

## UNITED STATES – MEASURE AFFECTING GOVERNMENT PROCUREMENT

### Request for the Establishment of a Panel by Japan

The following communication, dated 8 September 1998, from the Permanent Mission of Japan to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 18 July 1997, the Government of Japan requested consultations with the United States pursuant to Article XXII of the Agreement on Government Procurement (hereinafter the "GPA") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter the "DSU") regarding the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (WT/DS95/1, GPA/D3/1).

On 22 July, 2 October and 17 December 1997, the Government of Japan and the Government of the United States held consultations in Geneva. Unfortunately, these consultations failed to settle the dispute on this matter.

In light of the above, the Government of Japan hereby requests that a panel be established at the next meeting of the Dispute Settlement Body ("DSB") pursuant to Article 4.7 and 6 of the DSU and to Article XXII of the GPA, with standard terms of reference provided for in Article XXII:4 of the GPA.

### **Measure at Issue**

The measure at issue in this request is the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (Chapter 130 of the Acts of 1996) (hereinafter the "Act"). Under the Act, the public authorities of the Commonwealth of Massachusetts are, in principle, not allowed to procure goods or services from the persons, whether US or foreign, who are listed in the respected purchase list as doing business with or in Burma (Myanmar). In particular, the Executive Offices of Massachusetts offered by the United States under the GPA are not allowed to award a contract to such persons if there is a comparable low bid or offer by a person who is not on the list.

### **Legal Basis of the Complaint**

The Government of Japan considers that the measure described above is inconsistent with the obligations of the US under the GPA. In particular, the Government of Japan claims that:

- Under the Act, the suppliers who are on the restricted purchase list are not provided treatment no less favorable than that accorded to the suppliers who are not on the list, thus being inconsistent with Article III:1;

- The Act treats a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of foreign affiliation or ownership, thus being inconsistent with Article III:2(a);

- The Act imposes conditions for participating in tendering procedures which are not essential to ensure a firm's capability to fulfil the contract, thus being inconsistent with Article VIII(b);

- The Act prohibits entities from making awards to the tenderer whose tender is the lowest, except under the specific evaluation criteria which is inconsistent with the GPA, thus being inconsistent with Article XIII:4(b).

The Government of Japan asks that this request be placed on the agenda for the meeting of the Dispute Settlement to be held on 22 September 1998.

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