

**KOREA – MEASURES AFFECTING GOVERNMENT PROCUREMENT**

Request for the Establishment of a Panel by the United States

The following communication, dated 11 May 1999, from the Permanent Mission of the United States to the Permanent Mission of the Republic of Korea and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 6.2 of the DSU.

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The Government of Korea is engaging in government procurement practices, in the construction of the new Incheon International Airport, that are inconsistent with Korea's obligations under the WTO Agreement on Government Procurement (GPA). These practices include:

- Qualification requirements: In order to be eligible to bid as a prime contractor, an interested supplier must have a license that in turn requires the supplier to have manufacturing facilities in Korea.
- Domestic partnering requirements: Foreign firms must partner with or act as subcontractors to local Korean firms in order to participate in tendering procedures.
- Absence of access to challenge procedures: The GPA requires that member countries provide effective procedures enabling suppliers to challenge alleged breaches of the GPA arising in the context of procurements. However, such procedures do not exist for Incheon International Airport and other airport construction procurements.
- Inadequate bid deadlines: There are impositions of deadlines for the receipt of tenders that are shorter than the GPA-required 40 days, such as when tendering procedures are cancelled without explanation and immediate re-bidding takes place with a shortened deadline for tendering.

On 16 February 1999, the United States Government requested consultations with the Government of Korea pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII of the GPA with respect to the above measures. The United States and Korea held consultations in Geneva on 17 March 1999, but failed to settle the dispute.

During consultations, Korea asserted that the entities responsible for Incheon International Airport procurements are not within Korea's obligations under the GPA, and therefore not subject to the provisions of the GPA. The United States notes, however, that these entities are in fact within the scope of Korea's list of central government entities, as specified in Annex 1 of Korea's coverage of obligations in Appendix I of the GPA. The United States bargained in good faith for the coverage of all airport construction in Korea during negotiations for Korea's accession to the GPA; the United States' GPA commitments with respect to Korea and its acceptance of Korea as a party to the

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Agreement were based on a balance of rights and obligations that included this coverage. Korea's subsequent assertion that the entities responsible for the procurement of the Incheon International Airport are not covered by the GPA seriously disrupts this mutually-agreed balance.

Pursuant to Article I.1 of the GPA, Korea's obligations under the GPA apply in full with respect to government procurements for the Incheon International Airport. Consequently, the above measures are inconsistent with Articles III, VIII, XI, XVI and XX of the GPA. In addition, pursuant to Article XXII:2 of the GPA, whether or not these measures conflict with the provisions of the GPA, they nullify or impair benefits accruing to the United States under the GPA.

The United States continues to be interested in settling this dispute. However, in the absence of a settlement at this time, the United States, in order to preserve its rights, respectfully requests the establishment of a panel pursuant to Article XXII of the GPA, with standard terms of reference as set out in Article XXII.4 of the GPA. The United States further asks that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, to be held on 26 May 1999.

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