agreements cover about 80 percent of total U.S. government procurement, some of which also falls under the Code. However, we have been told that the MOU's do not require reciprocal transparency procedures. Even though Title VII investigations, negotiations to broaden the Code, and the terms of MOU's are interdependent, only informal

coordination appears to take place between DOD and the agencies responsible for international trade matters.

Finally, the difficulty in soliciting evidence of discriminatory foreign practices from the private sector may still persist. It is unclear whether adequate steps can be taken to remove the threat of retaliation against U.S. firms that provide such evidence.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions.

EXPLANATION OF TABLE ON GOVERNMENT PROCUREMENT CODE

Projected coverage: Estimates of the value of procurement opportunities expected to result from the Agreement, or Code, on Government Procurement. The United States and foreign governments made these estimates before the Agreement was signed. These estimates were imprecise primarily because many of the countries supplying them did not have reporting systems in place. The estimates were based on total purchases of non-military supplies and equipment by potential Code-covered entities and included procurements falling below the Code's threshold value. They did not take into account the use of single-tendering, which reduces the value of opportunities open to international competition. Therefore, as GAO's 1984 report indicated, the estimates greatly overstated the value of procurement opportunities provided by the Code.

Total entity procurement: The total value of procurement of supplies and equipment by government entities covered by the Code. This is the actual value that corresponds to the projected coverage.

Below threshold: The value of procurement by Code-covered entities in contracts below the minimum ("threshold") value of 150,000 SDRs (or \$176,874 at 1981 rates). These small contracts are not subject to Code procedures.

Code coverage: The (above-threshold) value of procurement opportunities which are covered by the Code; obtained by subtracting the value of below-threshold procurement from the value of entity procurement.

Single-tendering: The value of (above-threshold) procurements awarded using single tendering. The Code allows the use of single-tendering procedures, in certain circumstances, provided that data on their use is reported. Although these contracts may be awarded to foreign suppliers, they are not open to competition.

Open opportunities: The value of actual opportunities open to foreign competition; obtained by subtracting the value of single-tendered procurement from the value of opportunities covered by the Code. The Code does not guarantee sales results, only opportunities.

(Percent) Below-threshold procurement: The proportion of total procurement by Code-covered entities which is below the threshold value and therefore not covered by the Code. This indicates the extent of use of small contracts.

(Percent) Code-covered opportunities using single tendering: The proportion of above-threshold procurement which uses single tendering. This indicates the extent of use of non-competitive procedures for Code-covered opportunities.

APPENDIX I

APPENDIX I

Table: Procurement Under the Government Procurement Code During 1981
 Dollars in millions.

Country	Projected coverage	Total entity procurement	Below threshold	Code coverage ^b	Single tendering	Open opportunities	Percent Below-threshold procurement	Percent Code-covered opportunities using single tendering ^c
Austria	\$ (a)	\$ 156.4	\$ 150.3	\$ 6.1	\$ 1.4	\$ 4.7	96	23
Canada	1,250	969.2	520.4	448.8	125.3	323.3	54	28
European Communities	10,500	12,231.6	6,096.0	6,135.6	3,178.3	2,957.3	50	52
Finland	260	391.5	290.6	100.9	2.4	98.5	74	2
Hong Kong	(a)	212.4	46.9	165.5	24.9	140.6	22	15
Japan	6,900	1,728.4	656.6	1,072.1	720.9	351.2	38	67
Norway	170	548.9	398.2	150.8	4.1	146.7	73	3
Singapore	(a)	47.3	17.7	29.6	0.0	29.6	37	0
Sweden	1,100	797.3	701.6	95.7	22.9	72.8	88	24
Switzerland	330	357.2	230.8	126.4	33.2	93.2	65	26
Total foreign countries	\$20,510	\$17,440.2 minus \$9,108.7 equals \$8,331.5			\$4,113.6 minus \$4,217.9		52	49
United States	\$17,000	\$28,916.5 minus \$9,028.6 equals \$19,887.9			\$1,853.3 minus \$18,034.6		31	9

^aNot available.^bAbove threshold procurements, including single-tendering.^cAbove threshold procurements.

Source: Based on information supplied by signatory governments.

APPENDIX II

APPENDIX II

ESTIMATES OF TOTAL CENTRAL GOVERNMENT PROCUREMENT EXPENDITURES, 1985
MILLIONS OF DOLLARS

SIGNATORY	ESTIMATE
AUSTRIA	\$ 4,975
CANADA ^a	11,407
EC COUNTRIES ^b	130,703
FINLAND	2,289
ISRAEL ^a	4,186
NORWAY	2,685
SWEDEN ^d	4,003
<hr/>	<hr/>
SUB-TOTAL	\$ 160,248
OTHER FOREIGN SIGNATORIES	(d)
TOTAL, FOREIGN SIGNATORIES	(e)
UNITED STATES	\$ 199,200

^aData for fiscal year April 1985-March 1986.

^bEC Countries include Belgium, Denmark, Germany, France, Ireland, Luxembourg, the Netherlands and the United Kingdom. Italy is not included for comparability with government procurement data.

^cData for fiscal year July 1984-June 1985.

^dData for Hong Kong, Japan, Singapore and Switzerland are not available.

^eJapanese total central government expenditures are likely to be large because of the size of the Japanese economy; therefore, it is likely that the total for all foreign signatories exceeds \$200 billion.

Source: International Monetary Fund statistics.

Estimates are based on calendar years unless otherwise noted.

Methodology: Current expenditures on goods and services, other than wages and salaries, interest payments, subsidies, and other current transfer payments plus capital expenditures on fixed assets, excluding land, intangible assets, and capital transfers.