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1 PREAMBLE

1.1 Text of the Preamble

Parties to this Agreement (hereinafter referred to as "Parties"),

Recognizing the need for an effective multilateral framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

Recognizing that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers;

Recognizing that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

Recognizing the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

Recognizing the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;

Desiring, in accordance with paragraph 6(b) of Article IX of the Agreement on Government Procurement done on 12 April 1979, as amended on 2 February 1987, to broaden and improve the Agreement on the basis of mutual reciprocity and to expand the coverage of the Agreement to include service contracts;

Desiring to encourage acceptance of and accession to this Agreement by governments not party to it;

Having undertaken further negotiations in pursuance of these objectives;

Hereby *agree* as follows:

1.2 "to expand the coverage of the Agreement to include service contracts"

1. The Panel in *Korea – Procurement* recalled the background to the Agreement on Government Procurement, including its expansion to cover services:

"The original Agreement on Government Procurement was negotiated during the Tokyo Round of trade negotiations and was done in Geneva on 12 April 1979 ('Tokyo Round Agreement'). This Agreement was amended following negotiations in pursuance of Article IX:6(b) through a Protocol which entered into force on 14 February 1988. During the Uruguay Round of Trade Negotiations, Parties to the Tokyo Round Agreement held further negotiations in the context of an Informal Working Group¹, which involved the broadening of entity coverage, expansion of the coverage to

¹ (*footnote original*) The Informal Working Group on Negotiations was originally established in May 1985 to improve the text of the Tokyo Round Agreement.

services and construction services and further improvements of the text of the Agreement."²

2. The Panel in *US – Large Civil Aircraft (2nd Complaint)* referred to the sixth recital of the Preamble (and also Article I) of the Agreement on Government Procurement, 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 (on appeal, the finding was declared moot and of no legal effect). In the course of its analysis, the Panel observed that "while the SCM Agreement was being negotiated, the parties to the plurilateral Tokyo Round Procurement Code were in the process of extending the scope and coverage of that agreement to cover purchases of services" and referred to the sixth recital of the Preamble (and also to Article I) of the WTO Agreement on Government Procurement.³

Current as of: December 2022

² Panel Report, *Korea – Procurement*, para. 2.2.

³ Panel Report, *US – Large Civil Aircraft (2nd Complaint)*, para. 7.967.