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Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

1.2 General

1. The Panel in *US – Large Civil Aircraft (2nd Complaint)* referred to Articles XIII:2 and XV of the GATS in the context of interpreting the definition of a subsidy found in Article 1 of the SCM Agreement. The Panel concluded that transactions properly characterized as purchases of services are excluded from the scope of Article 1 of the SCM Agreement, which expressly refers to purchases of goods but omits any reference to purchases of services. In the course of its analysis, the Panel observed that "[w]hile the SCM Agreement was being negotiated, parallel negotiations on trade in services were also taking place. Article XIII:2 and XV of the GATS reflect the fact that the negotiators of the GATS were unable to reach agreement on disciplines regarding governmental purchases of services, or on disciplines governing the provision of subsidies to service suppliers."¹ The Panel concluded that when the omission of "purchases" of "services" from the text of Article 1 of the SCM Agreement is read against this historical background, it offers further confirmation that the drafters of that provision could not have removed the express reference to "purchases" of "services" from Article 1 of the SCM Agreement on the understanding that the reference was superfluous.²

Current as of: December 2020

¹ Panel Report, *US – Large Civil Aircraft (2nd Complaint)*, para. 7.968.

² Panel Report, *US – Large Civil Aircraft (2nd Complaint)*, para. 7.969.