REPORT BY THE U.S.

# General Accounting Office

## The International Agreement On Government Procurement: An Assessment Of Its Commercial Value And U.S. Government Implementation

The Government Procurement Agreement, although an important policy step toward less restrictive trade, has not had the commercial impact originally anticipated The signatories opened a far smaller value of procurements to foreign competition than expected, and most procurements did not represent legitimate new trade opportunities Nevertheless, the Agreement has some commercial value

The U S government needs to improve implementation of the Agreement GAO recommends that U S embassies upgrade their efforts to monitor foreign government compliance and that Commerce focus its assistance on those firms best able to benefit from the Agreement It also concludes that the Office of the U S Trade Representative should seek improvements to the information provided by foreign governments used in analyzing the relative benefits of U S participation in the Agreement



GAO/NSIAD-84-117
JULY 16, 1984

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-206455

The Honorable William E. Brock
U.S. Trade Representative

The Honorable Malcolm Baldrige
The Secretary of Commerce

The Honorable George P. Shultz
The Secretary of State

This report discusses U.S. government implementation of the international Agreement on Government Procurement, one of six non-tariff barrier codes resulting from the Tokyo Round of multilateral trade negotiations. It assesses the commercial impact of the Agreement and government efforts to: help U.S. firms participate in covered procurements, monitor foreign government compliance, and analyze the relative benefits of U.S. government participation in the Agreement.

This report contains a number of recommendations addressed to you. (See pp. 29, 30, and 41.) As you know, 31 U.S.C. §720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and the Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. Should any questions arise concerning this report, please contact Mr. Curtis Turnbow, Project Director, National Security and International Affairs Division. He can be contacted on 275-5889.

We are sending copies of this report to the Director, Office of Management and Budget, the cognizant congressional appropriation and authorization committees, and other interested parties.

Frank C Conahan

Frank C. Conahan
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE U.S. TRADE
REPRESENTATIVE AND THE SECRETARIES OF COMMERCE AND STATE

# THE INTERNATIONAL AGREEMENT ON GOVERNMENT PROCUREMENT: AN ASSESSMENT OF ITS COMMERCIAL VALUE AND U.S. GOVERNMENT IMPLEMENTATION

## D I G E S T


In 1979, the United States and 18 other countries signed the international Agreement on Government Procurement, one of six non-tariff barrier codes resulting from the Tokyo Round of multilateral trade negotiations. This Agreement, which became effective January 1, 1981, sought to limit signatory governments' use of discriminatory procurement practices as barriers to trade. The Agreement generally covers purchases of supplies and equipment valued at 150,000 Special Drawing Rights ($161,000) or more made by designated central government agencies, excluding purchases of supplies and equipment essential to the maintenance of national security and safety. It was expected to create $20 billion to $25 billion in new export opportunities for U.S. firms. (See pp. 1 to 4.)

In addition to revising its procurement regulations, the U.S. government saw a need to help U.S. firms benefit commercially from the Agreement by

--assisting U.S. firms to participate in foreign-government procurements,

--monitoring and enforcing foreign-government compliance with the Agreement, and

--annually assessing the relative benefits of U.S. participation in the Agreement.

GAO reviewed U.S. government implementation of the international Agreement on Government Procurement as part of its ongoing effort to report on the non-tariff barrier codes resulting from the Tokyo Round of trade negotiations. (See pp. 4 to 7.)



(GAO/NSIAD-84-117)

JULY 16, 1984


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## AGREEMENT HAS LESS COMMERCIAL VALUE THAN ORIGINALLY ANTICIPATED

Although the Agreement was an important policy step toward less restrictive trade, experience during the course of our review shows it to have far less commercial value than originally anticipated. Foreign signatory governments opened a smaller value of procurements to international competition than was projected. They had high proportions of procurements that were too small to be covered by the Agreement and made extensive use of noncompetitive procurement procedures, which the Agreement allows under certain circumstances. The commercial value of the Agreement was further limited by (1) cases of noncompliance with its requirements, (2) previous agreements and national practices that had already opened procurements covered by the Agreement to U.S. competition, and (3) the inability of U.S. firms to competitively sell overseas many of the products that foreign governments were buying. (See pp. 8 to 15.)

The U.S. government opened a greater value of procurements to foreign competition under the Agreement than did all other signatories. However, to a large extent, these did not represent genuine new trade opportunities for reasons similar to those cited above. (See pp. 15 to 17.)

Although it did not meet expectations, the Agreement does have some commercial value, particularly for relatively large, experienced U.S. exporters with overseas representation, and the government can improve its efforts to help firms benefit from U.S. participation. (See pp. 10 and 11.)

## COMMERCE NEEDS TO FOCUS ITS ASSISTANCE EFFORTS

GAO found little familiarity with the Agreement by U.S. firms domestically and in signatory countries. Commerce's efforts to make domestic firms aware of the Agreement were limited by budgetary constraints and an internal reorganization. Moreover, Commerce did not make a coordinated effort abroad to reach the firms most capable of benefiting from the Agreement through their representatives in signatory countries. (See pp. 21 to 25.)

The Trade Opportunities Program, Commerce's primary mechanism for distributing notices of procurements covered by the Agreement to U.S. firms, has not facilitated successful bidding. Through this system, Commerce distributes individual notices of covered procurements on a high priority basis and weekly compilations of these notices. Although the domestic firms that receive the individual notices have found them useful as general marketing information, not one firm responding to a March 1983 GAO survey had successfully bid on a covered procurement that it learned of through this system. Commerce could more efficiently meet the informational needs of subscribers by discontinuing the distribution of individual notices and relying solely on the weekly distribution of compiled notices. In addition, according to government and business officials, Commerce could better facilitate successful bidding by distributing individual notices to in-country representatives of U.S. firms through the embassies, thus reaching those firms best capable of participating in foreign-government procurements. (See pp. 25 to 29.)

MONITORING AND ENFORCEMENT EFFORTS HAVE NOT MET EXPECTATIONS

Although Washington headquarters agencies adequately pursued their monitoring responsibilities, most of the overseas posts we visited generally devoted little time to this effort. Further, some embassies were unsure about what they can and should do when pursuing instances of noncompliance that come to their attention. For instance, embassy officials' opinions differed regarding whether an embassy should assist foreign subsidiaries of U.S. firms offering goods manufactured outside the United States. (See pp. 33 to 36.)

There are difficulties in monitoring compliance even when adequate resources are devoted to the effort. Embassy officials believe that some governments may be violating the Agreement in ways they cannot detect. For instance, an agency could conduct what normally would have been one procurement as two or more procurements to bring the anticipated contract value below the Agreement's value threshold.

To more fully monitor compliance, embassies need the active assistance of the in-country American business community, but most business officials GAO contacted stated that they would not bring complaints to the attention of U.S. embassies for fear of jeopardizing future relations with the host governments. (See pp. 36 to 39.)

These monitoring constraints may also affect enforcement of compliance through the Agreement's formal dispute settlement mechanism. For instance, the U.S. government is protesting the European Communities practice of excluding certain taxes in determining whether a procurement falls above the Agreement's value threshold. Even if the U.S. government effort is successful, it will not be able to fully verify compliance with the determination. An agency, without being detected, could manipulate the determination of anticipated contract values to compensate for the requirement to include the taxes. (See pp. 39 to 41.)

## U.S. GOVERNMENT HAS PROBLEMS FULLY ASSESSING THE AGREEMENT

The U.S. government had difficulty fully assessing the benefits of its first year experience under the Agreement. The European Communities, representing 9 of the 18 original foreign signatories, provided data for 1981 that does not fully reflect the procurement activity of its member states. Of greatest importance, the European Communities used a method for determining whether a purchase is domestic- or foreign-source that may grossly understate its purchases of foreign-made goods under the Agreement. Further, the system established by the U.S. government to collect its own procurement data originally provided inaccurate and incomplete information for 1981. The U.S. government retroactively corrected its 1981 information and has taken steps to improve its overall data collection effort, but the European Communities has so far declined U.S. requests that it improve its data. (See pp. 44 to 48.)

## RECOMMENDATIONS

GAO recommends that the Secretaries of State and Commerce, in consultation with the U.S. Trade Representative:

--Direct U.S. embassies in signatory countries and Commerce district offices to include, as part of their ongoing commercial activities, programs devoted to informing U.S. business officials about the Government Procurement Agreement, their rights under it, and sources of information on covered procurements.

--Revise Commerce efforts to distribute notices of procurements covered by the Agreement by (1) discontinuing the high-priority distribution of individual notices and, instead, relying on the weekly distribution of compiled notices and (2) instructing embassies in signatory countries to establish ways to distribute notices to in-country representatives of U.S. firms, where appropriate.

--Instruct U.S. embassies in signatory countries to more vigorously monitor foreign-government compliance with the Agreement by actively seeking information from the in-country American business community. These instructions should cover (1) the level of resources they should devote to monitoring host-government compliance, (2) the types of tasks they should perform, (3) the extent to which they should follow up on complaints brought to their attention, and (4) whether they should assist subsidiaries of U.S. firms offering goods made outside the United States.

## AGENCY COMMENTS AND OUR EVALUATION

The Commerce and State Departments and Office of the U.S. Trade Representative made extensive comments on this report. Of particular significance:

--The agencies cautioned against drawing conclusions about the Agreement's potential value from the limited statistical information presently available and commented that ongoing renegotiations hold greater promise for expanding commercial opportunities under the Agreement than the report stated.

--The Commerce Department stated that the Trade Opportunities Program, as presently operated, is adequately informing U.S. firms of foreign-government procurements under the Agreement.

--The agencies commented that the report did not fully reflect Washington headquarters efforts to monitor foreign-government compliance and that they have cabled extensive instructions to the overseas posts.

--The Office of the U.S. Trade Representative commented that the signatories have agreed to use a uniform format for their annual statistical submissions beginning with 1982.

In response to these comments, GAO has (1) recognized in the report that ongoing renegotiations hold promise for increasing the commercial value of the Agreement by improving its procedures, and (2) expanded the discussion of headquarters efforts to monitor foreign-government compliance with the Agreement. GAO addresses other substantive agency comments in the pertinent chapters. (See pp. 19 and 20, 30, 41 to 43, and 48.)

Agency comments that deal with more technical aspects of specific findings are addressed as footnotes to the comment letters. (See apps. I, II, and III.)

# Contents

ABBREVIATIONS

| | |
|---|---|
| FCS | Foreign Commercial Service |
| FPDS | Federal Procurement Data System |
| GAO | General Accounting Office |
| GATT | General Agreement on Tariffs and Trade |
| MTN | Multilateral Trade Negotiations |
| NATO | North Atlantic Treaty Organization |
| OECD | Organization for Economic Cooperation and Development |
| OUSTR | Office of the U.S. Trade Representative |
| SDR | Special Drawing Rights |
| TOPs | Trade Opportunities Program |

# CHAPTER 1

# INTRODUCTION

In 1979, the United States and 18 other countries[1] signed the international Agreement on Government Procurement, one of six non-tariff barrier codes resulting from the Tokyo Round of multilateral trade negotiations (MTN). This Agreement, which became effective January 1, 1981, seeks to limit the signatory governments' use of discriminatory government procurement practices as barriers to international trade. To implement the Agreement, the U.S. government revised federal procurement regulations. To help American firms derive commercial benefit from the Agreement, the government initiated efforts to (1) assist U.S. firms to participate in foreign-government procurements, (2) monitor and enforce foreign-government compliance with the Agreement, and (3) collect and analyze data on procurement activity under the Agreement.

## A BRIEF HISTORY AND DESCRIPTION OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

Through the Agreement on Government Procurement, which was nearly two decades in the making, the signatories agreed not to discriminate against or among the products or suppliers of other signatories in making certain procurements. Discussions leading to the Agreement began as a series of informal exchanges during the early 1960s. These exchanges led to a series of formal discussions under the auspices of the Organization for Economic Cooperation and Development (OECD). By the mid-1970s, Congress had authorized U.S. negotiators to seek international agreements limiting the use of non-tariff barriers to trade, including discriminatory government procurement. In 1977, the OECD discussions, which by this time focused on a proposed international government procurement code, were transferred to the broader forum of the MTN, where the world's major trading countries were conducting wide ranging negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT)[2]. An interna-

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[1]Austria, Belgium, Canada, Denmark, Finland, France, Hong Kong, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Singapore, Sweden, Switzerland, the United Kingdom, and West Germany. Israel also became a signatory in June 1983.

[2]GATT is a multilateral trade agreement which sets out rules of conduct for international trade relations and provides a forum for multilateral negotiations regarding the solution of trade problems and the gradual elimination of tariffs and other barriers to trade.

tional Agreement on Government Procurement was concluded in 1979 and became effective January 1, 1981.[3]

The Government Procurement Agreement generally covers purchases of supplies and equipment[4] valued at 150,000 Special Drawing Rights (SDRs)[5] or more by designated central government agencies. The Agreement does not cover purchases of military weapons and other goods essential to the maintenance of national security and safety or purchases by state and local government agencies. In addition, each signatory excluded certain central government agencies, particularly those that are large purchasers of telecommunications equipment, heavy electrical machinery, and transportation equipment. Further, a number of signatories excluded certain categories of procurements for domestic socio-economic reasons. For instance, the U.S. government excluded certain procurements set aside for small and minority businesses. Due to these exclusions, the Agreement covers only a small proportion of the signatory governments' spending on goods and services.

In making covered procurements, the governments can use open, selective, or single-tendering procedures. These procedures, briefly described below, are designed to maximize the

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[3]The U.S.-Japan Agreement on Procurement by Nippon Telegraph and Telephone Public Corporation (NTT Agreement) evolved from the Tokyo Round negotiations leading to the Government Procurement Agreement. As part of these negotiations, each government submitted a list of its agencies that would be covered by the Agreement. The United States considered the Japanese offer unsatisfactory because the level of procurements was not commensurate with the U.S. offer. After continued negotiations, Japan agreed to open NTT's purchases of items not used in mainline communications under the Government Procurement Agreement and to open to U.S. competition its procurements of these items and mainline telecommunications equipment under the separate bilateral NTT Agreement. See our October 7, 1983 report, Assessment of Bilateral Telecommunications Agreements with Japan (GAO/NSIAD-84-2).

[4]The Agreement also covers purchases of services incidental to the procurement of supplies and equipment (i.e., where the value of the services equals less than 50 percent of the total value of the procurement).

[5]The SDR is an international reserve asset that serves as the International Monetary Fund's official unit of account. As of January 1984, 150,000 SDRs equaled approximately $161,000 for purposes of the Agreement.

ability of foreign firms to participate in these procurements and the ability of signatory governments to monitor each others' implementation.

Open procedures allow all interested suppliers to submit bids. The government places a notice of the intended purchase in a predesignated publication.[6] This notice must (1) include certain categories of information to help potential suppliers decide whether they want to participate in the procurement, (2) generally allow at least 30 days for submitting bids, and (3) contain a GATT language (i.e., English or French) synopsis if the notice itself is not in one of these languages. The government then gives each firm that properly responds to this notice a copy of the tender documentation, which contains specifications for the items being purchased and instructions for submitting bids. The Agreement requires that the tender documentation use internationally or nationally accepted specifications and fully describe the criteria that will be used in evaluating bids. After all bids have been received, the government opens them in the presence of "either tenderers or their representatives or an appropriate and impartial witness not connected with the procurement process." The Agreement requires that the government notify unsuccessful bidders in writing or by publication not later than 7 working days after the date of the award.

Selective procedures are similar to open procedures except that the agency solicits bids from selected suppliers, most often from a list of firms which have completed pre-qualification procedures. The Agreement requires that, to the extent possible, governments accommodate requests to participate in procurements from suppliers not originally invited to submit bids, annually publish instructions for completing pre-qualification procedures, and allow firms to pre-qualify at any time.

Using single tendering, governments need not publicize procurements but can award contracts noncompetitively to particular firms. Governments may use single-tendering procedures only under certain circumstances described in the Agreement, such as when only one supplier can meet the agency's needs or when the agency needs the products so urgently that it could not obtain them in time using open or selective procedures.

The Agreement also contains procedures for settling disputes. Governments are required to settle disputes through bilateral consultations. Should a dispute remain unresolved, the Agreement provides for the creation of a panel of experts to

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[6]The U.S. government announces these procurements in the Commerce Business Daily, a periodical which contains announcements of proposed U.S. government procurements.

review the issues and make a recommendation to the GATT Committee on Government Procurement. The Committee, which is composed of representatives of each of the signatories, then makes a determination to resolve the matter.

## GOVERNMENT ASSISTANCE NEEDED TO HELP U.S. FIRMS BENEFIT FROM THE AGREEMENT

The Office of the U.S. Trade Representative (OUSTR), in the Executive Office of the President, coordinated government efforts to (1) revise federal procurement regulations in accordance with the Agreement and (2) help U.S. firms benefit from the Agreement.

To comply with the Agreement, the U.S. government needed to amend legislation and revise procurement regulations. The government discriminates against foreign suppliers primarily through the Buy American Act, which gives suppliers offering U.S.-made goods price preferences over other suppliers. The Trade Agreements Act of 1979, which implemented the MTN agreements, authorized the President to waive the Buy American price preferences and any other discriminatory purchasing requirements in covered procurements with regard to products and suppliers of other signatories. The executive branch agencies with primary responsibility for federal procurement policy issued regulations implementing this waiver and making other federal procurement procedures consistent with those in the Agreement (i.e., requiring agencies to allow at least 30 days for submitting bids on covered procurements and to inform losing bidders no later than 7 working days after the contract is awarded).

The government also saw a need to help U.S. firms benefit commercially from the Agreement. The executive branch presented the Agreement to Congress as primarily a commercial agreement. Then-Deputy U.S. Trade Representative Robert Hormats testified before the Subcommittee on Trade, House Committee on Ways and Means, that "Unlike the other MTN codes, the balance of rights and obligations under the Government Procurement Code should not be considered in abstract terms. This code deals with contracts--the dollars and cents of trade." To help U.S. firms take advantage of the Agreement, which the government anticipated would open $20 billion to $25 billion annually in foreign-government procurements to U.S. competition:

1. The Commerce Department, working with the U.S. embassies, would need to make American firms aware of the Agreement and its potential benefits and to distribute notices of foreign-government procurements to U.S. firms.

2. The U.S. embassies, working with Washington headquarters agencies, would need to monitor and enforce other signatories' compliance with the Agreement.

3. The Office of Management and Budget would need to establish a mechanism to collect data on U.S. government procurements under the Agreement, which OUSTR would compare to similar information provided by the other signatories in annually assessing the relative commercial benefits of U.S. participation in the Agreement.

## OBJECTIVES, SCOPE, AND METHODOLOGY

We made this review to assess U.S. government efforts to help U.S. firms benefit commercially from U.S. participation in the Agreement on Government Procurement. We assessed the Agreement as a mechanism for increasing U.S. exports and reviewed U.S. government efforts to

--assist U.S. firms to participate in foreign-government procurements,

--monitor and enforce foreign-government compliance with the Agreement, and

--assess the relative benefits of U.S. participation.

We attempted to identify not only the areas in which the government could improve the implementation of its activities but also the areas in which the Agreement itself limits the government's ability to take needed action.

We assessed the value of the Agreement as a mechanism for increasing exports during 1981 to mid-1983. We interviewed U.S. and foreign government officials and business community representatives and reviewed pertinent documents concerning the signatories' practices and activities during this period. We also analyzed data on the value of procurements under the Agreement during 1981--the only year for which this information was available--and on the number of procurements during 1982 to determine the value of trade opportunities created and the extent to which the signatory governments are buying foreign-source goods under the Agreement. We also reviewed data showing the types of products purchased under the Agreement during 1981 and 1982 to determine whether foreign governments are buying products that U.S. firms can sell competitively in the purchasing country.

In reviewing government efforts to assist U.S. firms to participate in foreign-government procurements, we interviewed officials at Commerce headquarters, district offices, and U.S. embassies who planned and implemented the awareness and dissemination efforts. We reviewed plans showing what was needed to assist U.S. firms and compared these to actual efforts. We analyzed notices of covered foreign-government procurements sent to U.S. firms by Commerce to determine the timeliness of the notices and the actual number of firms receiving each notice. We also surveyed a statistically valid random sample taken from the approximately 1,700 exporting firms that received notices during the Agreement's first 2 years to determine whether the firms used them to successfully bid on foreign-government procurements. (See app. IV.) Our survey of 347 firms, which had a 76-percent response rate, allows us to be 95 percent confident that our projectable results are accurate to within about 5 percent for the universe of firms represented by the respondents. That is, actual results are most likely no more than about 5 percent higher or lower than our projections.

Our review of government efforts to monitor and enforce foreign-government compliance was made primarily overseas. In addition to interviewing headquarters agency officials and reviewing pertinent documents, we performed extensive work at U.S. embassies in 9 of the 18 original foreign signatory countries[7] from February to June 1983. We interviewed Foreign Commercial Service (FCS) and State Department economic section officials and reviewed cables regarding these and other signatory countries' implementation of the Agreement. In each country, we interviewed representatives of the in-country American business community, including the American chamber of commerce, and the host government. We also performed work at the U.S. Mission to the European Communities and at OUSTR's office in Geneva. In addition, we interviewed officials of the GATT Secretariat, focusing on the adequacy of the Agreement's dispute settlement mechanism, and the European Communities Commission.

Our review of U.S. government efforts to assess U.S. participation in the Agreement focused on the adequacy of its data collection efforts but also addressed the adequacy of data provided by the other signatories. We discussed the overall operation of the U.S. data collection system with pertinent officials of participating agencies. We obtained testimonial and documentary information to assess the quality controls used to assure the validity of the data. In addition, we assessed the accuracy and completeness of the 1981 procurement data for each covered

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[7]The countries we visited were Austria, Belgium, France, Hong Kong, Italy, Japan, the Netherlands, the United Kingdom, and West Germany.

civilian agency contract and for a statistically valid random sample taken from approximately 7,600 Defense Department contracts. Our sample of 548 Defense contracts allows us to be 95 percent confident that our projectable results are accurate to within 1.8 percent. That is, actual values are most likely no more than 1.8 percent higher or lower than our projections. In assessing information provided by other signatories, we could not review the adequacy of their data collection efforts or the accuracy and completeness of the data they submitted. Instead, we assessed the usefulness of this data for evaluating the relative benefits of U.S. participation in the Agreement.

Our review was made in accordance with generally accepted government audit standards.

## CHAPTER 2

## THE AGREEMENT ON GOVERNMENT PROCUREMENT HAS NOT MET EXPECTATIONS OF ITS COMMERCIAL VALUE

Although the Agreement on Government Procurement was an important policy step toward less restrictive trade, experience during the course of our review shows it to have far less commercial value than originally anticipated. Statistics used to support acceptance of the Agreement significantly overstated the value of procurements that would open to foreign competition. Data available show that the foreign signatories opened a far smaller value of procurements than was projected. Moreover, many procurements, including most opened by the United States, did not represent legitimate new trade opportunities. Neither the United States nor the other signatories appear to have made significant levels of foreign-source purchases under the Agreement. Although foreign government officials with whom we met did not support expanding the Agreement's coverage, they generally favored steps to improve its operation that could increase its commercial value.

### TRADE POLICY IMPLICATIONS OF THE AGREEMENT

By bringing government procurement under the auspices of GATT for the first time, the Government Procurement Agreement had an important impact on international trade policy. Most governments employ procurement practices that limit foreign competition. Article III of the GATT specifically states that its rules restricting the use of internal regulations as barriers to trade do not apply to "procurements by governmental agencies of products purchased for governmental purposes." This exclusion allows GATT signatories to discriminate against foreign suppliers and/or products in conducting government procurements. Since governments are the largest purchasers of goods in every major country, their use of discriminatory procurement practices could have a significant limiting effect on international trade.

In some instances, governments may legitimately need to limit competition, such as when only one firm can supply the product needed or the agency needs the product so urgently that it does not have time to use competitive bidding procedures. On the other hand, many governments, including the U.S. government, use procurement practices which discriminate solely against foreign suppliers and products. The U.S. government relies primarily on a highly visible system of price preferences. Under the Buy American Act, U.S. government agencies favor suppliers offering domestic goods and services by according them price preferences over other bidders. Since 1954, civilian agencies generally have used a 6-percent price differential, which may be

increased to 12 percent if the low bidding U.S. firm is a small business or is located in a "labor surplus" (i.e., high unemployment) area. The Department of Defense has applied a 50-percent price preference since 1962 as part of an initiative to improve the U.S. balance of payments. The U.S. government also discriminates against foreign-source goods through various product-specific restrictions which require the Defense Department to purchase U.S.-made textiles, clothing, specialty metals, stainless steel flatware, etc.

Other governments generally use less visible, but potentially more effective, administrative procedures. These include (1) making only domestic firms aware of the procurement, (2) using specifications that give a competitive advantage to domestic suppliers, and (3) applying criteria in awarding the contract that favor domestic suppliers, such as taking into consideration the use of domestic labor and materials. Using these and similar procedures, governments have been able to generally exclude foreign suppliers from procurements and thus restrict foreign participation to products not available domestically.

To some extent, the use of discriminatory government procurement practices has been mitigated by bilateral and regional agreements that predate the Government Procurement Agreement. The U.S. Defense Department has entered into memorandums of understanding or similar arrangements with 11 NATO allies and others[1] through which the signatories agree to give equal consideration to products from other signatories in making certain procurements. In addition, the European Communities (EC)[2] has enacted three internal directives requiring member states to treat all EC firms equally in awarding certain public works contracts and in conducting certain procurements of supplies and equipment. However, these agreements have limited potential for expansion because they are restricted to a relatively small number of signatories.

The Agreement on Government Procurement has a greater trade policy impact than these agreements. It creates an internationally recognized set of nondiscriminatory government procurement procedures under the auspices of GATT. As a result, it gives firms greater assurance of continued access to signatory government procurement markets. In addition, the potential exists for

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[1]Belgium, Canada, Denmark, Egypt, France, Israel, Italy, Luxembourg, the Netherlands, Norway, Portugal, Switzerland, Turkey, the United Kingdom, and West Germany.

[2]The EC member states are Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom, and West Germany.

the Agreement to be expanded to all major trading countries and a greater value of procurements than heretofore possible.

## COMMERCIAL VALUE OF THE AGREEMENT

During congressional deliberations on the Government Procurement Agreement, the executive branch emphasized that it would open new markets to U.S. firms. Although the Agreement has enhanced U.S. firms' ability to participate in foreign-government procurements, the executive branch overestimated the Agreement's commercial value. It has not created as large a value of procurement opportunities as originally anticipated.

### Certain U.S. firms may benefit

The Agreement has opened to U.S. firms sales opportunities that were previously closed to them. Whereas the U.S. government waived the use of price preferences which foreign firms often were able to overcome, many other signatories waived the use of more exclusionary administrative practices which had generally excluded U.S. firms from participating in foreign-government procurements.

Not all firms are in a position to benefit from these new opportunities, however. The government procurement markets of advanced, industrialized countries, such as those that signed the Agreement, are among the most difficult foreign markets in which to compete. Firms participating in procurements covered by the Agreement must be able to

--bid on relatively large procurements,

--develop and submit detailed bids within a very short time frame,

--develop bids in the national language and currency of the purchasing government,

--market and distribute products overseas, and

--often provide after-sales service.

Firms without in-country representation are at a particular disadvantage; business and government officials focused on such representation as a practical necessity for participating in foreign-government procurements. Such representation can also be useful in helping U.S. firms appear as domestic suppliers and, thereby, overcome individual procurement officials' natural bias toward domestic suppliers.

Business and government officials with whom we met agreed that relatively large, experienced exporters with overseas

representation are in the best position to benefit from the Agreement. Many such firms have already made some inroads into host-government procurement markets, to the point where agencies were treating them equally to domestic suppliers. The Agreement can assist these firms by requiring signatory governments to (1) increase the level of public information regarding covered procurements, especially regarding the criteria to be used in judging bids and, more importantly (2) follow a standard set of relatively visible procurement procedures in conducting these procurements. These representatives believed that, because of the Agreement, they are in a better position to increase their sales to signatory governments, particularly of products that U.S. firms sell competitively abroad, such as computers, measuring instruments, laboratory equipment, and pharmaceuticals.

## Assertions about Agreement's commercial value were questionable

During congressional deliberations on the Tokyo Round trade package, the executive branch claimed on several occasions that the Agreement would open an estimated $20 billion to $25 billion in foreign-government procurements to U.S. firms and an estimated $17 billion in U.S. government procurements to foreign firms. As recently as June 9, 1982, the U.S. Trade Representative stated in hearings before the Subcommittee on International Trade, Senate Committee on Finance, that "With [the Government Procurement Agreement's] entry into force, over $25 billion in new market opportunities have been opened to U.S. firms." (Underscoring supplied.) These estimates also appeared in various executive branch and congressional studies and analyses of the Agreement.

These estimates greatly overstated the commercial value of the Agreement. Of greatest importance, the signatory governments, including the U.S. government, based the estimates on data showing total purchases of non-defense supplies and equipment by covered agencies, thereby including procurements falling below the Agreement's 150,000 SDR threshold. Also, these estimates did not take into account factors that could lessen the value of such procurements, such as the use of single-tendering procedures and noncompliance with the Agreement. Further, the executive branch did not take into consideration that many of these procurements might not represent genuine new trade opportunities.

## Foreign governments opened only about $4 billion in procurements during 1981

During 1981, the only year for which value information was available, the foreign signatories to the Agreement opened a far

smaller value of procurements to foreign competition than originally anticipated. These governments reported that their agencies covered by the Agreement purchased about $17 billion worth of supplies and equipment. However, as shown below, only about $4 billion of these procurements were open to foreign competition. Information available on the number of procurements for 1982 indicates no significant change from 1981. Further, many procurements opened under the Agreement may not have represented genuine new trade opportunities. As a consequence, U.S. firms do not appear to have made substantial levels of sales to signatory governments under the Agreement.

Procurement Under the Government Procurement Agreement During 1981

| Country | Estimated | Actual[a] | | Falling below the threshold | | Covered by Agreement | | Using single-tendering procedures | | Open to foreign participation |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | (millions) | | | | |
| Austria | $ (b) | $ 156.4 | | $ 150.3 | | $ 6.1 | | $ 1.4 | | $ 4.7 |
| Canada | 1,250 | 969.2 | | 520.4 | | 448.8 | | 125.5 | | 323.3 |
| European Communities | 10,500 | 12,231.6 | | 6,096.0 | | 6,135.6 | | 3,178.3 | | 2,957.3 |
| Finland | 260 | 391.5 | | 290.6 | | 100.9 | | 2.4 | | 98.5 |
| Hong Kong | (b) | 212.4 | | 46.9 | | 165.5 | | 24.9 | | 140.6 |
| Japan | 6,900 | 1,728.4 | | 656.3 | | 1,072.1 | | 720.9 | | 351.2 |
| Norway | 170 | 548.9 | | 398.1 | | 150.8 | | 4.1 | | 146.7 |
| Singapore | (b) | 47.3 | | 17.7 | | 29.6 | | 0 | | 29.6 |
| Sweden | 1,100 | 797.3 | | 701.6 | | 95.7 | | 22.9 | | 72.8 |
| Switzerland | 330 | 357.2 | | 230.8 | | 126.4 | | 33.2 | | 93.2 |
| Total foreign countries | $20,510 | $17,440.2 | minus | $9,108.7 | equals | $8,331.5 | minus | $4,113.6 | equals | $ 4,217.9 |
| United States | $17,000 | $28,916.5 | minus | $9,028.6 | equals | $19,887.9 | minus | $1,853.3 | equals | $18,034.6 |

[a]Total non-defense purchases by covered agencies, including procurements falling below the threshold.
[b]Not available

Source: Based on information supplied by signatory governments.

The Agreement's threshold is primarily responsible for reducing the level of procurements open to foreign competition. Over half of the non-defense procurements made by the other signatories' covered agencies during 1981 fell below 150,000 SDRs. There are two primary reasons for this. First, many signatory governments have relatively decentralized procurement systems. For instance, each of the more than 40 Japanese government agencies subject to the Agreement conducts its own procurements. Further, several of these agencies have delegated procurement responsibility to sub-agencies, so the Japanese government has at least 500 individual units making procurements under the

Agreement. As a result, nearly 38 percent of the value of procurements made by the covered agencies fell below the threshold. Many EC governments also operate decentralized procurement systems. The EC reported that nearly half the value of covered agencies' procurements fell below the threshold. Second, many signatory governments have small overall procurement budgets and thus purchase in small quantities. Austria, which is in this category, reported that less than 5 percent of the value of procurements made by covered government agencies was above the Agreement's threshold. In total, approximately $9 billion of the $17 billion in foreign-government procurements fell below the threshold, leaving about $8 billion covered by the Agreement.

The foreign governments did not open all $8 billion in covered procurements to foreign competition, however; single-tendering procedures were used for nearly half of the procurements during 1981. Under single-tendering procedures, the agency need not publicize the procurement but can award the contract noncompetitively. Although foreign firms have won some single-tendered procurements, it is widely held that they are generally closed to foreign competition. Even when awarded to foreign suppliers, single-tendered procurements cannot be considered as genuine new trade opportunities opened by the Agreement. Governments award these procurements to foreign firms generally when only one firm can supply the needed product, such as when the firm holds a patent or when the government is making a follow-on purchase of a part or accessory obtainable only from the original supplier. Such procurements most likely would have been awarded to the foreign supplier even without the Agreement.

While some signatories, such as Finland and Singapore, made very little or no use of single tendering, others made great use of it. The Japanese government used single-tendering for over 65 percent of the value of its covered procurements and the EC governments used these procedures for over 50 percent of the value of their covered procurements. In total, approximately half of the $8 billion in covered procurements were single tendered, leaving about $4 billion open to foreign competition. Consequently, U.S. firms, at best, had the opportunity to competitively bid on approximately $4 billion in foreign-government procurements under the Agreement during 1981, as opposed to the $20 billion to $25 billion projected.

It appears that procurement activity under the Agreement for 1982 also did not approach the levels originally anticipated. Information regarding the full value of procurements under the Agreement for 1982 was not available at the conclusion of our review. However, information collected by the Commerce

Department shows that the number of foreign-government procurements opened to foreign competition increased about 27 percent from 1,403 in 1981 to 1,780 in 1982. This increase in the number of procurements is unlikely to generate a sufficient increase in their value to even approach the $20 billion to $25 billion originally anticipated.

Two factors further lessen the commercial value of the Agreement to U.S. firms. Many covered procurements (1) may not have been conducted in compliance with the Agreement and/or (2) do not represent genuine new trade opportunities because U.S. firms cannot competitively sell the product in the purchasing country and/or the procurements were already open to U.S. competition. Although it is not possible to quantify the extent to which these factors lessen the commercial value of the Agreement, we believe the overall impact could be significant.

Although compliance appears to have improved, noncompliance has lessened U.S. firms' ability to participate in procurements covered by the Agreement. The type of noncompliance that most visibly limits foreign firms' ability to bid on procurements is failure to provide at least 30 days for submitting bids. According to Commerce Department records, foreign governments did not meet this minimum time requirement in 30 percent of the procurements the embassies identified and disseminated to U.S. firms during 1981 and in 16 percent of such procurements during 1982. Other forms of noncompliance include the use of specifications that effectively describe domestic products and the application of criteria that favor domestic suppliers. The incidence of these and other less visible forms of noncompliance is not readily measurable. (See ch. 4.)

Further, many procurements open to foreign competition under the Agreement are not genuine new trade opportunities for U.S. firms. Approximately 62 percent of foreign-government procurements during 1981 were for fuel and related products, which the purchasing agencies generally procure through long-standing trade channels that were expected to remain unaffected by the Agreement. In addition, American firms generally cannot compete for many other products that foreign governments are buying, such as office furniture and supplies, due to transportation differentials, among other factors.

Second, many of the procurements ostensibly opened by the Agreement may have already been largely open to foreign competition. As mentioned earlier, EC internal directives require member states to open procurements to competition from all EC countries. These directives cover all firms legally established in the EC, including foreign offices of U.S. and other companies. Although the member states have not fully implemented these directives, a number of them, such as the Netherlands and West

Germany, are generally regarded as being in compliance. Consequently, some U.S. firms with offices in the EC already had access to a significant proportion of EC procurements covered by the Agreement. Moreover, a number of signatory governments, such as those of Hong Kong and Singapore, already pursued nondiscriminatory procurement policies prior to the Agreement, largely because they lack the domestic industrial capacity to meet all their procurement needs.

It is not possible to fully assess U.S. sales to foreign governments under the Agreement. The EC, which represents about 70 percent of the value of foreign-government procurements opened to U.S. competition during 1981, used a methodology for determining whether a purchase is domestic- or foreign-source that may grossly underestimate its purchases of foreign-source goods under the Agreement (see ch. 5). Nevertheless, information available for 1981 shows that foreign governments purchased only about $210 million of U.S.-source goods under the Agreement, representing about 2.5 percent of foreign-government procurements under the Agreement and an insignificant proportion of total foreign-government procurements of goods and services.

U.S. government procurements also did not meet expectations

Although U.S. government procurements opened to foreign competition under the Agreement exceeded those of all other signatories combined, to a large extent they did not represent genuine new export opportunities for foreign firms. Several factors substantially lessen their trade value, including (1) the types of products being purchased, (2) pre-existing agreements that had already opened much of these procurements to competition from some signatories, (3) U.S. government implementing procedures, and (4) difficulties experienced by the U.S. government in complying with the Agreement.

The U.S. government reported that it opened more than four times the value of procurements under the Agreement than all other signatories combined.[3] In all, covered agencies reported expenditures of nearly $29 billion on non-defense supplies and equipment during 1981.[4] A much greater proportion of these

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[3]As discussed in ch. 5, the U.S. government collected approximate data on its procurement activity under the Agreement.

[4]Some U.S. government agencies experienced difficulty collecting information on total purchases of supplies and equipment by agencies subject to the Agreement. Nonetheless, the total reported figure is a reasonable estimate. (See ch. 5)

procurements fell above the threshold than was true for the other signatory governments combined. The U.S. government purchases in relatively large quantities and operates a relatively centralized procurement system. Consequently, nearly 70 percent of the value of procurements by agencies subject to the Agreement fell above the threshold. In addition, the government used single-tendering procedures in conducting less than 10 percent of covered procurements. Consequently, it opened over $18 billion in procurements to foreign competition under the Agreement in 1981, far more than the $4 billion opened by the other signatories.

Yet, this value overestimates the commercial value of the Agreement to other signatories' firms. First, fuel and related products accounted for nearly 60 percent of the value of these procurements. As stated earlier, these products are generally procured through long-standing trade channels that were expected to remain unaffected by the Agreement. Second, as stated earlier, many of the procurements ostensibly opened by the Agreement were already open to some foreign competition through Department of Defense memorandums of understanding and similar agreements with NATO and other allies. Through these memorandums, all Defense Department procurements covered by the Agreement, which represented about 90 percent of such procurements in 1981, were already open to 11 of the 18 original foreign signatories.[5]

Third, U.S. government implementing procedures appear to limit foreign firms' ability to participate in its procurements. The Agreement requires signatory governments to open "any procurement contract of a value of 150,000 SDRs or more" to competition from other signatories. The U.S. government was not able to open contracts per se, because in its procurement system, a contract may cover many procurements and is drawn up only after suppliers have been selected. Instead, federal regulations require agencies subject to the Agreement to determine for each line item (i.e., purchase) whether or not to use Agreement procedures. A line item can represent the purchase of one type product or of several type products grouped together.

U.S. government publication practices make it difficult for foreign firms to identify exactly which purchases are open under the Agreement. Agencies announce their intention to make a purchase by placing an "invitation to bid" in the Commerce Business

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[5]Belgium, Canada, Denmark, France, Italy, Luxembourg, the Netherlands, Norway, Switzerland, the United Kingdom, and West Germany.

Daily, a Commerce Department publication listing prospective U.S. government procurements. Although an invitation to bid will often list more than one purchase, the publication does not indicate to the reader which purchases in an invitation are covered by the Agreement. Indeed, until early 1982, the Commerce Business Daily did not even identify which invitations to bid included purchases covered by the Agreement. Consequently, a foreign firm would experience difficulty identifying covered U.S. government procurements. This difficulty may dissuade foreign firms from participating in U.S. government procurements. In contrast, according to an OUSTR official, other signatory governments' procurement publications generally designate such purchases.

Finally, foreign signatories have complained that the U.S. government is not fully complying with the Agreement, limiting the ability of foreign firms to participate in U.S. government procurements. Of greatest importance, the EC has claimed that 90 percent of the procurements the U.S. government advertised as covered by the Agreement during the first 10 months of 1982 did not allow at least 30 days for submitting bids. The U.S. government, while not commenting on the accuracy of the EC statistics, has acknowledged that this problem exists. The EC has also claimed that since enactment of the Agreement, U.S. government agencies have markedly increased their use of small-business set asides, which would allow agencies to use Buy American Act procedures in conducting otherwise covered procurements. The U.S. government has claimed to be unaware of this trend and has asked the EC to provide evidence of this practice.

The U.S. government does not appear to have made substantial purchases of foreign-source goods as a result of the Agreement. It purchased about $3.3 billion worth of foreign-source goods under the Agreement during 1981, representing about 16.7 percent of its total covered procurements. However, over $3 billion of this amount was spent on fuel and related products which, as mentioned, remain generally unaffected by the Agreement. The government purchased about $270 million of non-fuel, foreign-source goods under the Agreement, representing about 1.3 percent of its total covered procurements and an insignificant proportion of its total procurements of goods and services. This amount is commensurate with the $210 million in purchases of U.S.-source goods reported by the other signatories, none of which involved fuel or fuel-related products.

## SIGNATORY GOVERNMENTS CONSIDER BROADENING THE AGREEMENT'S SCOPE

The Agreement on Government Procurement required that, before the end of 1983, the signatories begin renegotiations to

broaden and improve the Agreement. Although these renegotiations, which are presently ongoing, will address a number of considerations for expanding the Agreement, most foreign-government officials with whom we spoke did not favor expanding the Agreement. They instead preferred to focus the renegotiations on improving the Agreement's operation. Such improvements have potential for increasing competitive opportunities under the Agreement.

The signatories have agreed to an ambitious agenda for discussions on broadening the Agreement and improving opportunities for nondiscriminatory competition on covered procurements. These renegotiations will address

--expanding the Agreement's coverage to new agencies, including those that purchase significant amounts of telecommunications equipment, heavy electrical machinery, and transportation equipment;

--covering services;

--other improvements to the Agreement, such as lowering the threshold, lengthening the amount of time for submitting bids, and improving the transparency of the Agreement's procurement procedures.

The foreign-government officials with whom we met generally believed that the renegotiations should not focus on expanding the Agreement but on increasing its commercial value by improving its operation. Many of these officials acknowledged that their governments are having difficulty implementing the present Agreement and fear that any major broadening would only exacerbate these problems. One official stated that the Government Procurement Agreement is different from other Tokyo Round agreements in that it requires action by many agencies. The governments still need time to insure compliance by covered agencies; any further expansion may only cause more confusion.

## CONCLUSIONS

Although the Agreement on Government Procurement is an important trade policy step and can be of commercial benefit to U.S. firms, it has not met U.S. government expectations of its commercial value. The government over-estimated the potential value of procurements that would be open to foreign competition and did not take into consideration mitigating factors that would lessen the commercial value of the Agreement. The foreign signatories opened a far smaller value of procurements to foreign competition than was projected; many of these procurements did not represent new trade opportunities for U.S. firms.

Similarly, although the U.S. government opened far more procurements to foreign competition, most of its procurements did not represent genuine new commercial opportunities for foreign firms. The signatories are now addressing various considerations for increasing competitive opportunities under the Agreement.

## AGENCY COMMENTS AND OUR EVALUATION

The agencies agreed with our overall finding that the Agreement has not met original expectations of its commercial value. Commerce states that it "agree[s] fully with GAO's contention that the estimates developed by the Code's negotiators in 1979 have turned out to be overestimates of the volume of code-covered procurement." State adds that "The original estimates of trade opportunities to be opened by the code clearly have not been borne out in practice. . ."

However, the agencies made the following comments regarding the Agreement's commercial value.

OUSTR and Commerce cautioned against drawing conclusions about the Agreement's potential value from the limited amount of statistical information presently available. In particular, Commerce stated that "some patterns and trends in the first year's data are likely to be unrepresentative of more long-term stable trends that will result under the code."

As we demonstrated in the report, the commercial value of the Agreement appears to have increased from 1981 to 1982. We agree that its commercial value may continue to increase in subsequent years. Nonetheless, the difference between the Agreement's anticipated commercial value and its actual commercial value in 1981 is so great that it is unlikely that the Agreement, as presently written, can meet original expectations.

Commerce and State commented that we underestimated the prospects for significantly strengthening the Agreement during the renegotiations. They pointed out that a number of signatories join the United States in wanting to expand the Agreement. Although several signatories, most notably the EC countries, do not favor expansion, they have made useful proposals for improving the Agreement. State adds that "while 'improvements' may be a less dramatic part of the renegotiations, it would be unwise to underestimate its potential to increase competitive opportunities."

We agree that the renegotiation of the Agreement may increase competitive opportunities and are pleased to hear that other signatories join the United States in wanting to improve

its operation. In response, we have revised the report to recognize that improvements presently under consideration have the potential for increasing commercial opportunities.

Commerce and State commented on our finding that foreign-government noncompliance has decreased the commercial value of the Agreement. State in particular does not believe that "widespread failure to comply with the Agreement has significantly lessened its commercial value." Both argued that failure to allow at least 30 days for submitting bids is a start-up problem that has diminished and that they have no evidence of other forms of noncompliance. Commerce invited us to bring our evidence to Commerce's attention.

We did not mean to give the impression that there is "widespread" noncompliance with the Agreement, but only that such noncompliance exists and, to some extent, decreases the commercial value of the Agreement. We are pleased to hear that the incidence of allowing less than 30 days for submitting bids is decreasing. Nonetheless, it continues to exist and, thus, decreases the commercial value of the Agreement. Further, we obtained information on other government practices which appear to violate the Agreement and, as requested, have briefed Commerce, State, and OUSTR officials on this information.

Additional agency comments regarding chapter 2 are addressed as footnotes to the agency letters. (See apps. I, II, and III.)

# CHAPTER 3

# COMMERCE SHOULD FOCUS ITS EFFORTS TO ASSIST U.S. FIRMS TO BENEFIT FROM THE AGREEMENT

Although the Agreement on Government Procurement is of less commercial value than originally anticipated, it has sufficient commercial potential to warrant government efforts to help U.S. firms benefit. Commerce's efforts to assist U.S. firms were impaired because it could not fully implement its planned activities and did not focus these activities on the relatively large, experienced exporters most capable of taking advantage of the resulting trade opportunities. As a consequence, it was not fully effective in familiarizing the American business community with the Agreement or distributing announcements of foreign-government procurements to them.

## GOVERNMENT ASSISTANCE VIEWED AS KEY TO SUCCESS OF THE AGREEMENT

Congress and the executive branch emphasized the importance of Commerce's efforts to assist U.S. firms to take advantage of the trade opportunities provided by the Agreement. Government officials realized that the success of the Agreement would, to a large extent, be measured in terms of the new sales it creates and would require the substantial support and involvement of the private sector. At congressional hearings, government officials agreed that Commerce's role in familiarizing the American business community with the Agreement and disseminating notices of covered foreign-government procurements would be central to U.S. firms' efforts to realize the commercial opportunities opened by the Agreement. The Statements of Administrative Action which accompanied the Trade Agreements Act of 1979 stated that the "success of the Agreement will depend on the awareness of the U.S. business community of the provisions of the Agreement both in general terms and in terms of specific sales opportunities."

## EFFORTS TO FAMILIARIZE U.S. FIRMS WITH THE AGREEMENT DID NOT GENERATE AWARENESS

Commerce's initial effort to familiarize U.S. firms with the Agreement could have been more effective. Commerce could only partially implement its domestic awareness activities and, due to inadequate targeting, conducted almost no awareness activities overseas, overlooking the Foreign Commercial Service's potential to reach firms most likely to benefit from the Agreement. As a result, its efforts generated little awareness of the Agreement domestically.

## Planned domestic awareness program not fully implemented

Commerce had planned an extensive domestic campaign to educate the business community about the Agreement and ways to pursue procurement opportunities. Specifically, Commerce planned to (1) publish pamphlets and brochures about the Agreement, (2) conduct seminars for the U.S. business community on how to participate in foreign-government procurements covered by the Agreement, (3) promote the dissemination of notices of covered foreign-government procurements through its Trade Opportunities Program (TOPs) and establish a secondary distribution of TOPs notices of covered procurements through domestic multiplier organizations (i.e., trade associations), and (4) train U.S. Commercial Service trade specialists concerning the Agreement.

Commerce did not receive additional funding to carry out these responsibilities during fiscal years 1981 and 1982. Indeed, it did not ask for additional resources in its fiscal year 1981 budget submission. Commerce did request an additional eight positions and $1.27 million in its original fiscal year 1982 budget but deleted this request from subsequent submissions as part of the Reagan administration's effort to decrease government spending. According to Commerce officials, the resultant lack of resources caused Commerce to either forego or reduce the scope of its planned activities.

Commerce's efforts were further hampered by a February 1982 reorganization of its International Trade Administration. As old offices were abolished and new ones created and as staffs moved into new responsibilities, implementation of much of Commerce's planned efforts to make the business community aware of the Agreement "fell through the cracks." Of even greater importance, the Trade Advisory Center and Office of Export Marketing Assistance, which before the reorganization had primary responsibility for this awareness effort, no longer performed this function. The latter was abolished and the former no longer performs an outreach role. As a result, no office was left with organizational responsibility for carrying out these awareness activities and they came to a halt during the remainder of fiscal year 1982.

Nevertheless, Commerce was relatively successful in distributing printed information about the Agreement; specifically, it

- --distributed about 10,600 short pamphlets on the Tokyo Round agreements, including pamphlets on the Government Procurement Agreement.
- --distributed about 5,000 brochures explaining in detail the Agreement and its terms in non-technical language.

--devoted an entire issue of its Overseas Business Reports series to the procedural requirements of participating in the Agreement in each signatory country.

Since the reorganization, however, Commerce has discontinued promoting distribution of these publications and simply makes them available to individuals requesting them.

Commerce was less effective in carrying out its plans to have seminars for the American business community. It did not conduct the seminar series that was planned to specifically make the U.S. business community aware of the Government Procurement Agreement. Although Commerce did sponsor a series of six half-day seminars on the Tokyo Round results as a whole from a broad trade policy perspective, these seminars only touched upon the Agreement. Commerce also participated in three ad hoc half-day seminars held in Portland, Oregon; Seattle, Washington; and Greensboro, North Carolina co-sponsored with private industry groups. However, according to government officials involved, these seminars did not instruct the participants how to participate in procurements covered by the Agreement. Two of these seminars addressed selling to foreign governments in general and the other addressed the MTN agreements as a whole from a broad policy perspective.

Although Commerce planned to promote the use of TOPs by directly contacting U.S. exporters, it could only (1) make available to district offices a flyer encouraging firms to inquire about TOPs and (2) cable a notice to existing subscribers encouraging expanded subscriptions to the new Government Procurement Agreement notices. Commerce also encouraged a number of firms that disseminate information to subscribers through on-line computer systems to carry information on TOPS notices of covered procurements. However, it could undertake only a belated and short-lived effort to promote secondary distribution of notices through industry and trade associations. Although this effort was considered important to the overall dissemination program, it was not carried out until November 1981. At that time, Commerce officials made about 45 presentations to association representatives and a system of secondary distribution was established. However, the February 1982 reorganization terminated both the effort to enlist multipliers and the secondary distribution channels that had been established.

Lastly, Commerce did not mount a program to train trade specialists in its district offices. It was considered essential that Commerce train these trade specialists since they interact daily with exporters in their areas. A Commerce Department planning document stated that "Informed and knowledgeable employees who meet regularly with large segments of the

business community are the best awareness resource the Department can provide." Their detailed grasp of the complexities of the Agreement was viewed as essential to making any outreach effort effective. Yet, Commerce did no more than mail to the district offices the literature that had been developed on the Tokyo Round agreements and brief district office directors on the overall Tokyo Round results during their annual meeting in Washington, D.C.

Commerce's efforts have resulted in little awareness of the Agreement. This is generally acknowledged by Commerce headquarters and district office officials and has been confirmed by GAO and Commerce Department surveys of the American business community. In March 1983, we surveyed a statistically valid random sample taken from about 1,700 exporting firms that had received TOPs notices of foreign-government procurements covered by the Agreement and found that an estimated 80 percent of these firms were unfamiliar with the Agreement. In March 1982, Commerce also conducted a more broadly focused survey of a sample of about 7,000 firms drawn from lists of subscribers to the TOPs system and the Commerce Business Daily, and from other sources. This survey, whose methodology we did not review in depth, similarly found that an estimated 87 percent of the nearly 1,000 firms that responded were not familiar with the Agreement. We also contacted officials of 18 Commerce district offices during June 1983, who told us that firms in their districts were generally unfamiliar with the Agreement.

Letters sent or brought to the attention of U.S. embassies in signatory countries provide further evidence that U.S.-based firms are not knowledgeable about the Agreement, procedures for submitting bids, and the purpose of TOPs notices. The U.S. embassy in the Netherlands reported that U.S.-based firms have uniformly responded incorrectly to Dutch government procurement announcements. In response to TOPs notices, one U.S.-based firm contacted the U.S. embassy in Bonn directly, thinking that it was the procuring agency, and another asked Austrian government ministries to serve as its in-country representatives. In response to a French government procurement notice, one U.S.-based firm offered the procuring agency the opportunity to represent the company in France, claiming that "exclusive representation in France is still available."

## FCS overseas awareness activities are limited

Commerce did not provide the FCS staffs at the embassies in signatory countries with adequate guidance concerning their role in familiarizing the in-country American business community with the Agreement. It gave the posts an initial set of instructions, dealing only with monitoring host-government procurement activity and forwarding TOPs notices of covered procurements to

Washington, and some of the literature it had developed on the Agreement.

Embassy efforts consequently were ad hoc and inconsistent. Most of the embassies we visited made no serious effort to promote participation in the Agreement. U.S. posts conducted seminars on the Agreement in only 6 of the 18 signatory countries. Two seminars were held in Italy, which has experienced the greatest difficulty implementing the Agreement and has announced very few procurements. The other seminars were held in Frankfurt, London, Paris, Rotterdam, and Stockholm. As a result, Commerce did not take full advantage of an opportunity to not only foster awareness but also to demonstrate the U.S. government's support for the Agreement to the other signatories and the in-country American business community. Further, of the posts we visited, only the staffs at the U.S. embassies in Tokyo and Paris and consulates general in Frankfurt and Rotterdam made any ongoing efforts to inform U.S. firms about the Agreement and to keep them abreast of resulting sales opportunities.

The American business communities in the countries we visited were generally unfamiliar with the Government Procurement Agreement. Although they were generally interested in host-government sales opportunities, the representatives of U.S. firms with whom we met, with few exceptions, had little or no knowledge of the Agreement, its provisions, or their rights under it. They added that, if they had submitted bids on covered procurements, they had done so unknowingly. These officials saw the need for the overseas posts to hold seminars and undertake other activities to make the in-country American business community aware of the Agreement.

## EFFORTS TO DISTRIBUTE PROCUREMENT NOTICES DID NOT FACILITATE SUCCESSFUL BIDDING

Commerce's efforts to distribute notices of procurements covered by the Agreement to U.S. firms through the TOPs system have not facilitated successful bidding. TOPs is a domestically focused program that is inappropriate for the purpose. Commerce could de-emphasize its domestic distribution effort and, according to business and government officials, should instruct embassies in signatory countries to establish mechanisms to make in-country representatives of U.S firms aware of covered procurements.

### Commerce's domestic effort inappropriate for facilitating successful bidding

Commerce used a variety of means to distribute notices of covered procurements to U.S. firms.

--The primary instrument was the TOPs system, an existing program through which Commerce sends notices of export opportunities obtained by U.S. posts overseas to U.S. firms. Commerce sends individual notices of export opportunities to about 6,500 domestic subscribers. It determines which firms to notify of particular opportunities by matching the products or services being purchased to those supplied by the subscriber firms. Commerce decided to give highest priority to notices of procurements covered by the Agreement so as to shorten processing time. Commerce also provides subscriber firms with weekly compilations of individual notices.

--Notices of foreign-government procurements covered by the Agreement also appear in the Commerce Business Daily, which contains listings of proposed U.S. government procurements, and are made available through a related "on-line" system, through which firms can access information contained in the Commerce Business Daily via computer terminals.

Commerce originally supplemented these efforts with a "Special Handling" mechanism, through which Commerce notified U.S. firms by telephone of covered procurements that appeared to have significant export potential. However, this function was terminated in the February 1982 reorganization.

Although TOPs subscribers generally found notices of covered procurements useful as general market information, no firm successfully bid on a covered procurement that it learned of through the TOPs system. Possibly the most important reason for this lack of success is that TOPs subscribers usually are not the large, experienced exporters with significant overseas representation that can benefit from the Agreement. Such firms generally have their own sources of export leads and do not need the TOPs service. Our March 1983 survey of TOPs subscribers who received notices of covered procurements showed that approximately

--48 percent were small firms (less than $5 million in sales) and another 38 percent were medium sized (between $5 million and $50 million in sales);

--56 percent exported less than 5 percent of their total sales during fiscal year 1982, and 81 percent exported less than 25 percent of their total sales;

--41 percent had been exporting for less than 5 years; and

--64 percent had no representation in foreign signatory countries.

Nearly 75 percent of the firms responding to our survey stated that they would have significant difficulties participating in foreign-government procurements subject to the Agreement. The problems specifically cited by these firms include having to submit bids in the foreign currency and language and to deal with complicated foreign-government procurement procedures.

Another important reason for the TOPs program's lack of success is that TOPs subscribers do not sell many of the products that foreign governments are buying. Our findings indicate that notices for a majority of covered procurements are being sent to no or very few subscriber firms. We reviewed 463 TOPs notices of covered procurements processed during October 1, 1982 to May 15, 1983, and found that 14.5 percent were for products that no subscriber firm supplied and another 11.5 percent were for products that only one subscriber firm supplied. Indeed, almost 68 percent of all notices of covered procurements during this period were for products that five or fewer subscriber firms supplied.

The final limitation on the usefulness of the TOPs system is the short time frame for submitting bids allowed by the Agreement. The Agreement stipulates that signatories must allow at least 30 days for submitting bids. In practice, this time frame has become standard operating procedure for most covered agencies. Commerce cannot process and send notices fast enough to allow subscribers to prepare and submit bids in this short time. During October 1, 1982 to May 15, 1983, Commerce took an average of 20 days to send tender notices (i.e., from the date of announcement to receipt by subscriber firms, including 4 days for mail delivery of notices). This would leave the firm only 10 days to

--write the foreign government agency requesting the tender documentation;

--receive the documentation and, if necessary, translate it into English;

--analyze product requirements, match them to the firm's products, and assess the firm's likely competitiveness in that market;

--prepare a bid and, if necessary, translate it into the foreign language; and

--transmit the bid to the foreign government agency.

Although we found that some procurement announcements had bid periods longer than 30 days, business and government officials agreed that even an additional 15 to 20 days would not be enough time for firms in the United States to develop and submit bids on a foreign government procurement.

As a result of these limitations, TOPs subscribers who received notices of covered procurements have not used them to benefit from the Agreement. TOPs subscribers generally were able to use these notices only as general marketing information. Our survey found that only an estimated 7 percent of the firms had entered into pre-qualification procedures with signatory governments and an estimated 6 percent had successfully pre-qualified to participate in the procurements of any one signatory government. Further, only an estimated 11 percent of the firms submitted bids on covered procurements based on TOPs notices. Of greatest importance, not one subscriber responding to our survey successfully bid on a covered foreign-government procurement that it learned of through this system during the first 2 years of the Agreement.

The time and resources devoted to sending individual notices of all covered procurements to U.S. firms on a high priority basis does not appear to be justified by the results. Commerce could meet the general market information needs of U.S. firms by relying solely on the TOPs weekly services and the Commerce Business Daily. It could supplement these efforts by making American firms aware of public and private on-line programs which provide computer access to notices of covered procurements, such as the Commerce Business Daily system and the "Tenders Electronic Daily" system, a new system through which U.S. firms can obtain information on EC procurements covered by the Agreement.

## Overseas distribution effort needed

A number of government and business officials recommended that Commerce establish a system for distributing notices to the representatives of U.S. firms in signatory countries. Some overseas posts have done this on their own initiative. In this way, the government could distribute notices to those firms already established in-country, which are best capable of participating in covered foreign-government procurements.

The distribution systems used by the U.S. consulate general in Frankfurt and the embassy in Tokyo typify how such a system would work. These posts transmit notices of host-government procurements covered by the Agreement to the in-country American chambers of commerce, which then distribute these notices to members who have requested them. An American chamber of commerce official in Frankfurt is even considering sending notices

of covered procurements by other European governments. A post need not necessarily work through a chamber of commerce; the U.S. embassy in Paris and consulate general in Rotterdam have provided notices directly to interested firms.

Although embassy officials are not aware of sales that might have resulted from their distribution efforts, they generally believe the long-term potential for results justifies continuing this effort. The potential for results is greater because firms with in-country representation are best capable of selling to host governments. A cable from the U.S. embassy in Paris advocating overseas distribution of notices pointed out that such firms "have language capability and physical proximity to foreign government purchasers . . . [and] tend to be more internationally competitive, have more familiarity with the local market and products suited to it." Overseas representatives of American companies also welcomed overseas distribution of procurement notices as useful in their sales efforts.

## CONCLUSIONS

Commerce Department efforts to assist the U.S. business community to benefit commercially from the Government Procurement Agreement have not been fully effective. Commerce did not fully implement its planned domestic awareness activities or implement a comprehensive and coordinated awareness effort overseas to reach representatives of U.S. firms in signatory countries. Consequently, we found little familiarity with the Agreement domestically and in the signatory countries we visited. In addition, the TOPs system, which Commerce used as its primary means for distributing notices of procurements covered by the Agreement, has proved to be inappropriate for facilitating successful bidding. During the Agreement's first 2 years, not one TOPs subscriber responding to a GAO survey successfully participated in a covered foreign-government procurement that it learned of through this system.

## RECOMMENDATIONS

We recommend that the Secretaries of State and Commerce, in consultation with the U.S. Trade Representative:

--Direct U.S. embassies and Commerce district offices to include, as part of their ongoing commercial activities, programs devoted to informing U.S. business officials about the Government Procurement Agreement, their rights under it, and sources of information on covered procurements.

--Revise its efforts to distribute notices of procurements covered by the Government Procurement

Agreement by (1) discontinuing the high-priority distribution of individual notices through the TOPs system and, instead, relying on the weekly distribution of compiled notices and (2) instructing embassies in signatory countries to establish systems for distributing notices to in-country representatives of U.S. firms, where appropriate.

## AGENCY COMMENTS AND OUR EVALUATION

The agencies did not take issue with our overall findings and conclusions on government efforts to assist U.S. firms benefit from participation in the Agreement. Commerce stated that it considers heightening business awareness of the Government Procurement Code one of its important priorities, but it recognizes that budgetary constraints have continued to hamper its outreach efforts, stating in its April 1984 letter that "direct outreach activites over the past year have been hampered by resource constraints . . ." Commerce added that it intends to intensify its efforts to familiarize the U.S. business community with the Agreement and described in detail its planned efforts. The agencies also did not take issue with our finding that the TOPs system has not facilitated successful bidding and recommendation that it establish mechanisms to distribute notices to in-country U.S. firms.

However, Commerce commented that our analyses of its use of TOPs to distribute notices of covered procurements "overlooked a very important fact. The TOPs subscription fees for the MTN notices fully cover the incremental cost of mailing these notices to TOPs subscribers who request this service . . . Furthermore, it is evident that U.S. firms find the current TOPs system for Code notices valuable if they are willing to pay for it at the price that fully covers its costs."

We agree that TOPs subscribers find notices of procurements covered by the Agreement valuable as general marketing information. However, our March 1983 survey of TOPs subscribers found that firms cannot use these notices to successfully bid on covered foreign-government procurements. By providing U.S. firms with weekly compilations of notices, Commerce has the opportunity to provide this information to U.S. firms at less cost to them and in a format that would most likely be more useful. We believe Commerce should take this opportunity to improve its delivery of a useful service to U.S. firms.

Additional agency comments regarding chapter 3 are addressed as footnotes to the Commerce letter. (See app. II.)

# CHAPTER 4

# MONITORING EFFORTS TO ENSURE FOREIGN COMPLIANCE HAVE NOT MET EXPECTATIONS

Both Congress and the executive branch saw the need for vigorous monitoring, with the assistance of the American business community, to ensure that foreign governments comply with the Agreement on Government Procurement. While the Washington headquarters agencies have pursued their monitoring responsibilities, the U.S. embassies in signatory countries, which should be at the forefront of this monitoring effort, generally devote little time to monitoring compliance and are often unsure what they can and should do. Even a concerted effort would likely have limited success, however, because of the inability to detect many forms of noncompliance and business wariness of bringing complaints to the attention of the U.S. government. Further, the government's ability to correct foreign-government compliance problems could be hampered by limitations of the Agreement's dispute settlement mechanism.

## IMPORTANCE OF MONITORING AND ENFORCEMENT EMPHASIZED

During deliberations on the Tokyo Round trade package, Congress and the executive branch emphasized the need to vigorously monitor and enforce compliance with the Government Procurement Agreement. This effort was necessary to enable U.S. firms to derive whatever commercial benefit resulted from the Agreement and to ensure that the Agreement has the envisioned trade policy impact. In response, the executive branch assured Congress that it would be possible to fully monitor foreign-government compliance and reorganized its agencies involved in international trade so as to improve its monitoring capability.

The Agreement contains "transparency" provisions which require the signatory governments to conduct procurements subject to the Agreement in the open in accordance with a set of agreed-upon procurement procedures. This transparency was expected to result in more faithful adherence to the Agreement and to discourage noncompliance. If a firm is dissatisfied with a signatory's compliance with the Agreement, it can seek information regarding the procurement from the government involved and, if dissatisfied with the information provided, ask its government to intercede on its behalf and request further information. Thus, each signatory government could monitor the performance of the other signatories. Should it prove necessary, the signatories can use the Agreement's dispute settlement mechanism to improve compliance by signatories which appear to be inadequately implementing the Agreement.

Government and business officials agreed, however, that the Agreement's transparency did not, in and of itself, assure compliance and that vigorous monitoring and enforcement would be needed. The Senate Committee on Finance report on the Trade Agreements Act of 1979 states that:

> "While the agreement is a good first step in opening up the government procurement market, the agreement, in and of itself, will not guarantee open access or change deeply rooted habits. Only effective, vigorous monitoring and enforcement of the Agreement by the U.S. government can assure that the opportunities the agreement is designed to provide will in fact materialize."

The Chairman of this Committee re-emphasized this need in June 1982, stating that "if the [Agreement] is to be effective, [the executive branch must] . . . police vigilantly compliance with the [Agreement] by other contracting parties . . ."

The American business community and academia echoed this call for strong monitoring and enforcement. In particular, a number of Industry Sector Advisory Committees, established to advise the government during the Tokyo Round negotiations, urged vigorous monitoring and enforcement. One advisory committee stated in its report on the completed Agreement that:

> "A Government Procurement Agreement for insuring competition is much needed, but its success will depend on the effective monitoring of performance by others under this Agreement . . . Unless the enforcement procedures insure the total openness or transparency, perpetuation of the present discriminatory system of government procurement will result."

This argument also appears in academic articles on the Agreement.

In the Trade Agreements Act of 1979, Congress mandated that the executive branch should reorganize its agencies involved in international trade to better implement the Tokyo Round agreements and, in so doing, give particular consideration to the need to monitor compliance with the Government Procurement Agreement. The Senate Committee on Finance report on the Trade Agreements Act of 1979 stated that:

> "In the preparation of his recommendation for the reorganization of trade functions . . ., section 305(a) would require the President to ensure that careful consideration is given to the monitoring and enforcement requirements of the [Government Procurement] agreement . . ."

In response, the executive branch centralized many of its trade functions in the Commerce Department, including transferring to Commerce primary responsibility for overseas commercial work. To implement this new responsibility, Commerce created the Foreign Commercial Service in April 1980.

## HEADQUARTERS AGENCIES HAVE PURSUED THEIR MONITORING RESPONSIBILITIES

Commerce, State, and OUSTR headquarters have vigorously performed their responsibilities in monitoring foreign-government implementation of the Agreement. Their efforts have been most useful in identifying systemic problems in foreign-government implementation and problems in their compliance with the Agreement's provisions regarding publication of covered procurements. They have also obtained information on individual cases of noncompliance with Agreement provisions other than those covering notices.

Each agency has designated one individual to perform Agreement related activities. These individuals collectively (1) review all notices of covered procurements for compliance with the Agreement, (2) review the annual statistical information on procurement activity provided by the foreign signatories, (3) serve as a contact point for U.S. business representatives seeking information on the Agreement or complaining about foreign-government noncompliance, and (4) serve as representatives to the GATT Committee on Government Procurement, which oversees implementation of the Agreement. The country desk officers in the Commerce Department also serve a role in assisting firms on Agreement-related matters.

Through the efforts of these agencies, the U.S. government has identified and taken action to correct several foreign-government compliance problems. For instance, these agencies identified an overuse of the Agreement's single-tendering procedures by certain government agencies in Japan and Sweden through their review of the statistical information. They also identified a number of governments that were not allowing at least 30 days for the submission of bids through their review of the notices. In addition, through contacts with the business community and their work with representatives of other signatories on the GATT Committee, they identified instances of noncompliance that were not evidenced through their other activities. In each case, these agencies have taken the steps necessary to correct the problem.

## INADEQUATE HEADQUARTERS GUIDANCE RESULTED IN UNEVEN EMBASSY MONITORING AND ENFORCEMENT EFFORTS

Although the overseas posts we visited adequately responded to requests for assistance, they generally did not vigorously

monitor foreign-government compliance as envisioned by Congress. A strong embassy role in monitoring compliance was considered essential since they are the first line of contact with the in-country American business community, which can best participate in covered procurements.

The amount of time and effort devoted to monitoring foreign-government compliance with the Government Procurement Agreement differed considerably among the embassies we visited. Acting on Washington headquarters instructions, embassies in signatory countries at first made adequate efforts to monitor initial implementation of the Agreement. Once this effort ended, in the absence of additional instructions from Washington to vigorously monitor compliance, many of these embassies significantly scaled down their monitoring efforts and often were unsure what actions were expected of them and what they could do.

In December 1980, Washington agencies cabled reporting instructions for the Agreement to U.S. embassies in signatory countries. Posts initially were to report on and analyze host-government legislation, regulations, and administrative procedures implementing the Agreement and to report on the actual purchasing mechanisms and procurement practices of all host-government agencies, including those not covered by the Agreement. Further, in addition to forwarding TOPs notices of covered procurements to Commerce, posts in signatory countries were instructed to report on (1) significant changes to host-government legislation, procedures, practices, etc. that would affect implementation of the Agreement, (2) evidence of host-government noncompliance, such as substantive complaints from U.S. firms or a more general pattern of abuse, and (3) other types of information useful in assisting U.S. firms to benefit from the Agreement and the U.S. government to assess the value of U.S. participation in the Agreement.

According to Washington officials, the embassies adequately monitored initial implementation of the Agreement. They forwarded to Washington documents pertaining to each government's implementation and reported on several start-up problems. For instance, the posts reported that some governments were unable to implement the Agreement by the January 1, 1981 deadline. Some other governments used implementing legislation or regulations that did not reflect all of the Agreement's procedural requirements or did not include all the agencies originally contained in the Agreement. One government passed implementing legislation that appeared to violate the Agreement by requiring agencies to give preference to bidders from certain domestic counties in conducting covered procurements. This initial effort also showed that the EC member states were not including the value-added tax in determining which procurements fall above

the Agreement's threshold, which the U.S. government considers to be a violation of the Agreement. With the exception of the value-added tax problem, which is being resolved through formal dispute settlement procedures, the U.S. government has resolved each of these matters.

While three posts we visited continued to devote substantial time to monitoring host-government compliance after this initial effort, the others significantly reduced the time they spent on monitoring activities. Each post we visited determined for itself how much staff time and resources to devote to this effort. According to embassy officials, this decision was based on the significance they placed on the Agreement, how they viewed their roles in monitoring and enforcing compliance, competing duties and reponsibilities, and their perceptions of the level of reporting required by the State and Commerce Departments.

At the U.S. embassy in Brussels, the amount of time spent on the Agreement was described as little and sporadic. A local-national commercial specialist, who devoted more time to the Agreement than any other embassy official, spent only about one percent of her time, or about 2-1/2 days a year, on the Agreement. She believed this amount of time was sufficient, given the Agreement's importance and competing duties. Similarly, officials at the U.S. embassy in London termed the Agreement a minor matter and devoted only a small portion of the 1.5 staff weeks spent on all MTN activities during fiscal year 1983 to monitoring compliance with the Agreement. According to embassy officials, other issues have priority over the Agreement. In contrast, a few posts, such as the U.S. embassies in Bonn and The Hague, considered the Agreement sufficiently important to devote considerably more time to monitoring compliance. The U.S. embassy in The Hague, for instance, has devoted at least 5 staff weeks annually to monitoring host-government implementation of the Agreement.

In keeping with the limited amount of time devoted to monitoring compliance, most of the embassies we visited were not aggressively monitoring host-government compliance. The embassies we visited reacted adequately to specific requests for information or action from Washington or to complaints from American firms. However, Commerce, State, and OUSTR officials agreed that the embassies need to do more than respond to requests for assistance. They need to vigorously pursue their monitoring responsibilities, seeking out information from the in-country American business community and, where appropriate, from the host government. A few overseas posts have taken an aggressive posture. The embassy in The Hague actively sought information from in-country U.S. firms and searched local newspapers for

announcements of covered procurements that were not announced as such in the EC journal, which serves as the Dutch government's official procurement gazette for purposes of the Agreement.

Many embassy officials with whom we spoke were also unsure about what they can and should do in pursuing complaints of noncompliance. Some posts were unsure regarding the type and amount of information that can be requested from the host government. For example, one post was unaware that the Agreement gives them the right to request information regarding winning bids on covered procurements. Similarly, embassy officials were unsure whether they should assist overseas subsidiaries of U.S. firms offering products manufactured outside the United States or, instead, assist only U.S. firms offering American-made products. According to an OUSTR official, the U.S. government's policy is to assist all U.S. firms to participate in procurements subject to the Agreement, regardless of the source of the products offered.

## BUSINESS COMMUNITY INPUT NEEDED TO FULLY MONITOR COMPLIANCE

There are difficulties in monitoring compliance, even when adequate resources are devoted to the effort. While the U.S. government has found instances of noncompliance, the embassies acknowledge that the Agreement is not fully transparent. They believe that some signatory governments may be violating the Agreement in ways that make detection difficult. To more fully monitor compliance, the embassies need the active assistance of the in-country American business community. Yet, overseas business officials have not been forthcoming with information, largely because they are unfamiliar with the Agreement or feared jeopardizing future relations with the host government.

Working with headquarters officials in Washington, embassy officials have detected and/or assisted in attempting to correct both isolated and systemic instances of foreign-government noncompliance. The most noted case of systemic noncompliance involved Italy. Although the Italian government ostensibly implemented the Agreement by administrative circular, Italian procurement officials often did not use its procedures. Host-government agencies published virtually no announcements of covered procurements.

The U.S. government also detected isolated instances of noncompliance, primarily involving violations of provisions concerning the announcement of procurements. By far the most common form of noncompliance was the failure to allow at least 30 days for the submission of bids. Nearly every signatory government experienced some difficulty at first in meeting this time

frame. A number of governments published announcements of covered procurements in non-GATT languages. At least two foreign signatory governments have not notified losing bidders, as required by the Agreement. Lastly, the U.S. government has contended that one country does not annually publish permanent bidders lists of qualified suppliers, as required by the Agreement.

Post officials acknowledge, however, that they cannot detect other, potentially more significant forms of noncompliance. Cables from embassies in a number of signatory countries point out that these posts are not satisfied that they are detecting all host-government violations. Although they are able to detect problems in the conduct of procurements they do see, they are more concerned about the procurements they do not see. A cable from the embassy in The Hague reflects this concern.

> ". . . there were only 71 tender notices in 1981 that offered prospects to U.S. suppliers under the [Government Procurement Agreement]. We have not been able to determine if there were other purchases that should have been publicized under the provisions of the [Agreement]. . . [a]lthough it is obvious . . . that much procurement is not going through proper channels."

To more fully monitor foreign-government compliance, the embassies need the active assistance of the in-country American business community. This reliance was anticipated by the administration when the Agreement was signed. According to the Statements of Administrative Action, "The Administration will rely to a large extent on reports from the private sector on the existence of foreign violations of the obligations of the Agreement." Concrete examples of noncompliance must be brought to the embassy's attention. Without such examples, embassy officials are unwilling to approach the host government.

U.S. firms, however, have not been forthcoming with information on foreign-government violations of the Agreement. In-country American firms are not assisting the embassies to monitor compliance primarily because they are unfamiliar with the Agreement and their rights under it. As discussed in chapter 3, very few of the business representatives with whom we met were knowledgeable about the Agreement.

Nevertheless, when briefed on the Agreement, U.S. business representatives told us of foreign-government procurement practices which violated the Agreement and stated that the governments may have used these practices in conducting covered procurements. Some of the most commonly mentioned ways that foreign government procurement practices can circumvent or violate the Agreement are discussed below.

Single-tendering: An agency can use single-tendering procedures for procurements that could have been conducted using open or selective procedures. As discussed in chapter 1, agencies need not publicly announce procurements under single-tendering procedures but can award these contracts non-competitively. U.S. government procurement officials who reviewed the draft Agreement argued that the single-tendering criteria may be too loosely worded, possibly giving agencies too much leeway in determining whether to single-tender a contract. Since these procurements are not made public, U.S. embassy officials have no way of knowing whether the host-government is circumventing or possibly violating the Agreement when using these procedures.

Splitting contracts: An agency could conduct what normally would have been one procurement as two or more procurements to bring the anticipated contract value below the Agreement's 150,000 SDR threshold.

Diverting contracts: An agency subject to the Agreement could transfer an otherwise covered procurement to a central government agency that is not subject to the Agreement or, possibly, to the local or regional governments, which are excluded from the Agreement.

Design specifications: An agency could describe the product being purchased in such a way as to limit foreign participation in the procurement. This is most usually done by using specifications that describe the design of the product rather than its performance. Although embassy officials can detect certain instances of this practice, they acknowledge that they do not have the expertise to detect all such instances.

Favoring domestic bidders: Unless a firm requests that the embassy ask for information concerning the awarding of a contract, the embassy has no way of detecting when a foreign-government agency awards a contract to a domestic bidder even though a foreign firm should have won the competition.

Yet, these business representatives stated that they would not ask the embassy to assist them in instances of host-government noncompliance for fear of jeopardizing their firms' standing in the countries. One official stated that under no circumstances would he seek U.S. government assistance. To complain to the U.S. government generally runs counter to a firm's

marketing strategy of appearing as a domestic firm and may jeopardize future government sales efforts. The firm may win the contract in question but, as one business representative told us, "there may be a long dry spell after that." A foreign government could also use other means, such as denying an investment application, to retaliate against a U.S. firm. Instead, as was explained by a representative of a U.S.-based firm in France, the company would most likely attempt to document the unfair treatment and forward the information to the parent company in the United States, which would decide what, if anything, to do. In any event, the company would handle the matter internally.

As a consequence, although officials of some embassies we visited were generally aware of host-government procurement practices that would violate the Agreement, they did not have concrete examples with which to approach the host government. The experience of an embassy in one European country typifies this situation. American firms in this country have alleged to embassy officials that the host government pursues a buy-national procurement policy contrary to the Agreement's intent. One firm representative alleged that the government often gives domestic firms a price preference over foreign firms. Another claimed that the government frequently does not publicly announce procurements but, instead, directs purchases to domestic firms. Yet, firms have not provided specific examples or asked the embassy to seek further information on their behalf. Consequently, whenever the embassy has raised these issues with the host government, it was unable to provide concrete examples.In the absence of such examples, the host government continues to deny using any discriminatory procurement procedures.

## U.S. GOVERNMENT ENFORCEMENT COULD BE HAMPERED BY LIMITATIONS OF DISPUTE SETTLEMENT MECHANISM

The Government Procurement Agreement contains a mechanism through which signatories can resolve disputes regarding the Agreement. The Agreement requires that a signatory government should first seek consultations to see if a dispute can be settled bilaterally. If bilateral consultations fail, either signatory may request the GATT Committee on Government Procurement, composed of representatives from all the signatory governments, to intercede. Should Committee mediation prove unsuccessful, the parties may then ask the Committee to convene a panel composed of representatives from signatory countries to review the dispute and report to the Committee "such findings as will assist the committee in making recommendations or giving rulings on the matter." The Committee, which can either accept or reject the panel's findings, then makes a determination on the

matter and, when warranted, recommends corrective action. Ultimately, should the offending country not implement the Committee's determination, the other signatory-(ies) may be authorized to take retaliatory action, up to and including suspending the application of the Agreement with regard to that country.

U.S. government officials generally agree that the best chance for resolving a dispute is through bilateral consultations. The formal dispute settlement mechanism itself is useful primarily as a threat; governments generally prefer not to have to be taken to dispute settlement, which can be time consuming and opens the signatory's compliance difficulties to unwanted public scrutiny.

Although the timeliness of the dispute settlement mechanism improves upon the mechanism used prior to the Tokyo Round negotiations, a party to the dispute can still slow down the process. As stated in the Senate Committee on Finance report on the Trade Agreements Act of 1979, "The agreement's disputes resolution procedures can be cumbersome and time consuming and could be employed in a dilatory manner by a country intent on avoiding its obligations under the agreement." For instance, a government could continually refuse individuals nominated to sit on the panel or delay in collecting information requested by the panel. Indeed, it is not difficult to envision a situation in which a signatory government is unable to collect or assure the reliability of information requested by the panel.

The U.S. government's one experience with the formal dispute settlement mechanism has been lengthy but free of unnecessary delays. The U.S. government has formally challenged the EC practice of excluding the value-added tax in determining whether a procurement falls above the Agreement's 150,000 SDR threshold. It contends that the Agreement does not permit the exclusion of any form of taxation in making this determination. In addition, this practice may decrease the number of EC procurements covered by the Agreement and, thereby, open to U.S. competition. As of January 1984, the dispute settlement procedures have taken nearly a year. However, according to OUSTR officials, they have proceded according to schedule.

Moreover, it may not always be possible to verify that a signatory implemented a Committee determination requiring it to revise its procurement practices. The Committee is responsible for keeping under surveillance any matter on which it has made a recommendation. However, since the Committee has no monitoring capability, the signatory(ies) bringing the complaint must perform this function. Although the governments can adequately monitor compliance with a Committee determination in many instances, they may not always be able to do so for reasons

already discussed. U.S. government efforts regarding EC exclusion of the value-added tax from contract value illustrate this problem. U.S. and foreign government officials acknowledge that, even if the Committee decides in favor of the United States, the U.S. government will not be able to fully verify EC compliance with the decision. An agency could, without being detected, manipulate the determination of anticipated contract values to compensate for the requirement to include the value-added tax.

## CONCLUSIONS

Although the government could improve its efforts to monitor and enforce foreign-government compliance with the Government Procurement Agreement, certain limitations to this effort appear to be intractable. Improved headquarters guidance would give the embassies a better understanding of what they can and should do to insure host-government compliance. However, even vigorous monitoring would not totally insure proper implementation of the Agreement. Governments can use procurement practices that circumvent or violate the Agreement in ways the embassies cannot detect. To more fully monitor compliance, the embassies need the active assistance of the in-country American business community. Yet, virtually all business community officials with whom we met said they would be very wary of seeking the assistance of a U.S. embassy in obtaining access to a foreign-government procurement. Through multilateral negotiations, the U.S. government may also be able to improve the timeliness of the dispute settlement procedures. However, the difficulties involved in verifying implementation of Committee determinations will remain.

## RECOMMENDATION

We recommend that the Secretaries of Commerce and State, in consulation with the U.S. Trade Representative, instruct U.S. embassies in signatory countries to more vigorously monitor foreign-government compliance with the Agreement on Government Procurement by actively seeking information from the in-country American business community. These instructions should cover (1) the level of resources they should devote to monitoring host-government compliance with the Agreement, (2) the types of tasks they should perform, (3) the extent to which they can follow up on complaints brought to their attention, and (4) whether they should assist subsidiaries of U.S.-based firms offering goods made outside the United States.

## AGENCY COMMENTS AND OUR EVALUATION

The agencies did not take issue with our overall findings that (1) many overseas posts are devoting insufficient time to vigorously monitoring foreign-government compliance and (2) the

government needs business community assistance to fully monitor foreign-government activities. OUSTR added that "if the rights provided by the Agreement to U.S. firms are to be meaningful, U.S. firms must be willing to exercise them. I intend to do everything in my power to see that this problem is remedied."

However, the agencies commented on some specific findings regarding embassy monitoring activities.

Commerce, State, and OUSTR commented that the report did not fully reflect the monitoring work performed at Washington headquarters and discussed these efforts in detail.

We agree that the monitoring work performed at Washington headquarters is important to overall U.S. government efforts to ensure foreign-government compliance with the Agreement and, in response to this comment, we have expanded the discussion of these efforts in the report. However, we note that this effort cannot substitute for vigorous embassy monitoring of foreign government compliance. As stated in the report, the embassies should be at the forefront of this effort; they are the first line of contact with those firms best able to benefit from the Agreement.

Commerce commented that it disagrees "with GAO's view that FCS resource allocation in the posts for monitoring the Agreement is ad hoc." According to Commerce, it "has a systematic institutionalized process for setting, and then monitoring, resource allocation in FCS posts called the Country Marketing Plan/Post Commercial Action Plan (CMP/PCAP) process." Commerce discussed in detail how it uses the CMP/PCAP process to instruct posts regarding the time they should devote to the Agreement and monitor their performance against the original guidelines.

We agree that the CMP/PCAP system gives Commerce some control over FCS resource allocation for monitoring compliance with the Agreement. The divergence we found among the posts could result from flexibility built into the CMP/PCAP system. The CMP itself does not serve as a vehicle for allocating resources to specific FCS activities since it is simply a general description of each post's goals for the coming year. Although the PCAP does contain resource allocations, it does not contain a line item specifically for the Government Procurement Agreement, much less monitoring host-government compliance. The PCAP line items have been kept purposely broad to give FCS posts some flexibility in allocating their resources. In keeping with this policy, the Agreement is included in a general line item for all MTN activities. Consequently, each embassy decided for itself how many resources it would devote specifically to monitoring host-government compliance with the Agreement. In the absence of additional instructions to vigorously monitor compliance, some embassies decided to devote few resources to this effort.

Commerce, State, and OUSTR commented on our finding that Washington has not adequately instructed the posts in signatory countries regarding their monitoring responsibilities. These agencies pointed out that they cabled comprehensive reporting instructions to the posts in December 1980 and updated instructions during early 1983. They added that they have sent extensive instructions to the posts in specific cases as well as on generic issues throughout the life of the Agreement.

We do not take issue with the quantity of instructions but with the content of those instructions. The original comprehensive cable on the Agreement instructed the embassies that ". . .reports should be transmitted on . . . serious complaints of U.S. firms in the procurement area or host country procurement developments likely to have a significant impact on U.S. trade interests." The updated instructions do no more than emphasize the importance of post reporting to U.S. government implementation of the Agreement and refer post officials to earlier cables. These cables, however, do not instruct posts to vigorously monitor host-government compliance, as expected by Congress. As a result, many posts have taken a reactive posture and have not actively sought information from the in-country American business community on host-government compliance. We believe such a vigorous effort is essential to any meaningful monitoring effort.

Additional agency comments regarding chapter 4 are addressed as footnotes to the Commerce and State letters. (See apps. II and III.)

# CHAPTER 5

# U.S. GOVERNMENT EXPERIENCES

## PROBLEMS FULLY ASSESSING THE AGREEMENT

The U.S. government experienced difficulty in assessing its first year experience under the Government Procurement Agreement. The European Communities, representing 9 of the 18 original foreign signatories, provided data for 1981 that did not fully demonstrate EC member state activity under the Agreement. In addition, the system established by the U.S. government to collect information on its procurement activity under the Agreement developed inaccurate and incomplete data for 1981. The U.S. government has retroactively corrected its 1981 data and, acting on recommendations made in a previous GAO report, is taking steps to improve its overall procurement data collection.

### ACCURATE AND CONSISTENT DATA NEEDED TO ASSESS BENEFITS

The Government Procurement Agreement is largely a commercial agreement and, as such, will be judged in terms of the trade opportunities and sales it generates. As one member of the Senate Committee on Finance stated:

> "[I] will be most reluctant to support further negotiations on government procurement in the absence of hard evidence that . . . there is a significant quantifiable favorable impact on Americans seeking to do business with foreign governments."

To demonstrate this impact, the government needs accurate and consistent data on its own and other signatories' procurement activities under the Agreement.

The Agreement provides that signatories will annually provide the GATT Committee on Government Procurement with a report showing

- --the estimated total value of contracts awarded by covered agencies, specifying the value above and below the threshold;
- --the number and total value of contracts awarded above the threshold, including information on the agencies involved, categories of products, and either the nationality of the winning bidder or country of origin of the product; and

--the total number and value of contracts awarded using single-tendering procedures.

The Committee then distributes the information provided to the signatory governments.

This exchange is intended to provide the signatories with information necessary to annually analyze the success of the Agreement in opening trade opportunities. The U.S. government uses this information not only to assess the relative benefits of U.S. participation in the Agreement but also as part of its monitoring effort to determine the value of foreign-government procurements falling below the Agreement's threshold and conducted using single-tendering procedures.

## EC DATA NOT ADEQUATE FOR U.S. PURPOSES

U.S. government efforts to assess its first year of experience under the Government Procurement Agreement have been hampered by inadequate data from the European Communities. The signatories to the Agreement generally used different methods to collect their 1981 data and different formats to present it. This inconsistency generally caused the U.S. government only minor difficulties. However, the information provided by the EC, which represents about 70 percent of total foreign procurements open under the Agreement during 1981, does not fully portray EC governments' activities under the Agreement.

The EC statistics may grossly understate foreign sales to EC governments under the Agreement. The EC determines whether a purchase is domestic- or foreign-source based on the nationality of the winning bidder, not on the country of origin of the product as does the United States. This method is allowed under the Agreement. However, the EC uses a very liberal definition of domestic firm, treating purchases of foreign-made goods from foreign-based suppliers as domestic purchases as long as the firms submitted their bids from within the EC. Thus, the EC statistics may not reflect many contracts awarded to U.S. firms under the Agreement. Consequently, the U.S. government cannot adequately assess the extent to which American firms benefited from the Agreement.

In addition, the EC provides much of the required data on an EC-wide basis rather than by member states. It claims the right to provide the data in this manner since the EC Commission signed for the member states. However, the U.S. government cannot use these statistics to determine the value of each EC country's procurements that fall below the threshold or that are conducted using single-tendering procedures. Consequently,

although the EC statistics show a high level of procurements in these categories, the U.S. government cannot attribute these procurements to particular member states.

The U.S. government has requested the EC Commission to provide data for each member state and to use the product's country of origin in determining whether a purchase is domestic- or foreign-source. The Commission has declined these requests, claiming that its method of collecting the information and format for presenting it are in compliance with the Agreement.

## U.S. DATA COLLECTION CAN BE MORE ACCURATE AND EFFICIENT

U.S. government efforts to assess its experience under the Government Procurement Agreement were also hindered by deficiencies in its own data collection effort. The system it established to collect data on U.S. procurement activity was capable of collecting only approximate information. However, it did not live up to even its limited capabilities in collecting the 1981 data. This system developed information that significantly over-valued covered procurements and did not fully report other essential information. Based on the findings and recommendations contained in our October 25, 1983 report, Data Collection Under the International Agreement On Government Procurement Could Be More Accurate and Efficient (GAO/NSIAD-84-1), the 1981 data has been retroactively corrected and steps have been taken to improve overall data collection.

The Office of Management and Budget established the trade data system to collect information required by the Government Procurement Agreement. Under this system, each agency covered by the Agreement submits (1) an individual contract report on each contract containing a covered procurement or modification to such a contract valued at $10,000 or more and (2) a quarterly letter report showing the total value of supplies and equipment purchased during the covered period. This data gathering system was established separate from but parallel to the Federal Procurement Data System (FPDS), which collects data on each federal procurement contract valued at $10,000 or more made with appropriated money. It was decided not to use FPDS to collect the trade data because it would entail expanding FPDS to collect information on three data elements that were then unavailable in the system and on contracts made with non-appropriated funding.

Since establishing a system to collect precise data on U.S. government procurements covered by the Agreement would have been difficult, the trade data system is capable of collecting only approximate individual contract information. First, like all federal government procurement data collection systems, the trade data system ultimately assigns one product and one agency

to each contract, regardless of the number of different products and agencies involved. Thus, it does not precisely reflect the agencies making purchases under the Agreement or the products purchased. Second, although agencies are required to implement the Agreement on a "line item" or purchase basis (see ch. 2), they report information into the system on a contract basis. Since any one contract could contain several different purchases, agencies are reporting entire contracts that could contain both purchases covered by the Agreement and those not subject to it. As a result, the trade data system may over-value covered U.S. government procurements.

The trade data system did not perform even up to its limited capabilities in developing data for 1981. The Federal Procurement Data Center, which has day-to-day responsibility for operating this system, did not have the resources necessary to adequately monitor agency compliance. In addition, agencies subject to the Agreement did not have adequate incentive to properly collect and submit this data. Efforts by the Center to compensate for inadequate individual contract data were unsuccessful. As a result, the trade data system developed data that was not only approximate but also significantly over-valued covered procurements and did not fully report other essential information. The data developed by this system overstated the value of U.S. government procurements covered by the Agreement by an estimated $2.2 billion, or 10 percent of total stated procurements. This summary over-valued the $1.2 billion in civilian agency procurements by 25 percent, showing $1.5 billion in covered procurements, and over-valued the $18.7 billion in Defense Department procurements by about 10 percent, showing $20.6 billion in covered procurements. Further, approximately 83 percent of all civilian agency contracts and an estimated 48 percent of Defense contracts were missing at least one of the additional data elements. Of particular importance, at least 46 percent of these contracts did not have data showing country of manufacturer, which is essential in assessing the relative commercial benefits of U.S. participation in the Agreement.

Many agencies also submitted inaccurate and incomplete letter report information showing total purchases of supplies and equipment. Since the Defense Department, which accounted for over 90 percent of U.S. government procurements covered by the Agreement during 1981, submitted reasonably accurate letter report data, the government's overall estimate of covered agency purchases of supplies and equipment is a reasonable estimate. However, many of the agencies we reviewed in depth had great difficulty collecting this data because they could not readily determine the value of procurements of supplies and equipment valued below $10,000. Most of these agencies either ignored contracts valued below $10,000 or used methodologically unsound shortcuts in attempting to estimate their letter report data.

When briefed on our findings, OUSTR officials took measures to retroactively correct the 1981 data.

Given the limited resources available and the low priority the collecting agencies placed on the trade data system, we recommended, among other things, that the government could best improve the accuracy and efficiency of this data collection effort by abolishing the trade data system and using FPDS to collect the individual contract data. We demonstrated that FPDS would be suitable for collecting needed data with only minor modifications to this system. We recognized that, like the trade data system, FPDS can collect only approximate individual contract data. However, we believe its use will improve the accuracy and completeness of the information collected and, by abolishing a redundant reporting requirement, reduce the paperwork and costs of collecting this data. The Federal Procurement Data Center, Office of Management and Budget, and OUSTR implemented this recommendation effective January 1984.

## CONCLUSIONS

If the U.S. government is to fully assess the relative benefits of its participation in the Government Procurement Agreement, it needs accurate and complete procurement data. However, the European Communities provided data for 1981 that did not fully reflect its member states' activity under the Agreement. Further, the U.S. government's own trade data system originally developed inadequate procurement data for 1981. Although the government has taken the necessary steps to improve its own data gathering effort, these measures are not sufficient. To adequately assess the relative benefits of U.S. participation in the Agreement, the government needs accurate and consistent data from all signatories. We believe U.S. government efforts to negotiate improvements to the EC statistical information are appropriate and should be continued.

## AGENCY COMMENTS AND OUR EVALUATION

OUSTR commented that it "succeeded last year in gaining agreement with our fellow signatories on a uniform reporting format. This uniform format will greatly facilitate our data analysis efforts and is being used for all data reported from 1982 onward."

We are pleased that the signatories have agreed to a uniform reporting format that will improve U.S. government ability to review the annual statistical submissions and determine the relative commercial benefit of U.S. participation in the Agreement. We note, however, that this format will not address our concerns regarding the EC submission. Under this new format, the EC will continue to be able to submit information on a community-wide basis and use nationality of the winning bidder as the basis for determining whether a procurement is domestic- or foreign-source.

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

April 26, 1984

Mr. Frank C. Conahan
Director, National Security and
International Affairs Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

I appreciate this opportunity to review your draft report entitled "The International Agreement on Government Procurement Has Not Met Expectations of Its Commercial Value".

Your report provides a number of helpful and timely insights. As you are aware, we are now in the process of negotiating improvements in the operation and coverage of the Agreement. However, I do not agree with all of the report's observations and conclusions and welcome this opportunity to offer comments on a number of key points. These points concern the sections of the report on the commercial benefits of the Agreement, our monitoring activities, and efforts to analyze the benefits of the Agreement.

Commercial Benefits of the Agreement

The commercial value of any non-tariff barrier agreement is, by nature, difficult to quantify. A good faith effort was made during the negotiation of the Agreement to estimate the value of markets that it would open based on the limited data that was available at the time. Unfortunately, the only data available were rough estimates from our negotiating partners. Your report correctly points out that these estimates did not make allowances for the effect of the Agreement's threshold or single tendering. This reflects the scarcity of detailed procurement data prior to the Agreement. Nevertheless, a substantial level of procurement has been opened to U.S. exporters by the Agreement. (1)

Your analysis of the commercial value of the Agreement relies heavily upon statistics on 1981 procurement developed by our fellow signatories. I would caution against reaching any firm conclusions on the basis of this first year's data. As you know, the United States had serious difficulties in preparing data for 1981 and we were building upon a sophisticated preexisting data collection system that we had been working on for over five years. In the case of our trading partners, this was the first time that a number of them collected any procurement data whatsoever, and they had to develop new systems for doing so. Inevitably, they had major start-up problems of their own. (2)

Note: All footnotes were added by GAO and refer to our evaluation of the comments, which appears at the end of this letter.

Special care must be taken in working with this first year's data. For instance, your report points out that the 1981 statistics show a high level of single tendering by our fellow signatories. In evaluating the significance of this finding, there are two points that you should keep in mind. First, the data for 1981 reflect a number of implementation problems that have been corrected. For instance, Japan's NTT and a Swedish procurement entity have corrected problems that had resulted in an abnormally high rate of single tendering in 1981. Second, it is not entirely correct to equate single tendering with lost sales opportunities for U.S. firms. Evidence indicates that a substantial portion of single tendering by a number of our fellow signatories has gone to U.S. firms. (3)

Monitoring Activities

I strongly disagree with comments in your draft report that imply that we have failed to vigorously monitor implementation of the Agreement. This Office, along with the Commerce and State Departments, has devoted considerable time and resources to monitoring foreign compliance.

Efforts to monitor the Agreement were initiated even before it entered into force. During that period, we consulted with all major signatories on their implementation efforts. This included meetings not only in Geneva, but also in the capitals concerned. Also as a part of this process, our Embassies in signatory countries were instructed to provide copies of all implementing regulations and legislation. These materials were carefully reviewed in Washington for potential implementation difficulties. Through this process it was possible to work out a number of potential problems before the Agreement entered into force.

Once in force, our monitoring efforts were continued and augmented. In Washington we began a continuous process of analyzing compliance information gathered from a range of sources. These sources include foreign notices of proposed purchases, foreign implementing measures sent to Washington from our Embassies, comments from our industry advisers, and the statistics required under the Agreement. In addition, we work closely with a number of countries in sharing information on compliance by third countries.

This process has enabled us to discover and aggressively pursue a number of implementation problems. In each case, our Embassy in the offending country was instructed to bring the problem to the attention of the appropriate government officials and seek resolution. This process resulted in the successful correction of many of these start-up problems. I should point out that we, too, had a number of start-up problems in our implementation of the Agreement.

We also found a number of more fundamental problems, such as poor implementation of the Agreement by Italy and the VAT issue with the EC. We dispatched teams to Rome on two occasions to discuss Italian compliance with the Agreement and work closely with U.S. Embassy officials. As a result, there has been substantial improvement in Italy's compliance, although we are not yet fully satisfied. In regard to the VAT issue, as you note in your report, we have invoked the Agreement's dispute settlement procedures and are hopeful of a favorable resolution.

The first year's procurement data from signatories, as you point out, was disappointing in quality. Nevertheless, we painstakingly examined this data for indications of improper implementation. We found a number of problems which now appear to be corrected, such as extensive use of the Agreement's national security exemption by one Swedish procurement entity.

Your report states that U.S. Embassy officers have put insufficient time and effort into monitoring the Agreement. Obviously, the resources of our Embassies are limited and there are many competing demands on them. Nevertheless, while I defer to the Commerce Department for detailed comments, I believe that our Embassies have played an active and important role in our monitoring efforts.

At the time of the Agreement's entry into force, our Embassies were issued standing instructions on their responsibilities connected with the operation of the Agreement. Following up on these instructions, the Commerce Department has an ongoing program that provides briefings for FCS officers on all of the MTN Agreements, including the Government Procurement Agreement, before they are stationed abroad. Embassy officers have aggressively pursued situations where there has been evidence of non-compliance and have provided information essential to our surveillance work in Washington.

Overall, I believe that the record shows that we have aggressively monitored the operation of the Agreement.

Your report does indicate a weakness in our monitoring efforts that is of great concern to me. It points out the reluctance of U.S. firms to come to our Embassies with compliance problems. This is a serious problem. If the rights provided by the Agreement to U.S. firms are to be meaningful, U.S. firms must be willing to exercise them. I intend to do everything in my power to see that this problem is remedied.

I should mention that we are proposing a number of modifications to the Agreement to facilitate the monitoring process. These modifications are being discussed in the context of an ongoing negotiation and our negotiating partners have expressed generally favorable attitudes toward our proposals. In fact, a number

of them have made useful suggestions of their own.

Data Collection

GAO's earlier report on data collection efforts by the Federal Procurement Data Center was very helpful. Due to that report, we have now corrected the flaws in the data reporting system which GAO identified and retrospectively corrected inaccuracies in our data for 1981. The cooperation of your staff in these efforts was greatly appreciated.

In regard to foreign data, we succeeded last year in gaining agreement with our fellow signatories on a uniform reporting format. This uniform format will greatly facilitate our data analysis efforts and is being used for all data reported from 1982 onward.

Classification Review

As you requested, my staff has reviewed the classified materials in your report derived from documents classified by this office. As a result of this review, I have decided to declassify the information contained in your report which originated in this office.

Once again, thank you for this opportunity to comment on your draft report.

Very truly yours,

WILLIAM E. BROCK

WEB:smab

## GAO FOOTNOTES TO OUSTR COMMENTS

1. We do not doubt that a good faith effort was made to estimate the Agreement's commercial value. Our work showed, however, that executive branch agencies were aware that the estimates were unreliable and yet did not properly qualify the data when presenting these estimates to Congress.

2. As stated in the report, we could not review foreign government efforts to collect information on their procurements under the Agreement. Nonetheless, the information we did obtain does not lead us to believe that foreign governments experienced significant difficulties. The U.S. government had problems collecting the 1981 data largely because it needed a highly sophisticated, computer-assisted system to collect the necessary information. Given the system's sophistication and the number of agencies and procurements involved, the U.S. government's data collection system was prone to develop problems. In contrast, many foreign governments, which have far fewer covered procurements, were able to institute relatively simple mechanisms to accumulate the necessary information, often relying solely on hard copy files. Thus, they may have developed more accurate 1981 data than the U.S. government originally did. Further, even if some foreign governments did experience difficulties developing accurate information, it is highly unlikely that the real level of procurements would even begin to approach the original expectations.

3. We are pleased to hear that some U.S. firms have won single-tendered foreign-government procurements. However, OUSTR's support for this statement is based on preliminary evidence for one year provided by a few signatories with low levels of procurements and, thus, does not constitute conclusive evidence that U.S. firms have won a substantial number of all such procurements. Further, as stated in the report, single-tendered procurements cannot be considered as genuine new trade opportunities opened by the Agreement. Governments generally award these procurements to foreign firms when only one firm can supply the needed product, so such procurements would most likely have been awarded to the U.S. supplier even without the Agreement. (See ch. 2.)

APPENDIX II

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D C 20230

APR 19 1984

Mr. J. Dexter Peach
Director, Resources, Community, and
Economic Development Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

This is in reply to GAO's letter of March 5, 1984, requesting comments on the draft report entitled "The International Agreement on Government Procurement Has Not Met Expectations of Its Commercial Value" (Code 483368).

We have reviewed the enclosed comments of the Under Secretary for International Trade and believe they are responsive to the matters discussed in the report.

Sincerely,

Kay Bulow
Deputy Assistant Secretary
for Administration

Enclosure

APPENDIX II

**UNITED STATES DEPARTMENT OF COMMERCE**
**The Under Secretary for International Trade**
Washington D C 20230

APR 2 1984

Mr. J. Dexter Peach
Director, Resources, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to comment on your draft report entitled "The International Agreement on Government Procurement Has Not Met Expectations of Its Commercial Value". The report offers some useful observations and analysis regarding the Agreement, a number of which are especially timely in light of the recently initiated renegotiations to broaden and improve the Code. I would like to comment first on GAO's general recommendations and then turn in some detail to three areas addressed in the report: (1) the commercial assessment of the Agreement (Chapter 2); (2) Commerce outreach efforts (chapter 3); and (3) monitoring efforts (chapter 4). In addition, in accordance with GAO's request, my staff will be providing specific technical comments directly to the authors of the report.

Before turning to these comments, however, I would like to make two general observations. The first is the fact that the Procurement Code only came into effect on January 1, 1981. As such, it is premature to draw long-term conclusions about the performance of the Code and the commercial benefits created by it. A number of the problems cited in the report, both in terms of data as well as the operation of the Code, are in fact start-up problems which in many cases have either been or are being corrected. My second observation concerns the nature of the Code itself. While the government has a key responsibility for assisting U.S. businesses to bid on Code opportunities, neither the Procurement Code itself nor government efforts can guarantee sales. We in the Department of Commerce will continue to assist business in every way we can--including paying close heed to the recommendations included in this report. But ultimately it is industry's responsibility to move aggressively and competitively to bid on the procurement opportunities made available by the Code.

I would like to highlight our responses to the recommendations included in the Digest. We will elaborate on these in the text.

Outreach:

- We are already increasing our outreach activities from our Washington office and will be consulting with the U.S. embassies and USCS offices to develop additional outreach activities.

Publicizing Code opportunities:

- Business subscribers to the Trade Opportunities Program (TOPs) find the TOPs system for Code notices valuable as currently structured. Nonetheless, we will consider GAO's suggestions on possible ways to alter the system.

- Foreign Commercial Service officers in many Code signatories already disseminate notices to in-country representatives of U.S. firms.

Monitoring:

- The Department of Commerce has had a systematic institutionalized process since fiscal year 1981 for setting, and then monitoring resources allocation in FCS posts to all FCS activities including Procurement Code monitoring.

- Our Washington office is continually sending extensive instructions to the posts on appropriate monitoring activities on specific cases as well as generic issues relating to Procurement Code implementation.

- We will instruct the posts that it is not appropriate to assist U.S. subsidiaries when they are selling a foreign-produced products.

Comments on Chapter 2: Analysis of the Commercial Benefits of the Agreement

My point about drawing premature conclusions about the commercial benefits created by the Code is particularly relevant to the analysis in Chapter 2. There are only three years of experience with the Code and only one year of full statistics currently available, and the utility of those statistics is somewhat limited. As is to be expected when any new international agreement is put in place, there were start-up problems during the first year of the Code's operation as countries changed long-established procurement procedures. Therefore, some patterns and trends in the first year's data are likely to be unrepresentative of more long-term, stable trends that will result under the Code. (1)

Note: All footnotes were added by GAO and refer to our evaluation of the comments, which appears at the end of this letter.

Moreover, we may be judging the performance to date against an unrealistic standard. We agree fully with GAO's contention that the estimates developed by the Code's negotiators in 1979 have turned out to be overestimates of the volume of Code-covered procurement. We also agree that the rate of single tendering during the first year's operation, 1981, was surprisingly large. Part of this latter problem is attributable to start-up problems that have been corrected, including excessive use of single tendering by two large foreign entities: NTT in Japan and the Civil Defense Board in Sweden. In both cases we have confirmed that the frequent use of single tendering procedures in 1981 has been corrected by government authorities. Moreover, Commerce--together with other USG agencies--is probing the cause of the remaining single tendered contracts in France, Belgium and Japan to determine if they are the result of noncompliance with Code procedures. If so, we will take all necessary actions, both bilateral and multilateral, to bring signatory practices into conformity with the Code.

We disagree with the conclusion on p. 25 that the commercial value of covered procurement has been lessened because (1) countries used practices (other than single tendering) that did not comply with the Code and (2) many contracts were previously open to U.S. firms. In support of the first contention, the report cites two examples (p. 26) of possible practices in violation of the Code: discriminatory use of specifications and discriminatory use of application criteria. While these may be theoretical possibilities, we have received no evidence, including no reports by U.S. firms or our missions abroad, that either of these practices is actually being carried out. If GAO has specific evidence of such violations, however, we would appreciate your bringing it to our attention so that we may pursue these problems. The other type of noncompliance cited by GAO, short deadlines, is a start-up problem that is diminishing over the years. We are continuing our efforts to eliminate this problem completely.

As to the second point, while GAO is accurate in stating that some procurements covered by the Agreement were previously open to foreign competition, the report tends to ignore the significant fact that the Agreement nonetheless confers new and important benefits for these procurements as well. First, the Code enforces a set of procedures, such as required publication and a minimum amount of time between publication and bid deadline, which were not generally applied to these procurements prior to the Code. These procedures facilitate access by foreign firms to these contracts. Second, the Agreement provides the added dimension of security of continued, long-term non-discriminatory treatment. The Code ensures that all signatories cannot unilaterally change a policy of non-discrimination, as was the case prior to the Code.

Our final comment on Chapter 2 concerns GAO's finding (p. 32) that foreign government officials prefer to keep the Agreement as it is.

We recognize that budgetary and time constraints prevented GAO staff from visiting every signatory country. As it turns out, however, GAO's field work included all the signatories that are least supportive of amending the Code and excluded some key signatories such as Canada, Sweden, Finland, and Norway who are very interested in expanding and broadening the Code. In addition, even those signatories not presently interested in expanding entity coverage, such as the European Community, have initiated proposals that would amend the Code in significant ways to improve its operation. Therefore, GAO received and presents a somewhat unbalanced perspective of foreign signatory views on broadening and improving the Code.

Comments on Chapter 3: Commerce Outreach Efforts

We consider heightening business awareness of the Government Procurement Code one of our important priorities at the Commerce Department. While direct outreach activities over the past year have been hampered by resource constraints, we are committed to intensifying our outreach efforts and have already begun to do so. We are working with the Chamber of Commerce to hold a Government Procurement Code seminar in June in Washington where we anticipate an audience comprised of representatives from 100 to 200 U.S. firms. We are also planning an outreach seminar in late June in Israel, the newest code signatory, to inform representatives, subsidiaries, and agents of U.S. firms of the opportunities and rights created for them by the Code. We will be developing further initiatives to publicize the Code domestically over the coming year, including increased efforts by our District Office staff.

With respect to specific comments on issues raised in chapter 3, as the report points out (p. 38), Commerce developed two useful booklets describing the Code in non-technical terms and there was heavy dissemination of these publications immediately after the Code went into effect. Commerce provided the District offices and business multiplier groups with a stock of the publications as part of a broad effort to educate the business public on the full range of then-new MTN codes. Dissemination of publications has become less intense not because of confusion after the 1982 realignment--as the report implies--but because the initial heavy need has been filled. The booklets are available both from Washington headquarters and in the District Offices. (2)

With respect to FCS outreach activities overseas, we agree with the report that more can always be done. We plan to develop, in consultation with the posts, strategies for increasing formal seminar efforts in signatory countries. However, I would note that many FCS officers in signatory capitals are already regularly undertaking a variety of less-formalized but nonetheless important outreach efforts other than seminars, such as regularly

disseminating contract notices to in-country U.S. businessmen. (A fuller description of these activities is provided below.) (3)

We disagree with GAO's analysis on pp. 39-40 that Commerce promotion activities for the Trade Opportunities Program (TOPs) have been inadequate. Commerce has successfully sought subscriptions to TOPs by important multiplier groups. For example, Dialog Information Systems and General Electric currently maintain a computerized file of the TOPs information. These organizations in turn service a large base of U.S. business subscribers who receive TOPs information through their systems. (4)

The problems of post reporting of notices cited in the report on pages 46-48 are old problems that have already been detected and for the most part corrected. The first issue discussed in this section, reporting of French and Belgian notices that appear exclusively in the domestic and not EC journals, is of minor commercial consequence. There is only a narrow band of value, and consequently very few contracts, that fall between the thresholds of the EC Directive and the Procurement Code and that are therefore published only in the domestic journals in France and Belgium. Nonetheless, we have taken a number of steps to ensure that these contracts are publicized to U.S. firms. In April 1983 (83 State 91525) we requested a status report from the Embassies in Paris and Brussels on the reporting of Code notices published only in the domestic journals and not in the EC Official Journal. In response, FCS Brussels indicated its awareness of its responsibility and explained that the lack of reporting was due to the fact that no Belgian notices had been published which fell into this very narrow band of contract value. Similarly, we realized early on that reporting of these types of contracts from France was difficult due to the lack of any kind of identifying mark to distinguish these notices from the scores of other published French government contracts. Consequently, we pressed French officials throughout 1982 to establish an identification system and in January 1983 won their agreement to place an asterisk by these notices. We are now consulting with the Embassy in Paris to establish the most cost-effective system for reporting these notices (i.e., using Embassy resources versus contracting the work out to a private company). (5)

The report is also incorrect in asserting that the U.S. Mission to the EC (USEC) did not receive instructions regarding transmittal of untranslated notices. In June 1983 Washington cabled USEC (83 State 177772) to begin transmitting the English language summary of untranslated notices, which USEC began in July 1983 (83 Brussels 9993). Furthermore, the lack of transmittals prior to this time did not, as the report suggests, hamper Washington monitoring efforts. Commerce Headquarters receives the European Offical Journal directly for monitoring purposes and thereby reviewed all EC published notices even prior to the new reporting procedure.

Regarding transmittal of tender documentation, contrary to GAO's statement, Commerce did instruct posts on June 16, 1983 to discontinue sending tender documentation to Washington. (5)

With regard to GAO's comments about the questionable utility and expense of the TOPs program for MTN notices, we believe GAO has overlooked a very important fact. The TOPs subscription fees for the MTN notices fully cover the incremental cost of mailing these notices to TOPs subscribers who request this service. Even at the nominal fee of 75 cents per notice, no net Government revenues are being expended for this service. Furthermore, it is evident that U.S. firms find the current TOPs systems for Code notices valuable if they are willing to pay for it at a price that fully covers its costs. Many firms use the TOPs notices for market research, projections of future purchases, and examining buying trends as well as to bid on specific contracts.

We agree with GAO (pp. 53 ff) that distribution of Code-covered notices by FCS officers to in-country representatives and subsidiaries of U.S. firms is a useful service. In fact, many FCS officers already carry out this activity. For example, in response to a Washington Cable in March 1983 (83 State 86049) asking for a status report on posts' efforts to promote the Code, we received responses stating that FCS or State Commercial officers in Brussels, Luxembourg, Hong Kong, Bonn, Copenhagen, and The Hague regularly distribute the notice immediately after publication to representatives of U.S. firms that may be capable of supplying the contract, and to the American Chamber of Commerce in those countries that have one. As the report points out, FCS officers in Paris, Frankfort, and Rotterdam also routinely disseminate notices to in-country firms likely to be interested in the contract. (3)

These comments cover the majority of the recommendations at the end of Chapter 3 (pp. 55-6). As detailed above, we will be increasing outreach activities from our Washington office and will be consulting with the U.S. embassies and USCS district offices to develop additional outreach activities. While business interest in the TOPs program as currently structured appears strong, we will nonetheless consider GAO's suggestions on ways to alter the system. In the Spring and Summer of 1983, after detecting the same problems ourselves, we undertook actions on the subject of the final three GAO recommendations: we instructed (1) embassies in all signatory posts to stop sending tender documentation to Washington, (2) USEC to transmit the English summary of untranslated notices, and (3) the U.S. embassies in Brussels and Paris to carry out their responsibilities to transmit those Code notices published exclusively in the domestic and not the EC journal. (5)

Comments on Chapter 4: Monitoring Efforts

We have four general comments with respect to Chapter 4's analysis of monitoring efforts. First, we disagree strongly with GAO's view that FCS resource allocation in the posts for monitoring the Agreement is ad hoc. Commerce has a systematic, institutionalized process for setting, and then monitoring, resource allocation in FCS posts called the Country Marketing Plan/Post Commercial Action Plan (CMP/PCAP) process. As the first step in this annual process, all Commerce offices needing FCS support, including the Office of Multilateral Affairs which monitors the Government Procurement Code, indicate to the Commerce country desk officer for each FCS post the amount of FCS time and support they require. The country desk officer coordinates these resource requests and, in consultation with the FCS officers in the post, develops a program of detailed time allocation for all FCS activities. FCS officers submit monthly and quarterly reports showing actual time spent on each activity. FCS actual versus projected time allocation is reviewed annually, and sometimes more frequently, by all the Commerce offices that requested FCS support.

Since Fiscal Year 1981, when the PCAP was instituted, MTN implementation, including the Government Procurement Code, has been a specific PCAP line item for each FCS post. The Office of Multilateral Affairs (OMA), in consultation with the desk officers, has in each year indicated at the beginning of the PCAP process the amount of FCS time needed to support Government Procurement Code implementation. Actual hours spent on Procurement Code implementation as reported by the FCS posts in the monthly and quarterly reports has not deviated significantly from projected time. OMA has also indicated during the review stage of the PCAP process cases where the quality or quantity of FCS support activities have been lacking, and this has been conveyed to the FCS officers at the post. In Fiscal Year 1983, 210 work weeks were devoted to MTN implementation in Procurement Code signatory posts. For Fiscal Year 1984 we have projected 255 work weeks for MTN implementation in Procurement Code signatories. In summary, the Commerce CMP/PCAP process ensures that in signatory posts where it is the FCS officer(s) who have responsibility for the Code, time allocation is not "ad hoc". We will, through the PCAP process, continue to review the time allocated to and spent on Procurement Code implementation to ensure that adequate resources are devoted to this effort, particularly in high potential signatories.

Our second general comment is that the GAO report ignores a large and important segment of monitoring activities: the monitoring done by Commerce headquarters in Washington. This activity is located in two places. The first place is the Commerce country desk officers (in the International Economic Policy component of the International Trade Administration) who serve as the direct contact point for the FCS officers in the overseas posts. The 1982 realignment established a network of country desk officers responsible for both

policy and business activities. These desk officers utilize their country expertise to counsel U.S. business on the specific government procurement procedures (e.g., qualification procedures, appropriate forms, etc.) in their country of responsibility. Some country desk officers have developed country-specific material to assist in business counseling such as the comprehensive, detailed guide to government procurement in Canada written by the Commerce Canadian desk officers. To ensure even more effective assistance to the business community through this channel, we will be placing increasing emphasis in the coming year on upgrading desk officers' knowledge of procurement practices and policies in their respective countries.

The second locus of Code monitoring in Commerce Headquarters in Washington is OMA which includes a Procurement Code Specialist. In addition to working closely with the individual desk officers, OMA reviews all foreign Code-covered notices to detect Code violations in the notices and to keep tabulations on long-term trends which can reveal other possible Code violations. When violations are detected, Washington instructs the post to seek correction from host country officials. In addition, the Office of Multilateral Affairs, assisted by other Washington agencies, carefully reviews and analyzes the annual required statistical submissions from signatories to detect trends that suggest possible Code violations. For each statistical report submitted to date, Washington has developed a list of detailed questions relating to trends in the statistics and has sought answers from the foreign signatories both directly in Code meetings and through the U.S. embassies to uncover any Code-inconsistent practices. OMA also monitors other aspects of Code implementation, requesting post support as necessary, in areas not tied specifically to individual notices or the annual statistics. For example, in the past few months OMA has initiated an effort to monitor reorganizations in foreign signatory bureaucracies that affect code coverage.

Moreover, OMA serves as a primary contact point for U.S. businesses that have experienced Code violations. We have processed a number of complaints brought directly to our attention by U.S. firms, Commerce district offices, and FCS posts overseas. Undertaking these monitoring activities in Washington rather than in the field is both appropriate and efficient: Washington personnel have the in-depth technical Code expertise and the broad, cross-country knowledge of the Code and its procedures that are essential to effective monitoring activities. In leaving out a discussion of Washington activities, the GAO report does not give a full picture of the extent of monitoring being done by the U.S. government.

Our third general comment is that we disagree with GAO's assessment that instructions to posts from Washington have been inadequate. The Commerce Department not only sent comprehensive reporting instructions on all the MTN Codes, including the Procurement Code, in December 1980 but reiterated an updated version of those

reporting instructions in January 1983 to ensure that posts were fully aware of their required support activities. More importantly, as detailed above, Washington has sent out extensive instructions to signatory posts on specific cases as well as generic issues (e.g., government reorganizations, treatment of value-added taxes in all countries, new legislation in signatory countries affecting procurement, etc.) affecting the Code's operation. In cases where we have detected systematic problems, such as Italy, we have cabled instructions to the posts detailing more intensive monitoring efforts (83 State 346566 of December 1983). Washington has also readily responded to questions posts have raised concerning substantive aspects of the Code or post activities in support of the Code.

In addition, we have institutionalized a briefing process in which the Commerce Procurement Code specialist briefs any new FCS officer in a Code signatory post as part of the outgoing FCS officer's Washington orientation. Procurement Code activities are also reviewed with FCS officers when they are in Washington for consultations.

Our fourth general comment is that the GAO report correctly points out that monitoring of the Agreement would be facilitated if U.S. businesses reported their experiences on bidding on Code-covered contracts to Commerce or other U.S. government agencies. The lack of feedback from the business community is not the result of an institutional defect within the USG, but is, as the report states, a result of the reluctance of some U.S. businesses to initiate interactions with the government. We have stressed to individuals and groups of businessmen the importance of learning about actual experiences and have encouraged business to be more forthcoming. Since March 1983 the Commerce Procurement Code specialist has addressed fourteen meetings of private sector Industry Advisory Committees to provide a briefing on Code issues and activities and to seek comments on firms' experiences and recommendations regarding the Code. Another example of our efforts to solicit views from the business community is our February 3, 1984 mailing to the 600 private sector members of the Industry Advisory Committees requesting their comments on their experiences under the Code.

Our first specific comment on this chapter concerns the discussion of non-compliance by the EC on p. 66. It is true that in the first two years of the Code's operation the EC published a number of notices without an English language summary. In each case, however, Washington Commerce officials instructed the post to seek correction. By the third year of operation the EC had completely corrected the problem, and there were no EC publications in 1983 without at least a summary in English, as required by the Code. Our second specific comment relates to the catalog of the possible types of non-compliance listed on pp. 68-69. The first practice, single tendering, is part of the required annual statistical reports by signatories. Therefore this type of non-compliance with the Code is

in fact not difficult to detect. Indeed, these statistical data have led to our current efforts to investigate this practice.(6)The other types of non-compliance cited in the report -- splitting contracts, diverting contracts, discriminatory design specifications, and domestic preferences -- are theoretical possibilities. We have no evidence and no reason to believe, however, that foreign signatories are intentionally and systematically engaging in these practices and we question the basis for GAO's implication that signatories are deliberately violating their Code obligations in these ways. Again, however, we stand ready to receive and act upon whatever evidence GAO may have. It is also important to note that the drafters of the Code anticipated these ways to subvert the Code and included provisions explicitly prohibiting these practices. Therefore in the event any of these practices are brought to light, the U.S. Government has unambiguous Code rights to insist on their correction.

Once again, our comments above have addressed in some detail the bulk of the recommendations in this chapter. To recapitulate, the Commerce Department already through its PCAP/CMP process provides instructions to FCS officers on the resource allocation for Procurement Code monitoring. As appropriate, we will work to upgrade these efforts. We will continue to send extensive instructions on appropriate monitoring tasks and follow-up activities. In response to the final recommendation, we will provide instructions to the posts that it is not appropriate to assist U.S. subsidiaries when they are selling a foreign-produced product.(7)

Conclusion

Once again, thank you for the opportunity to comment on your draft report. I hope that through my rather detailed response, you and your staff will expand your understanding of our efforts to ensure that the U.S. business community obtains maximum benefits from this international agreement. For our part, we appreciate GAO's views on those areas where improvements can be made. We will bear your recommendations in mind as we work to strengthen our implementation efforts.

Please contact me if you have questions on my response.

Sincerely,

Lionel H. Olmer

## GAO FOOTNOTES TO COMMERCE DEPARTMENT COMMENTS

1. Commerce's contention does not appear to be supported by the evidence we collected. Although there are no hard and fast criteria as to what constitutes a start-up problem, we believe that any situation that continues to exist after 3 years, as have many problems discussed in this report, represents a long-term trend. While the incidence of noncompliance with the 30-day bid deadline has decreased, it continues to be a problem more than 3 years after initiation of the Agreement. Commerce recognizes the continuing nature of this problem, stating that it "is continuing [its] efforts to eliminate this problem completely." Commerce also acknowledges that misuse of single tendering may still be a problem, stating that it:

> ". . .is probing the cause of the remaining single tendered contracts in France, Belgium and Japan to determine if they are the result of non-compliance with Code procedures."

Further, since Commerce had no information on any instances of the use of discriminatory specifications and application criteria, which our report identified as potential problems, it did not have the data to determine whether they are merely start-up problems. In response to this comment, we briefed Commerce, State, and OUSTR officials on this issue and provided them with information on the use of discriminatory specifications and application criteria.

2. Commerce's assertion that it discontinued promoting distribution of booklets because the initial heavy need had been filled is not supported by the evidence we collected. As discussed in the report, a Commerce survey of U.S. firms conducted in March 1982, one month after the reorganization of the International Trade Administration, showed that nearly 87 percent of the approximately 1,000 firms responding were unfamiliar with the Agreement. This finding was later confirmed by both our March 1983 survey of TOPs subscribers, which found that an estimated 80 percent of these firms were not familiar with the Agreement, and our June 1983 survey of 18 Commerce district office officials, who responded that firms in their regions were generally unfamiliar with the Agreement.

3. We are pleased to hear about these efforts. However, such informal efforts are not a substitute for a centally coordinated program to familiarize in-country representaives of U.S. firms with the Agreement. We hope Commerce takes this opportunity, in cooperation with OUSTR and State, to implement such an effort, which we believe is essential if the United States is to benefit commercially from its participation in the Agreement.

4. We are pleased that Commerce has been able to enlist the help of firms that provide on-line access to computerized information in distributing notices of covered procurements. Nonetheless, Commerce's success in this effort does not obviate the need for it to implement other portions of its planned promotion efforts. Many firms do not subscribe to such on-line information services. As stated in its plans, Commerce needed to pursue many avenues to promote use of the TOPs system by directly reaching U.S. exporters. As the report states, Commerce carried out only a portion of its planned efforts.

5. Since Commerce has taken or is initiating steps to correct the problems cited and since these problems were very minor, we have deleted the pertinent sections from the final report. We are pleased that Commerce took these actions after we had brought them to the attention of Commerce officials at meetings during the review.

6. We agree with Commerce that the government can detect systemic instances of noncompliance, such as general misuse of single-tendering procedures, through reviewing the annual statistical submissions. Nonetheless, as stated in the report, the government cannot detect all isolated instances of noncompliance without the assistance of the American business community. The need for such assistance does not result from a flaw in the Agreement or U.S. government implementation but is inherent in international agreements of this type.

7. Before cabling this instruction to the posts, we suggest that Commerce consult with State and OUSTR. As stated in the report, we understand from discusions with an OUSTR official that U.S. government policy is to assist all firms facing difficulty in participating in covered procurements, since any violation of the Agreement that discriminates against U.S. firms offering foreign-made goods would also discriminate against firms offering U.S.-made goods.

DEPARTMENT OF STATE
*Comptroller*
*Washington, D.C. 20520*

APR 20 1984

Dear Frank:

I am replying to your letter of March 5, 1984, which forwarded copies of the draft report: "The International Agreement on Government Procurement has not Met Expectations of its Commercial Value."

The enclosed comments on this report were prepared in the Bureau of Economic and Business Affairs.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

Roger B. Feldman

Enclosure:
As stated.

Mr. Frank C. Conahan,
Director,
National Security and
International Affairs Division,
U.S. General Accounting Office,
Washington, D.C. 20548

GAO Report: "The International Agreement on Government Procurement has not Met Expectations of its Commercial Value"

The Department of State welcomes the opportunity to comment on your draft report entitled "The International Agreement on Government Procurement Has Not Met Expectations of its Commercial Value." Our comments focus on the commercial value of the Agreement and current efforts to broaden its scope, discussed in chapter two, and on U.S. government efforts to monitor compliance with the Agreement, discussed in chapter four.

Commercial Value of the Agreement

The original estimates of potential trade opportunities to be opened by the Code clearly have not been borne out in practice; however, the draft report exaggerates the problem. For example, the report states that single-tendered procurements are closed to foreign firms. This is not necessarily true. In 1982 the percentage by value of contracts awarded to foreign companies by covered entities in Canada using single-tendering was three times higher than that awarded to foreigners under competitive procedures. In Switzerland the foreign penetration ratio was approximately three percent higher in single-tendered purchases than in competitively procured contracts. Single tendering presents a problem when it is used in circumstances not permitted by the Code, or when it discriminates against foreign firms, but, it is not, per se, bad. (1)

We do not agree with the report's assertion that widespread failure to comply with the Agreement has significantly lessened its commercial value. The draft report itself points out that an early problem of non-compliance, failure to provide 30 days for bids, markedly improved during the second year of the Agreement. No evidence has surfaced in the U.S. or in other signatory countries to support the report's contention that there are other, widespread non-compliance problems.

Chapter two also underestimates the prospects for significantly strengthening the Agreement during renegotiations. We recognize that signatory governments are divided in their views regarding the desirability of expanding coverage of the Agreement to include service contracts or new entities. Not only the United States, but also Canada, Finland, Israel, Norway and Sweden have indicated interest in exploring one or both of these aspects of expanding the Agreement. While "improvements" may be a less dramatic part of

Note: All footnotes were added by GAO and refer to our evaluation of the commnets, which appears at the end of this letter.

the renegotiations, it would be unwise to underestimate its potential to increase competitive opportunities. The European Communities has tabled a lengthy, well-considered document proposing ten areas in which the Agreement could be modified and improved. Similar proposals have been tabled by the Nordics and the United States.

Monitoring Efforts

A full assessment of USG efforts to monitor compliance with the Agreement must include efforts in Washington and at meetings of the Committee on Government Procurement in Geneva, as well as in our embassies. The process of identifying systematic violations of the Agreement is also less difficult than the draft report indicates. Finally, we disagree with the draft's analysis of the dispute settlement process.

The role of Washington agencies is central to a complete understanding of how the USG monitors compliance. Within the Department of State the Office of Trade, Special Trade Activities Division (STA) is responsible for government procurement policy issues. STA's monitoring efforts include responsibility, shared with Commerce and USTR, for careful analysis of the annual statistical reports submitted by signatory countries. This analysis can reveal potential systematic abuse, such as unusually high incidences of single tendering, uncharacteristically low values of above-threshold purchases, rates of foreign penetration significantly below average, or similar problems. The Commerce Department's review of all foreign code-covered notices is particularly useful in early detection of case-by-case violations, such as notices allowing less than 30 days and unusually short delivery periods. When potential problems are identified, Washington agencies direct our embassies to obtain further information and seek correction of the problem.

Meetings of the GATT Committee on Government Procurement also afford useful means of furthering U.S. efforts to monitor and ensure compliance with the Agreement. Washington delegates to the meetings from USTR, State and Commerce have developed productive working relationships with members of other delegations, facilitating the sharing of information about questionable practices by third countries as well as resolving bilateral problems. Each formal Committee agenda includes implementation issues. Formal sessions provide answers to questions regarding possible non-compliance problems raised by the U.S. as well as other signatories. Knowledge that possible problems can be raised at formal sessions acts as an incentive to resolve problems quickly, because of Signatories' desires to avoid public criticism.

We agree that there could be some improvement in our efforts to give economic and trade officers in our embassies a better understanding of the Agreement on Government Procurement. The policy of the Department of State is to delegate responsibility for utilizing personnel resources in our embassies to ambassadors. The Department's role, in addition to seeking to assure that our embassies are adequately staffed, is to provide embassies with reporting instructions and a general understanding of the issues, so they may establish their own priorities.

Instructions from Washington have been adequate. Washington agencies issued instructions on general reporting requirements regarding the Agreement on Government Procurement to all posts in signatory countries last year (State 1983 Airgram 268). This airgram updated instructions from December 1980 on monitoring and reporting requirements for all the MTN Agreements. Numerous cables have followed from Washington directing the embassies to take action on individual compliance problems, as well as general policy issues relating to operation and renegotiation of the Agreement.

We recognize that more could have been done in providing background information on the Agreement to officers with economic and trade responsibilities in signatory countries. We, therefore, are taking steps to ensure greater consistency in briefing economic officers and their supervisors who are newly assigned to posts in signatory countries about the Government Procurement Code and the embassies' role in monitoring enforcement. On March 26, 1984, the Economic Bureau circulated a memorandum to other bureaus within the Department requesting cooperation in scheduling these pre-departure briefings.

Our final comments relate to the Agreement's dispute settlement mechanism. Formal dispute settlement procedures are intended to be used when Parties are unable to resolve differences bilaterally. Bilateral consultations are an explicit pre-condition for access to the dispute settlement procedures. Just as in a domestic legal dispute, settling "out-of-court" can save all parties time, money and goodwill.

The dispute settlement provisions contain specific internal deadlines for each step in the process to guard against the delays which the report asserts might arise. For example, parties to a dispute must react within seven working days to nominations of panel members.(2)The draft report incorrectly asserts that the GATT Committee has no monitoring capability and states that therefore there may be difficulties in verifying implementation of Committee determinations. However,

the Agreement states "the Committee shall keep under surveillance any matter on which it has made recommendations or given rulings." The confusion may have arisen because of the distinction between the Committee's staff, which indeed has no independent monitoring authority, and the Committee itself, which is composed of signatory countries. As we mentioned in our discussion on monitoring efforts, the combined monitoring efforts of the many signatories help ensure that the Committee can execute its responsibilities effectively. (3)

RECOMMENDATIONS

A. GAO recommends that the Secretary of Commerce in consultation with the U.S. Trade Representative and the Secretary of State direct U.S. embassies in signatory countries and Commerce district offices to work into their ongoing commercial activities programs devoted to informing U.S. business officials about the Government Procurement Agreement, their rights under it, and sources of information on covered procurements.

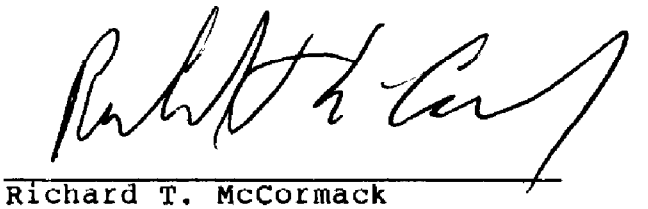
The Department of State is prepared to consult with the Department of Commerce on these matters, if the Department of Commerce so desires.

B. GAO recommends that the Secretaries of Commerce and State, in consultation with the U.S. Trade Representative, provide guidance to U.S. embassies in signatory countries regarding (1) the level of resources they should devote to monitoring host-government compliance, (2) the types of tasks they should perform, (3) the extent to which they should follow up on complaints brought to their attention, and (4) whether they should assist subsidiaries of U.S. firms offering goods manufactured outside the United States to participate in procurements under the Agreement.

The Department of State notes regarding points 1 and 2 that U.S. ambassadors have responsibility for establishing the level of resources their embassies can devote to monitoring host-government compliance. However, the Department has already undertaken, in its March 26 memorandum, to ensure that newly-assigned economic officers will be briefed on the importance of monitoring host country compliance with the Agreement, and on the embassies' role in this regard. We are prepared to repeat and update the general reporting requirements guidance contained in 83A-268 approximately every two years, and will continue to send specific directions as required.

Points 3 and 4 concern matters which are primarily within the competence of the Secretary of Commerce. We are prepared to consult with the Commerce Department on these matters if Commerce so desires.

Before concluding, we would like to stress that this report is drawn largely from experiences during 1981, immediately after the Agreement entered into effect. Several more years' experience under the Agreement will be necessary to evaluate the Agreement's potential in a more conclusive manner.



Richard T. McCormack
Assistant Secretary for
Economic and Business Affairs

APPENDIX III

## Security Statement

The draft report contains one paragraph (pages 61-62) drawn from sources classified by the Department of State. The Department of State advises that this paragraph may be declassified without damaging U.S. interest. The accuracy of that paragraph would be enhanced if the GAO would add that after having received embassies' reporting of the possibility that some governments might not implement the Agreement by the January 1, 1981 deadline, the U.S. made effective diplomatic representations urging other Signatories to respect the deadline. As a result, countries implemented the Agreement in a much more timely fashion than early reports had indicated would be the case; all countries were in de facto compliance by mid-January, 1981, and had completed all formal steps within six months.

Richard T. McCormack
Assistant Secretary for
Economic and Business Affairs

## GAO FOOTNOTES TO STATE DEPARTMENT COMMENTS

1. We are pleased to hear that foreign firms have won some single-tendered foreign-government procurements. However, State's support for this statement is based on preliminary evidence for one year provided by a few signatories with low levels of procurements and, thus, does not constitute conclusive evidence that foreign firms have won a substantial number of all such procurements. Further, as stated in the report, single-tendered procurements cannot be considered as genuine new trade opportunities opened by the Agreement. Governments generally award these procurements to foreign firms when only one firm can supply the needed product, so such procurements would most likely have been awarded to the U.S. supplier even without the Agreement. (See ch. 2.)

2. We agree that the deadlines incorporated into the Agreement's dispute settlement provisions improve the timeliness of the procedures. Nonetheless, they do not prevent the "dragging out" of the process. As stated in the report, a country intent on avoiding its obligations could still employ these procedures in a dilatory manner. For instance, although parties to a dispute must react within 7 working days to nominations of panel members, they can prolong the procedure by continually refusing the nominations. A party could also delay in providing information, claiming, for instance, that it is not readily available and will take time to collect.

3. We do not dispute that the Committee has monitoring "responsibilities," but find that it has no "capabilities" other than those at the disposal of the Committee members. Consequently, the Committee's monitoring capabilities have the same limitations as do those of the signatory governments, which, as we point out, cannot fully monitor foreign-government compliance with the Agreement.

APPENDIX IV

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

INTERNATIONAL DIVISION

Dear Mr.

The U.S. General Accounting Office, an agency of Congress, is studying the U.S. Government's implementation of the Multilateral Trade Negotiations (MTN) Agreement on Government Procurement. The enclosed questionnaire is designed to help us assess the Commerce Department's use of Trade Opportunities Program (TOP) notices as a method of informing U.S. firms of foreign-government procurement opportunities covered by the agreement.

The Agreement on Government Procurement, which went into effect on January 1, 1981, requires the signatory governments to (1) treat bids from foreign firms equally to bids from domestic firms in making certain procurement decisions and (2) conduct covered procurements in the open in accordance with a detailed set of procedures. The agreement covers designated central-government agencies' purchases valued at approximately $182,000 or more, excluding procurements of services, military weapons, and other products essential to the maintenance of national security and safety. By lessening discrimination in foreign-government procurements, the agreement was expected to open a significant new market to U.S. exports.

Your firm was chosen from a list of present and past Trade Opportunities Program subscribers that received TOP notices of foreign-government procurements covered by the agreement. Please complete the enclosed questionnaire and return it in the pre-addressed envelope within 10 days. If you have any questions, please contact either Leyla Kazaz or Joseph Natalicchio of my staff, both of whom may be reached on (202) 275-5889. If you would like to receive a copy of our report on the agreement, please check the box in the space provided for additional comments.

Thank you for your assistance.

Sincerely,

Frank C. Conahan
Director

Enclosures

U.S. GENERAL ACCOUNTING OFFICE

Survey of Subscribers to the Commerce Department's Trade Opportunities Program (TOP) Notices of Foreign Government Procurement Opportunities

INSTRUCTIONS: The U.S. General Accounting Office is studying the U.S. Government's implementation of the Multi-lateral Trade Negotiations (MTN) Agreement on Government Procurement, which went into effect January 1, 1981. We are reviewing the Commerce Department's use of Trade Opportunities Program (TOP) notices as a method of informing U.S. firms of foreign-government procurement opportunities covered by the agreement.

Please complete the questionnaire and return it in the pre-addressed envelope within 10 days. Complete your answers by either checking the appropriate box or filling in the indicated blank. The questionnaire should take no more than 15 minutes to complete. If you should have any questions, please call either Leyla Kazaz or Joseph Natalicchio at (202) 275-5889. Thank you very much.

In the event the envelope is misplaced, the return address is:

U.S. General Accounting Office
Room 4148
441 G Street, N.W.
Washington, D.C. 20548

Attn: Ms. Leyla Kazaz

AGREEMENT ON GOVERNMENT PROCUREMENT

The Agreement went into effect on January 1, 1981, for the United States and the following 18 signatory countries:

| | | |
|---|---|---|
| Austria | W. Germany | Netherlands |
| Belgium | Hong Kong | Norway |
| Canada | Ireland | Singapore |
| Denmark | Italy | Sweden |
| Finland | Japan | Switzerland |
| France | Luxemburg | United Kingdom |

The Agreement covers foreign government procurements valued at approximately $182,000 or more.

I. CORPORATE AND RESPONDENT INFORMATION

1. Name of your corporation: _____

_____

2. Name of person completing questionnaire:

_____

3. Telephone number: ( ) _____
Area Code

4. What is your firm's principal business activity? (Please check only one.) (5)

1. / / Manufacturing
2. / / Distribution/wholesaling/retailing
3. / / Export management/trade company
4. / / Engineering/construction
5. / / Other (Please describe.) _____

5. Please check each of the categories listed below in which your firm exports one or more products. (If a product seems to fit in two or more categories, check only the one best fitting category.) (6-23)

1. / / Coal
2. / / Textiles
3. / / Lumber and wood products (not furniture)
4. / / Furniture and fixtures
5. / / Paper products
6. / / Printed products
7. / / Chemical products
8. / / Petroleum products
9. / / Rubber and plastics
10. / / Leather
11. / / Stonery, clay, glass, and concrete
12. / / Primary metal products
13. / / Fabricated metal products except machinery and transportation equipment
14. / / Machinery, except electrical
15. / / Electrical and electronic machinery, equipment, and supplies
16. / / Transportation equipment
17. / / Measuring instruments; photographic, medical, and optical goods; watches, and clocks
18. / / Other (Please specify.) _____

APPENDIX IV

6. What was your firm's approximate total annual sales for fiscal year 1982? (Please check only one.) (24)

1. / / Below $1 million
2. / / $1 million to $4.99 million
3. / / $5 million to $24.99 million
4. / / $25 million to $49.99 million
5. / / $50 million to $74.99 million
6. / / $75 million or more

7. In fiscal year 1982, what proportion of your firm's total dollar sales consisted of exports? (Please check only one.) (25)

1. / / Less than 5%
2. / / 5% to 25%
3. / / 26% to 50%
4. / / More than 50%

8. For how many years has your firm been involved in exporting? (Please check only one.) (26)

1. / / Less than 5 years
2. / / 5 to 10 years
3. / / 11 to 25 years
4. / / More than 25 years

9. Prior to January 1, 1981, did your firm make any sales to any of the foreign governments that are signators to the MTN Agreement on Government Procurement? (See box, page 1.) (27)

1. / / Yes
2. / / No

## II. FAMILIARITY WITH AGREEMENT ON GOVERNMENT PROCUREMENT

10. To what extent, if at all, are you familiar with the MTN Agreement on Government Procurement? (Please check only one.) (28)

1. / / To little or no extent (SKIP to Question 12)
2. / / To some extent
3. / / To a moderate extent
4. / / To a great extent
5. / / To a very great extent

11. What was the primary source of your familiarity with the Agreement? (Please check only one.) (29)

1. / / Commerce Department publication such as "Business America," "Overseas Business Reports," or a specially issued booklet or pamphlet on the Agreement
2. / / Commerce Department-sponsored seminar
3. / / Other Commerce Department source

(Please specify.) _____

_____

4. / / Other source (Please specify.) _____

_____

## III. USE OF TOPS NOTICES

12. Is your firm currently a subscriber to the Commerce Department's TOP Notices? (30)

1. / / Yes
2. / / No

13. Has your firm used the TOP notices of procurements covered by the Agreement (MTN Tenders) solely for general market information or have you also used the TOP notices to learn of specific procurements on which to bid? (Please check only one.) (31)

1. / / Solely for general market information (Please skip to Question 20.)
2. / / Also to learn of specific procurements on which to bid

APPENDIX IV

14. Since January 1, 1981, has your firm entered into prequalification procedures (i.e., completed and submitted prequalification forms) with any of the foreign governments that are signators of the Government Procurement Agreement (see box, page 1)? (32)

1. / / Yes
2. / / No

15. Please check each of the foreign signatory governments with which your firm has entered into prequalification procedures since January 1, 1981. (33-50)

| | | | |
|---|---|---|---|
| 1. / / | Austria | 10. / / | Italy |
| 2. / / | Belgium | 11. / / | Japan |
| 3. / / | Canada | 12. / / | Luxemburg |
| 4. / / | Denmark | 13. / / | Netherlands |
| 5. / / | Finland | 14. / / | Norway |
| 6. / / | France | 15. / / | Singapore |
| 7. / / | W. Germany | 16. / / | Sweden |
| 8. / / | Hong Kong | 17. / / | Switzerland |
| 9. / / | Ireland | 18. / / | United Kingdom |

16. Has your firm successfully completed prequalification procedures with any of the foreign signatory governments? (51)

1. / / Yes
2. / / No (If no, please SKIP to Q. 18.)

17. Please check each of the signatory governments with which your firm has successfully completed prequalification procedures. (52-69)

| | | | |
|---|---|---|---|
| 1. / / | Austria | 10. / / | Italy |
| 2. / / | Belgium | 11. / / | Japan |
| 3. / / | Canada | 12. / / | Luxemburg |
| 4. / / | Denmark | 13. / / | Netherlands |
| 5. / / | Finland | 14. / / | Norway |
| 6. / / | France | 15. / / | Singapore |
| 7. / / | W. Germany | 16. / / | Sweden |
| 8. / / | Hong Kong | 17. / / | Switzerland |
| 9. / / | Ireland | 18. / / | United Kingdom |

18. On how many TOP Notices of foreign government procurements covered by the Agreement (MTN Tenders) has your firm submitted a bid to date? (Please check only one.) (70)

1. / / None (SKIP TO Q. 22.)
2. / / 1 to 10
3. / / 11 to 25
4. / / 26 to 50
5. / / More than 50

19. Of the bids your firm submitted, what proportion resulted in sales to signatory governments (see box, page 1)? (Please check only one.) (71)

1. / / 0
2. / / 1 - 10%
3. / / 11 - 25%
4. / / 26 - 50%
5. / / 51 - 75%
6. / / 76 - 100%

(PLEASE SKIP TO QUESTION 22)

APPENDIX IV

20. Please indicate the reasons why your firm has not made use of the TOP notices to bid on procurements covered by the Agreement. (Please check one or more.) (72-74)

1. / / The notices have not arrived in sufficient time to submit a bid within the usual 30-day timeframe
2. / / The notices have not provided sufficient information to determine whether to request the tender documentation
3. / / Other (Please specify.)

_____

CASE / / / / / (1-3)

CARD /2/ (4)

21. Since January 1, 1981, which of the following actions, if any, has your firm taken to benefit from new trade opportunities resulting from the MTN Agreement on Government Procurement? (Please check all actions taken. (5-8)

1. / / Obtained new foreign representation in signatory countries
2. / / Expanded your firm's existing overseas activities into the new foreign government procurement market
3. / / Expanded your firm's existing overseas activities into new product lines
4. / / Used the TOP Notices to monitor the performance of overseas representatives or offices

22. Of how much help, if any, has TOP been in your firm's efforts to bid on the foreign government procurements covered by the Agreement? (Please check only one.) (9)

1. / / Of very great help
2. / / Of great help
3. / / Of moderate help
4. / / Of some help
5. / / Of little or no help

## IV. OVERSEAS REPRESENTATION

23. Does your firm have an office or agent in any of the foreign countries whose governments are signators of the Government Procurement Agreement? (See box, page 1.) (10)

1. / / Yes
2. / / No (If no, please SKIP to Q. 25.)

24. Please check each of the signatory or other countries in which your firm has an office or agent that helps in obtaining foreign business. (11-29)

1. / / Austria
2. / / Belgium
3. / / Canada
4. / / Denmark
5. / / Finland
6. / / France
7. / / W. Germany
8. / / Hong Kong
9. / / Ireland
10. / / Italy
11. / / Japan
12. / / Luxemburg
13. / / Netherlands
14. / / Norway
15. / / Singapore
16. / / Sweden
17. / / Switzerland
18. / / United Kingdom
19. / / Other

25. In your opinion, how likely or unlikely is it that your firm could successfully compete on foreign-government procurements without foreign representation, relying solely on the TOP Notices? (30) (Please check only one.)

1. / / Very likely
2. / / Likely
3. / / Neither likely nor unlikely
4. / / Unlikely
5. / / Very unlikely

APPENDIX IV

## V. YOUR ASSESSMENT OF AGREEMENT

26. How much of an increase, if any, has the Agreement on Government Procurement contributed to sales by your firm to signatory foreign governments? (Please check only one.) (31)

1. / / Very great increase
2. / / Great increase
3. / / Moderate increase
4. / / Some increase
5. / / Little or no increase
6. / / Don't know

27. Please check each of the categories listed below in which your firm now sells products to signatory foreign governments (see box, page 1) that you did not sell to these governments prior to January 1, 1981. (If a product seems to fit into two or more categories, check only the one best fitting category. If appropriate, please check "none.") (32-50)

1. / / Coal
2. / / Textiles
3. / / Lumber and wood products (not furniture)
4. / / Furniture and fixtures
5. / / Paper products
6. / / Printed products
7. / / Chemical products
8. / / Petroleum products
9. / / Rubber and plastics
10. / / Leather
11. / / Stonery, clay, glass, and concrete
12. / / Primary metal products
13. / / Fabricated metal products except machinery and transportation equipment
14. / / Machinery, except electrical
15. / / Electrical and electronic machinery, equipment, and supplies
16. / / Transportation equipment
17. / / Measuring instruments, photographic, medical, and optical goods, watches, and clocks
18. / / Other (Please specify.) _____
19. / / None

28. We are interested in learning what barriers, if any, exist to U.S. firms' efforts to make sales to the 18 foreign governments that are signators to the Agreement on Government Procurement. Please indicate, by checking the appropriate column, how much of a barrier, if any, each of the possible conditions listed below is to your firm's efforts to make sales to these governments. (Please check one column for each factor listed.)

| POSSIBLE TRADE BARRIERS | Little or no barrier 1 | Slight barrier 2 | Moderate barrier 3 | Great barrier 4 | Very great barrier 5 | |
|---|---|---|---|---|---|---|
| 1. Need to conduct transactions in language of the foreign country | | | | | | (51) |
| 2. Need to make bids and conduct transections in currency of the foreign country | | | | | | (52) |
| 3. Concern that bid will not receive fair consideration | | | | | | (53) |
| 4. Belief that it is difficult to be price competitive with producers located in the signatory foreign country | | | | | | (54) |
| 5. Amount of paperwork and administrative detail required (sometimes called "red tape") | | | | | | (55) |
| 6. Need to submit bids within usual 30-day timeframe | | | | | | (56) |
| 7. Other (Please specify.) _____ _____ | | | | | | (57) |

VI. ADDITIONAL COMMENTS

29. Please use the space below (or attach another sheet) to make any additional comments on any of the subjects raised in this questionnaire and/or to request a copy of our report. Thank you for your cooperation. (58)

/ / Yes, I would like to receive a copy of the General Accounting Office's report on the Government Procurement Agreement. My mailing address is:

_____

_____

_____

(59)

COMMENTS.