

108. Mandatory biotechnology labelling requirements apply for genetically modified corn and soybeans as well as for processed foods containing these products, including soybean sprouts and fresh biotechnology potatoes. Since September 2002, Korea has accepted a notarized self-declaration, instead of requiring full documentation, to certify products that are exempt from biotechnology requirements. Importers or manufacturers must keep records for up to two years to prove that unlabelled foods subject to GMO labelling requirements are GMO free.

(x) Government procurement

✓ 109. In 2006, Korea's government procurement market was about 10% of GDP (12% in 2004). Korea operates international tendering and other procurement procedures in accordance with its multilateral commitments under the WTO Plurilateral Agreement on Government Procurement (GPA). Although government procurement is directed at achieving "value for money", it also focuses on promoting SMEs and regional development.⁷⁸ Korea's international tendering system is based on open competitive tendering. According to authorities, restricted tendering is rarely used.⁷⁹ For GPA-covered entities, contracts subject to Korea's commitments represented about 38.4% of total GPA-covered procurement in 2004.⁸⁰ More than 3% (by value) of these contracts were awarded using restricted (limited) tendering. Procurement by GPA-covered entities represented 44.9% of Korea's total procurement (excluding defence equipment) in 2004. More recent data were not available from the authorities due to institutional change of responsibilities for data collection in this area as of 2006.

110. The main government procurement legislation (Act on Contracts to which the State is a Party, 1995) has not changed substantially during the review period; the Local Government Procurement Law (2006) and the Public Enterprises' Contracting Affair Rules (2007) were passed. The legislation covers international and domestic procurement of goods and services (including construction) by all central government agencies. Procurement by sub-central government entities and public entities are regulated by the Act on Contracts to which the State is a Party and the Act on the Management of Non-Departmental Public Entities. Although purchase of agricultural, fisheries and livestock products is not subject to international tendering under the GPA, their procurement is covered by the Act on Contracts to which the State is a Party. Procurement from SMEs is covered by the procurement legislation and the Promotion of SMEs and Encouragement of Purchase of Their Products Act. The comprehensive 2004 Law on the Promotion of Environmentally Friendly Product (implemented in July 2005) requires government agencies and SOEs to give top priority to environment-friendly products; it applies to 55 central government agencies, 444 local government bodies, and 220 enterprises affiliated with central and local government agencies.⁸¹ The law makes mandatory the purchase of environmentally friendly products but provides exceptions for quality and availability reasons as well as emergency procurement needs.

✓ 111. Some government procurement is conducted by the central procurement agency Public Procurement Service (PPS). The role of the PPS is changing progressively and, by implication, responsibility for purchasing will be further decentralized to agencies. As of 2008, local governments are fully authorized to procure goods and services independently. Construction works by local governments will be contracted as from 2010. Central government agencies must use the PPS to procure goods and services above W 100 million (foreign goods and services over US\$200,000, previously US\$100,000); below that threshold individual government agencies can conduct their own

⁷⁸ APEC (2007).

⁷⁹ This consists of limited (by invitation) or nominated (by nomination) competitive bidding and private contracts where a specific supplier is used.

⁸⁰ WTO document GPA/84/Add.1, 12 October 2006.

⁸¹ EIU (2007).

purchasing directly.⁸² All other public institutions, including SOEs, can procure goods and services directly, but may choose to use the PPS. Except for defence-related procurement, which is conducted by the Defense Acquisition Program Administration, the PPS has the following five main functions: supply goods and services for government use; contract and manage public works; stockpile 13 items of raw materials, such as aluminium and construction materials, to secure price stability and supplies⁸³; coordinate and audit government goods and real estate property management; and manage and operate the Korea ON-line E-Procurement System (KONEPS) (previously called Government's e-procurement system, GePS). This system, which is a single window for procurement, has digitalized the purchasing process, including registration, public notice, bidding, contracts, and payment. PPS's total annual procurement has grown steadily, from W 19.6 trillion in 2002 to W 28.3.7 trillion (2007), of which W 14.4 trillion was on public works construction.⁸⁴

✓ 112. The PPS was in charge of about 30% of Korea's total government procurement of goods and services (excluding defence equipment) in 2005. Some 70% of Korea's procurement market therefore involves procurement directly by public institutions. Foreign supplies accounted for about 3.1% of PPS's total business receipts in 2005, a significant drop compared with the period 1991-95, immediately prior to Korea's accession to the GPA, when government procurement of foreign sourced goods by the Office of Supply averaged 9.9% of the agency's purchases. Reportedly, foreign suppliers appear to be losing ground in the Korean government procurement market due to the highly sophisticated and increasingly competitive domestic suppliers of manufactures and construction services, as well as the discontinuation of government purchases based on international public loans (IBRD, OECF), which required international competitive tendering.⁸⁵

✓ 113. Reportedly, the KONEPS, *inter alia*, minimized the risk of untoward influence on purchasing decisions.⁸⁶ It is highly-regarded and acclaimed internationally. KONEPS has ensured that transparency and openness of decision-making have greatly improved. Transactions conducted through KONEPS were approximately W 43.8 trillion, or 52% of total government procurement (W 83.8 trillion) in 2006. KONEPS is estimated to save US\$4.5 billion in costs per year when both the private and public sector benefits are taken into account, although in a recent review of regulatory reform in Korea, the OECD argues that there is room for improvement in utilizing KONEPS.

114. All bidders wishing to participate in PPS-conducted tenders must register with PPS. For construction works, it evaluates bids of less than W 30 billion using an "eligibility screening system" based on factors such as past performance, including record in meeting previous contracts, technical capability, financial status, adequacy of management plans, and price. "Abnormally low or dumping" tenders are rejected.⁸⁷ For contracts exceeding W 30 billion, PPS uses the lowest bid award system after conducting a pre-qualification evaluation. A pre-qualification system is also used to determine eligible bidders for large-scale and complex construction projects, if the estimated value exceeds

⁸² A higher threshold of W 3 billion applies to construction activity on behalf of central government. Local governments are required to use PPS for construction projects to be contracted through design-build tendering or alternative tendering. For other types of construction, local governments are allowed to conclude contracts independently

⁸³ The Minister of Strategy and Finance specifies annually essential materials that are highly dependent on imports. As of 2007, PPS stockpiled 13 items consisting of 5 items of non-ferrous metals including aluminium and copper, 7 items of rare metals such as nickel and ferro silicon, and chemical pulp. They are purchased by the PPS using international competitive tenders. On request, these stocks are made available to the private industry including SMEs at the prevailing international market price.

⁸⁴ PPS (2007).

⁸⁵ APEC (2007).

⁸⁶ APEC (2007).

⁸⁷ Bids are evaluated based on estimated prices prepared by PPS. Those that exceed these estimates are precluded, as are bids that fall below a certain level.

W 20 billion and the construction involves one or more of the 18 trades specified in the relevant law (e.g. bridges, tunnels, and subways). Separate pre-qualification lists are maintained for each construction project, based on objective criteria.⁸⁸ Bid results, including scoring criteria, tenders, pre-qualification evaluation, and contract awards are released on the KONEPS Internet site (<http://www.g2b.go.kr>). Entities procuring directly also conduct pre-qualification reviews to determine tender eligibility based on similar criteria used by PPS. According to the authorities, there are no special pre-qualification requirements or restrictions imposed on foreign suppliers.

115. Contracts are awarded through open competitive tender, unless there are reasons (of "purpose, nature, size, etc. of a contract") for awarding by restricted tender. According to the authorities, private contract is allowed in some rare cases; while no data were made available, the authorities indicate that the share of open competitive tendering is constantly increasing, whereas that of restricted and private tendering is decreasing. Although defence procurement is covered by the procurement legislation (but not by Korea's WTO procurement obligations) and, in principle, conducted by open competition, procurement procedures tend to follow defence acquisition management practices, whereby restricted and private tendering is often used. With the abrogation of collective private tendering system for SMEs in 2006, goods manufactured by SMEs are in principle procured under competitive tendering as from 2007. Although private contracts are occasionally used for purchases of goods and services not exceeding W 50 million in value (W 200 million for construction works) in accordance with relevant laws, competitive contracting is generally used for such purchases from SMEs. The PPS handles procurement from SMEs and other socially weak sectors, such as regional companies and female-owned businesses.⁸⁹ Procurement of goods manufactured by SMEs accounts for about 70% of PPS's total domestic procurement of supplies (excluding construction).⁹⁰ The Small and Medium Business Administration provides the criteria of SME products for single tendering procurement and the list of set-asides products, which are allowed as an exception under the GPA.⁹¹ PPS's "competitive bidding system restricted by region" and "compulsory joint sub-contracting and single source contracting system" has expanded regional opportunities.⁹²

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration, documentation, and clearance

116. Most (95% of cases) export declarations that are submitted electronically without supporting documents are accepted automatically without examination; for goods subject to documentary and physical inspection, exporters are required to submit export declarations and supporting documents in

⁸⁸ Bidding is only open to suppliers that receive a certain pass score in a comprehensive evaluation based on experience, technical capacity, financial status, and credibility (record of the supplier's integrity in abiding by relevant laws).

⁸⁹ The precise definition of an SME differs between sectors. In manufacturing it is a company employing fewer than 300 persons or with paid-up capital of less than W 8 billion.

⁹⁰ Domestic procurement refers to goods, services and leases produced or supplied domestically. Page 41 of Part III of PPS (2007).

⁹¹ The scope of single tendering procurement includes five types of technology development products and products provided by SMEs in four special support regions. There are 226 SME products for set-asides in 2007.

⁹² The competitive bidding system "restricted by region" applies to projects valued up to W 5 billion, and allows companies located in the construction region to participate in the open competitive tender. The compulsory joint venture system (up to W 7.4 billion as from 2007) requires a bidder to form a joint venture with a company located in the construction region. Both methods apply only to projects whose estimated value does not exceed the WTO GPA threshold.

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