

Supreme Court decided a total of seven antitrust cases.<sup>218</sup> In each case, the Court reached the decision requested by the United States.

219. The United States has antitrust cooperation agreements with Australia, Brazil, Canada, the EC, Germany, Israel, Japan, and Mexico.<sup>219</sup> These agreements do not override provisions of domestic law that protect the confidentiality of investigative information, nor does the OECD's Recommendation concerning Co-operation between Member countries on Anticompetitive Practices affecting International Trade, to which the U.S. antitrust agencies adhere.

220. The International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. section 6211) authorizes the Government of the United States or the DOJ and the FTC to enter into bilateral antitrust mutual assistance agreements with foreign governments that authorize the agencies to share confidential information obtained in the agencies' investigations and to gather evidence on behalf of foreign antitrust authorities.<sup>220</sup> The United States has entered into only one such agreement, with Australia. The United States also has a number of mutual legal assistance treaties, which permit the exchange of information in criminal matters and are particularly important for international cartel investigations. U.S. antitrust agencies also cooperate informally with foreign agencies, e.g. through the exchange of public information and of confidential materials submitted by parties that have granted waivers of confidentiality rights.

221. The Antitrust Modernization Commission, created in 2002 to assess the need to reform antitrust laws, presented its report to Congress in April 2007. The report concluded that there was no need to revise the antitrust laws nor were statutory changes recommended with respect to merger law. The report noted the importance of ensuring that merger enforcement policy be sensitive to the need of companies to innovate and obtain the scope and scale needed to compete effectively in domestic and global markets, while continuing to protect the interests of U.S. consumers. While noting that market power should not be presumed from a patent, copyright, or trade mark in antitrust cases, the report recommended avoiding abuse of the patent system by, in particular, ensuring the quality of patents.<sup>221</sup> The report also recommended simplifying and unifying merger clearing procedures and harmonizing the work of state and federal antitrust agencies, particularly with respect to mergers. Other recommendations included pursuing more bilateral and multilateral antitrust cooperation agreements to promote global trade, investment, and consumer welfare.

**(iv) Government procurement**

**(a) Introduction**

222. The United States is a party to the WTO Agreement on Government Procurement (GPA). GPA thresholds in SDRs have remained unchanged since the Agreement entered into effect on 1 January 1996, but thresholds in U.S. dollar are revised every two years by the USTR.

<sup>218</sup> *Texaco Inc. v. Dagher*; *Illinois Tool Works Inc. v. Independent Ink, Inc.*; *Volvo Trucks North America, Inc. v. Reeder-Simco GMC, Inc.*; *Weyerhaeuser Co. v. Ross Simmons Hardwood Lumber Co., Inc.*; *Bell Atlantic Corp. v. Twombly*; *Leegin Creative Leather Products v. PSKS*; and *Credit Suisse First Boston Ltd. v. Billing*.

<sup>219</sup> USDOJ online information. Viewed at: [http://www.usdoj.gov/atr/public/international/int\\_arrangements.htm](http://www.usdoj.gov/atr/public/international/int_arrangements.htm).

<sup>220</sup> Changes to the scope of and international cooperation for antitrust enforcement are contained in the U.S. Safe Web Act of 2006 (Public Law No. 109-455).

<sup>221</sup> Antitrust Modernization Commission (2007).

223. Annex I of Appendix I of the Agreement contains the list of central government agencies covered by the GPA; Annexes 2 and 3 list the 37 states, the Federal and the sub-federal bodies applying the GPA. In 2004, the United States circulated proposed modifications to Appendix I of the Agreement, to reflect changes in the administrative structure of the Federal Government<sup>222</sup>; these changes were incorporated into Annex 1 and became effective on 1 October 2004. In 2006, the United States proposed the withdrawal of the Pennsylvania Avenue Development Corporation, which had been dissolved; this modification was incorporated into Annex I and became effective on 26 March 2006.<sup>223</sup>

224. In the GPA Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices, the United States submitted a communication in December 2004 containing generic and specific requests.<sup>224</sup> In December 2005, the United States submitted an initial offer in the context of the negotiations. A revised offer was issued in October 2006.

225. In January 2002, the United States submitted to the WTO the statistical information required under Article XIX:5 of the GPA for the years 1996-99.<sup>225</sup> The submission for 1999 reported 56,598 contracts with a total value of more than US\$205 billion.<sup>226</sup> No new submission has been made since then.

226. Statistics on the procurement activities of the main agencies at the federal level are contained in the United States' Federal Procurement Data System (FPDS), maintained by the Office of Federal Procurement Policy (OFPP), responsible for collecting and disseminating procurement data. The OFPP also works with the General Services Administration (GSA) and other agencies to collect information on contractor performance, and disseminates information on contracting opportunities through a single point-of-entry, known as Federal Business Opportunities (FedBizOpps). The FPDS publishes an annual report of the procurement activities of some 50 federal agencies, and produces statistics on federal awards by department.<sup>227</sup> In FY2005, the last year available as at early 2008, the total procurement of these agencies was 8.37 million transactions valued at US\$424.2 billion (equivalent to 3.4% of GDP); of this total, 70.3% was Department of Defense (DOD) procurement. Among civilian agencies, the Department of Energy accounted for the highest value of procurement with 5.4% of the total. Some 77% of the transactions in FY2005 were under US\$25,000 and 90% were under US\$100,000. Around 47.3% of procurement corresponded to construction and services; 39.5% to supplies and equipment; and 12.7% to research and development. In value terms, 31.7% of contracts reported were awarded in FY2005 to set-aside preferential programmes, mainly to small businesses (21.1% of the total) and small disadvantaged businesses (5.7%). Procurement by U.S. agencies performed outside the United States totalled US\$34.8 billion in FY2005, of which 71.2% in Asia and 19.3% in Europe.<sup>228</sup>

227. The National Governors Association and National Association of State Budget Officers produce estimates of procurement based on state spending from revenues derived from general sources not earmarked for specific items; this spending was estimated at US\$585 billion for FY2006 and US\$616 billion for FY2007.<sup>229</sup>

<sup>222</sup> WTO document GPA/MOD/USA/1, 15 January 2004. The changes mainly reflected the creation of the Department of Homeland Security (DHS), which was added to the list.

<sup>223</sup> WTO document GPA/89, 11 December 2006.

<sup>224</sup> WTO document GPA/O/USA/1, 23 December 2004.

<sup>225</sup> WTO documents GPA/21/Add.3, GPA/22/Add.4, GPA/29/Add.4, GPA/40/Add.4, 30 January 2002.

<sup>226</sup> WTO document GPA/40/Add.4, 30 January 2002.

<sup>227</sup> FPDS (2005) and (2004).

<sup>228</sup> FPDS (2005).

<sup>229</sup> NASBO (2007).

✓ 228. The value of U.S. government consumption expenditure and gross investment was US\$2.52 trillion in 2006, or some 19.1% of GDP, up from 18.5% in 2004. Of this, US\$932.5 billion corresponded to federal spending and US\$1.59 trillion to state spending. At the federal level, defence consumption expenditure on goods and services totalled US\$624.3 billion in 2006; non-defence expenditure totalled US\$308.2 billion.<sup>230</sup>

(b) Institutional and legal framework

229. At the federal level, procurement is decentralized, through the various executive agencies' procurement systems. The Office of Management and Budget (OMB) oversees and coordinates federal procurement, and reviews proposed regulations for compliance with policy guidance, through the Office of Federal Procurement Policy (OFPP).<sup>231</sup> The OFPP provides overall direction for government-wide procurement policies. The OFPP Administrator issues policy letters stating principles that must be followed by the agencies; such letters need to be implemented through the Federal Acquisition Regulation.

230. The United States notified to the WTO its basic procurement legislation and legislation giving effect to the GPA in 1998.<sup>232</sup> The GPA is implemented in U.S. law at the federal level primarily through the Trade Agreements Act (TAA) of 1979, as amended, which provides authority for the President to waive discriminatory purchasing requirements (e.g. the Buy American Act), designate eligible countries, and bar procurement from non-designated countries. At the state level, the GPA is implemented through laws and regulations in each of the 37 states participating in the GPA.

231. Legislation on procurement is contained in various laws, in particular the Federal Property and Administrative Services Act of 1949 (FPASA), the Competition in Contracting Act of 1984 (CICA), the Federal Acquisition Streamlining Act of 1994 (FASA), the Clinger-Cohen Act of 1996, the Small Business Act of 1985, and the Services Acquisition Reform Act.

232. The Federal Acquisition Regulation (FAR) regulates federal government agencies' acquisitions of supplies and services with appropriated funds. The FAR system allows individual executive agencies and their sub-agencies to develop specific internal guidelines. The FAR is updated regularly through Federal Acquisition Circulars (FACs) to reflect changes in procurement procedures, the effect of trade agreements, and other changes. Proposed regulations are published in the *Federal Register* and are open to comments, which are considered when drafting the final rules.

✓ 233. The procurement process is guided in detail by the FAR. Federal government agencies are required to publish notices of proposed procurement opportunities in excess of US\$25,000 in FedBizOpps (with some exceptions). Notices of proposed procurement must be published at least 15 days before a request for bids; prospective suppliers have at least 30 days from that date to submit bids. For procurement of commercial items and for procurement opportunities valued at or below US\$100,000, shorter time-frames may be established and simplified procedures applied. When procurement falls within the scope of the GPA or a free-trade agreement, a period of not less than 40 days must be granted, unless an annual forecast has been published, in which case this may be reduced to 10 days. State governments covered by the GPA are required to publish invitations to tender in their own publications and must conform to GPA deadlines. In addition to notices of proposed procurement, some states use notices of planned procurement.

<sup>230</sup> BEA (2007e).

<sup>231</sup> OFPP online information. Viewed at: <http://www.whitehouse.gov/omb/procurement/index.html>.

<sup>232</sup> WTO document GPA/23, 15 July 1998.

234. Under the CICA, procurement must take place through full and open competitive procedures. Executive agencies must solicit sealed bids if time permits, and awards must be made on the basis of price (with some exceptions). The CICA provides for simplified procedures for small purchases. The FASA established a new simplified acquisition threshold of US\$100,000, and allowed purchases not exceeding US\$3,000 from Buy American Act requirements and allowed them to be made without obtaining competitive quotations if the contracting officer determines that the purchase price is reasonable.

235. The Clinger Cohen Act of 1996, P. L. No. 104-106 establishes the use of a two-phase selection procedure for entering into a contract for the design and construction of a public building facility; under this procedure the contracting officer may pre-select the most highly qualified offers (maximum five) based on the use of solicitation evaluation factors. The Act also authorizes the use of simplified acquisition procedures for the acquisition of commercial items valued at US\$5.5 million or less, under certain circumstances.

236. Federal regulations allow for the preparation of non-exhaustive lists of suppliers by a federal government agency, provided the agency justifies in writing the need for such a list. The GSA maintains lists of approved suppliers and their products on Federal Supply Schedules, which include both national and foreign suppliers from parties to the GPA or other international agreements. The authorities have noted that the Federal Supply Schedules are akin to a catalogue, rather than a list of qualified suppliers as used in selective tendering.

237. The list of Federal Supply Schedule Contractors is available to the public. Interested suppliers can apply for inclusion on the schedules at any time. Federal agencies, as well as states and other sub-federal bodies may maintain lists of qualified suppliers for their procurement: several of the 37 states covered by the GPA use such lists when tendering for certain types of procurement. Lists of qualified or registered suppliers are made public.

238. Contractors are required to register online in the Central Contracting Registration (CCR), the primary vendor database for the U.S. Federal Government.<sup>233</sup> In October 2007, some 454,253 government vendors were registered, of which over 10,000 foreign firms. Foreign companies must first obtain a North Atlantic Treaty Organization Commercial and Government Entity (NCAGE) code.

239. Procurement at the sub-federal level is governed by state or other sub-federal government laws and procurement regulations. In some cases, where procurement is funded with federal money, states must comply with certain federal statutory requirements. Local governments have their own procurement agencies, as well as their own procurement policies.

(c) Access conditions

240. U.S. policy with respect to market access for government procurement is based on reciprocity. A number of domestic purchasing requirements are maintained for procurement not covered by the GPA, the WTO plurilateral Agreement on Trade in Civil Aircraft, or preferential trade agreements. Revised GPA and FTA thresholds for 2008-09 are contained in 73 Federal Register 4115, 25 January 2008. For the GPA, they were set at US\$194,000 for goods and services included in Annex 1; US\$528,000 for Annex 2; US\$595,000 for Annex 3; and US\$7,443,000 for construction services.<sup>234</sup>

<sup>233</sup> FAR 4.1102, 1 October 2003. CCR online information. Viewed at: <http://www.ccr.gov>.

<sup>234</sup> Notified to the WTO in WTO document GPA/W/299/Add.1, 21 December 2007. A US\$250,000 threshold applies for goods and services covered by the GPA from certain entities identified in Annex III. FTA thresholds are: for supply and service contracts: US\$25,000 (NAFTA Canada) for supplies; US\$50,000 (Israel for supplies); US\$67,826 (NAFTA Mexico, Australia, Chile, Dominican Republic, El Salvador, Guatemala,

The Trade Agreements Act of 1979 generally prohibits federal agencies from purchasing goods and services from countries that are not a party to the GPA or other trade agreements that cover government procurement (i.e., non-designated countries). The authorities indicated that this is aimed at encouraging other Members to join the GPA.

241. The Buy American Act of 1933 (BAA) limits the purchase of supplies and construction materials by government agencies to those defined as "domestic end-products", in accordance with a two-part test that must establish that the article is manufactured in the United States, and that the cost of domestic components exceeds 50% of the cost of all the components. The BAA does not apply to services. The Trade Agreements Act of 1979 authorizes the President to grant waivers from the Buy American Act and other procurement restrictions; the President delegated this authority to the USTR.

242. Exceptions to the BAA can be granted if it is determined that domestic preference is inconsistent with the public interest, in case of U.S. non-availability of a supply or material, or for reasonableness of cost. The latter applies when the cost of the foreign (non-eligible) product, inclusive of import duty and a 6% added margin, is below the lowest domestic offer when this offer is from a large business concern; in this case the cost of the domestic offer is considered unreasonable. If the lowest domestic offer is from a small business concern, the added margin considered is 12%. For purchases by the Department of Defense the price difference must be of at least 50%. In the context of this review, the authorities noted that current data on the use of BAA exceptions is incomplete, but that the collection system is being corrected, and that better data is expected for FY2008.

243. The Trade Agreements Act of 1979 waives the application of the BAA to the end-products of designated countries, which include the parties to the GPA, bilateral agreements that cover government procurement, CBERA beneficiaries, and least developed countries. For CBERA and least developed countries, the thresholds are those of the GPA; for NAFTA countries, Australia, Bahrain, Chile, the Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Morocco, Nicaragua, and Singapore, the thresholds are those stipulated in the relevant agreement. Eligible products are granted non-discriminatory treatment.

244. The non-statutory Balance of Payments Program, applies provisions similar to those of the BAA to Department of Defense contracts over US\$100,000 for end-products for use outside the United States.<sup>235</sup> The Independent Agencies Appropriations Act of 2006 (P.L. No. 109-115) requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies manufactured outside the United States. Federal domestic preference requirements are also sometimes included in annual appropriation and authorization bills.

245. The provisions of the BAA are waived for civil aircraft and related articles that meet the substantial transformation test of the Act and originate in parties to the WTO Agreement on Trade in Civil Aircraft. The Department of Defense also waives the restrictions of the BAA/Balance of Payments Program for the acquisition of defence equipment produced in a "qualifying country" (with

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Honduras, Nicaragua, Singapore); and for construction contracts: US\$8,817,449 (NAFTA; Bahrain); US\$7,443,000 (Australia, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Singapore); and US\$50,000 (Israel) NAFTA Canada for Services.

<sup>235</sup> *Federal Register* Vol. 67, No. 83, 30 April 2002. Viewed at: <http://www.acqnet.gov/far/FAC/fac2001-07.pdf>.

which there is a reciprocal procurement agreement or memorandum of understanding).<sup>236</sup> The FASA exempts purchases not exceeding US\$3,000 from Buy American Act requirements.

246. Procurement policy seeks to increase the participation of small businesses, veteran-owned small businesses, small disadvantaged business (SDBs), and women-owned small businesses. The USDOC determines annually the authorized SDB procurement mechanisms and application factors (percentages). The Small Business Act (P.L. 85-536) requires, in principle, each contract with an anticipated value greater than US\$2,500 but less than US\$100,000 to be reserved exclusively for small business concerns. The Small Business Administration (SBA) manages five main programmes to promote the ability of small businesses to compete for federal procurement contracts.<sup>237</sup> The SBA also administers two business assistance programmes for SDBs.<sup>238</sup>

247. The Veterans Benefits Act of 2003 established the Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBC), a procurement programme that allows federal contracting officers to restrict competition to SDVOSBCs and award a sole source or set-aside contract where certain criteria are met. A number of other set-asides and pricing preferences are in place, such as the HUBZone Empowerment Contracting Program and the Small Business Competitiveness Demonstration Program. The goal is for procurement awarded to small businesses to represent 23% of all prime contracts.

248. The set-aside goal for SDBs is 5% of prime contracts and sub-contracts, the same as the goal for women-owned small businesses. The goal for HUBZone businesses and for SDVOSBCs is 3% of prime contracts and sub-contracts, in each case.

249. In certain cases imported supplies for use in government contracts may be exempted from customs duties. These goods are listed in sub-chapters VIII and X of Chapter 98 of the U.S. tariff schedule. Other supplies may also be granted duty-free entry; in this case, the contract price must be reduced by the amount of duty that would be payable if the supplies did not enter duty free. Supplies (excluding equipment) for government-operated vessels or aircraft may be imported duty free.<sup>239</sup>

250. Sanctions applied to certain EC Members were removed as of April 2006.<sup>240</sup> Under Section 305(g) (1) of the Trade Agreements Act of 1979, the United States had applied sanctions, since May 1993, on Member States considered to discriminate against U.S. products and services in their government procurement practices.<sup>241</sup>

251. Each U.S. State has its own procurement access conditions. As noted, 37 States participate in the GPA; among those that do not, some restrict foreign participation in biddings, others offer preferences to in-state suppliers, or apply domestic purchase requirements (Table AIII.5). Only North Carolina, Oklahoma, Rhode Island, and Wisconsin do not grant any form of preference.

<sup>236</sup> Australia, Belgium, Canada, Denmark, Egypt, France, Germany, Greece, Israel, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. Products from Austria and Finland could also be exempted, on a purchase-by-purchase basis.

<sup>237</sup> Prime Contracting Assistance; Subcontracting Assistance; Government Property Sales Assistance; Certificate of Competency; and Service-Disabled Veteran-Owned Small Business Concerns programme. Code of Federal Regulations Title 13, Volume 1, revised 1 January 2005.

<sup>238</sup> The 8(a) Business Development Program and the Small Disadvantaged Business Certification Program. For further information see FAR Sub-Part 19.8, at: <http://www.arnet.gov/far/>.

<sup>239</sup> FAR Subpart 25.9. Viewed at: <http://www.arnet.gov/far/current/pdf/FAR.book.pdf>.

<sup>240</sup> FAC 2005-09.

<sup>241</sup> Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, Netherlands, Sweden, and the United Kingdom.

252. The U.S. Administration adopted a new reciprocity approach to sub-federal procurement in three FTAs (Colombia, Panama, and Peru). Based on this policy, government procurement of eight U.S. states and Puerto Rico were covered in the FTAs signed with Colombia, Panama, and Peru. The Administration considers that states gain when their purchases are covered under FTAs through greater opportunities for companies in that State to sell their products and services in the foreign partner's government purchasing market, and through guaranteed open competition, which can increase product choice and reduce costs.<sup>242</sup>

(v) Trade-related intellectual property rights

(a) Introduction

253. U.S. laws and regulations on trade-related aspects of intellectual property rights (IPRs), as well as their updates, were notified to the WTO in 1996; the notification was supplemented in 1998 (Table III.8).<sup>243</sup> U.S. intellectual property legislation was reviewed by the TRIPS Council in 1996, and has been reviewed regularly in WTO Trade Policy Reviews.<sup>244</sup> Updates of legislation addressing IPRs, including amendments presented in a consolidated text, have been notified subsequently.<sup>245</sup>

254. The United States is a member of the World Intellectual Property Organization (WIPO), and participates in a large number of international conventions and treaties related to IPRs.<sup>246</sup>

255. The United States seeks to promote increased IPR protection and enforcement through a variety of mechanisms. The United States has addressed IPR subject matter in the context of bilateral intellectual property agreements and memoranda of understanding, bilateral investment treaties, and trade and investment framework agreements. IPR issues have also been included in U.S. free-trade agreements in force or pending approval or implementation.<sup>247</sup> The United States pursues high standards of IP protection through its engagement with countries seeking accession to the WTO.

256. On 17 December 2005, the United States accepted the Protocol Amending the TRIPS Agreement adopted by the General Council on 6 December 2005 (WT/L/641).<sup>248</sup> In a Joint Communication with the EC, Japan, and Switzerland to the TRIPS Council, submitted in November 2006, the United States recalled the importance of effective IPR enforcement, in particular in terms of innovation and investment.<sup>249</sup> In January 2007, the United States made a submission to the TRIPS Council with respect to border enforcement of IPRs.<sup>250</sup>

257. The United States is an important producer and exporter of goods and services that embody knowledge and other intellectual developments. In this respect, IP has been recognized in Congress as the backbone of U.S. economic competitiveness and the only sector where the United States has a trade

<sup>242</sup> USTR (2006).

<sup>243</sup> WTO documents IP/N/1/USA/1, 21 January 1997, and IP/N/1/USA/U/2, 6 October 1998.

<sup>244</sup> WTO document IP/Q/USA/1, 30 October 1996.

<sup>245</sup> WTO documents IP/N/1/USA/C/3 and IP/N/1/USA/I/1, 9 February 2004; and IP/N/1/USA/I/2, 9 February 2004, and IP/N/1/USA/I/3, 20 February 2004.

<sup>246</sup> WIPO online information. Available at: <http://www.wipo.org>.

<sup>247</sup> See Chapter II and USTR online information. Viewed at: [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html).

<sup>248</sup> WTO document WT/Let/506, 22 December 2005.

<sup>249</sup> WTO document IP/C/W/485, 2 November 2006.

<sup>250</sup> WTO document IP/C/W/488, 30 January 2007: "Enforcement of Intellectual Property Rights (Part III of the TRIPS Agreement): Experiences of Border Enforcement: Communication by the United States".

services market.<sup>240</sup> The American Bar Association (ABA) and the American Law Institute represent lawyers as a profession.

208. The United States has been active in the DDA services negotiations and, together with other Members, has formulated a specific proposal on licensing of foreign lawyers.<sup>241</sup> The United States has made GATS commitments to accord market access and national treatment for the provision of foreign legal consultancy services in 16 jurisdictions.<sup>242</sup> Thirteen other states have implemented rules on foreign legal consultancy in recent years and foreign-licensed lawyers may provide consultancy services in these jurisdictions.<sup>243</sup>

209. The practice of law in the United States requires admission to the bar of a particular state or jurisdiction.<sup>244</sup> Each U.S. state/jurisdiction has its own rules for bar admission.<sup>245</sup> All jurisdictions require that applicants for admission to the bar pass a written bar examination; all jurisdictions, except Maryland, Puerto Rico, Wisconsin, and Washington, also require applicants to pass a separate Multistate Professional Responsibility Examination (MPRE). Eighteen states limit eligibility for the bar exam to Juris Doctor or LL.B. graduates of ABA-approved law schools. The remaining states have more extensive lists of approved law schools and/or allow other means for meeting the education requirement, including foreign law degrees. Graduates of foreign law schools are eligible for admission in 25 states, generally upon a determination of educational equivalency. The state-administered bar exam includes the Multistate Bar Examination (MBE), in all jurisdictions except Louisiana, Washington, and Puerto Rico.<sup>246</sup> Lawyers who have been admitted to the bar in one jurisdiction may be admitted to the bar in another without taking another examination if they meet the latter jurisdiction's standards, which usually include a specified period of legal experience. In most cases, however, lawyers must pass the bar examination in each state in which they plan to practice.

210. Admission to a state bar does not entitle the admitted attorney to appear and plead before the U.S. district courts or any U.S. Court of Appeals; in some states admission to the bar does not entitle the admitted attorney to appear and plead before the State's appellate courts. Observers have noted that, because lawyers often represent individuals/corporations with business dealings in multiple states, the regulation of legal practice at the state level tends to create impediments to the efficient delivery of legal services.<sup>247</sup>

(d) Architectural and engineering services

211. The United States posts a significant trade surplus in architectural, engineering, and other technical services. In general, both exports and imports have increased rapidly in recent years: U.S. exports of these services increased to US\$3.7 billion in 2006, while imports rose to US\$169 million.<sup>248</sup> Commercial presence remains the most important mode of delivery.

<sup>240</sup> U.S. Economic Census, 2002. Viewed at: <http://www.census.gov/econ/census02/index.html>.

<sup>241</sup> WTO document TN/S/W/37, S/CSC/W/46, 24 February 2005.

<sup>242</sup> Alaska, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Texas, and Washington.

<sup>243</sup> Arizona, Delaware, Idaho, Indiana, Louisiana, Massachusetts, Missouri, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, and Utah.

<sup>244</sup> USDOJ, United States Attorneys' Manual. Viewed at [http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/index.html](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/index.html).

<sup>245</sup> For admission rules see: <http://www.abanet.org>.

<sup>246</sup> A Lawyer's Guide to the United States. Viewed at: <http://www.lexmundi.com/images/lexmundi/PDF/guide-unitedstates.PDF>.

<sup>247</sup> Williams and Nersessian, (2007e).

<sup>248</sup> BEA (2007e).



*Architectural services*

212. The U.S. GATS Schedule binds market access in modes 1, 2 and 3, with the exception of a commercial presence limitation applied by Michigan, where two thirds of the officers, partners, and/or directors of an architectural firm must be licensed in that state as architects, professional engineers, and/or land surveyors.

213. The right to practice architecture and to use the title "architect" is granted by registration boards in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, who also regulate the profession in their jurisdiction.<sup>249</sup> The National Council of Architectural Registration Boards (NCARB), which represents state boards, works with its member boards to establish registration or licensing policies. The National Architectural Accrediting Board (NAAB) is the sole agency authorized to accredit U.S. professional degree programmes in architecture. Most state registration boards require a degree in architecture from a NAAB accredited programme as a precondition to registration.<sup>250</sup>

214. There is no reciprocal registration between foreign countries and the United States, with the exception of Canada, with which the United States maintains a full mutual recognition and immediate access agreement, the Inter-Recognition Agreement.

215. To register as an architect in a U.S. jurisdiction, a foreign architect must first comply with the education, training and examination requirements of that jurisdiction. The NAAB examines non-U.S. programmes in order to give NCARB a basis for deciding whether the architectural education in another country is comparable.<sup>251</sup> Foreign architects credentialed in countries that the NCARB determines offer reasonable reciprocal credentialing opportunities for U.S. architects may apply for NCARB certification through the Broadly Experienced Foreign Architects process. The NCARB has worked to increase the mobility of architectural credentials through international agreements; at end 2007, NCARB had agreements with entities in Australia, Canada, China, the Czech Republic, Japan, Mexico, and New Zealand. The agreement with Mexico will end once the trinational agreement under negotiation is operational. Negotiations have been held with over 50 countries, including broader-scope MRA discussions with Australia and the EC.<sup>252</sup>

*Engineering and integrated engineering services*

216. In the GATS, the United States has undertaken market-access commitments regarding engineering and integrated engineering services. The only reservations involve citizenship requirements for the licensing of professional engineers in the District of Colombia and in-state residency requirements in 12 states.<sup>253</sup>

217. The registration of professional engineers is performed by the individual states.<sup>254</sup> Each registration or licence is valid only in the State in which it is granted. The licensing procedure

<sup>249</sup> NCARB (1999).

<sup>250</sup> NCARB (2007).

<sup>251</sup> NAAB online information. Viewed at:

[http://www.naab.org/newsletter1727/newsletter\\_show.htm?doc\\_id=14327](http://www.naab.org/newsletter1727/newsletter_show.htm?doc_id=14327).

<sup>252</sup> AIA International Enews, "NCARB Fosters International Mobility". Viewed at: [http://www.aia.org/nwsltr\\_intl.cfm?pagename=intl\\_a\\_ncarb\\_07](http://www.aia.org/nwsltr_intl.cfm?pagename=intl_a_ncarb_07).

<sup>253</sup> Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and West Virginia.

<sup>254</sup> For a list of the states' engineering sites, see: [http://www.nspenetforum.org/eweb/DynamicPage.aspx?Site=NSPE1&Webcode=state\\_society\\_website](http://www.nspenetforum.org/eweb/DynamicPage.aspx?Site=NSPE1&Webcode=state_society_website).

requirements vary but in general include: (i) graduation with a degree from an accredited four-year university programme in engineering; (ii) completing a standard Fundamentals of Engineering (FE) written examination; (iii) accumulating a certain amount of engineering experience (four years, in most states); and (iv) completing a written Principles and Practice in Engineering examination.<sup>255</sup> Some states also have state-specific examinations.<sup>256</sup> Various states issue generic professional engineering licences, while others issue licences for specific disciplines.<sup>257</sup>

218. The National Council of Examiners for Engineering and Surveying (NCEES) is a non-profit organization composed of engineering and surveying licensing boards representing all states and U.S. territories. NCEES develops, scores, and administers the examinations used for engineering and surveying licensure throughout the United States. The accreditation of domestic and international engineering programmes from other countries considered to be substantially equivalent is performed by ABET. The U.S. Council for International Engineering Practice (USCIEP) participates in international fora that facilitate international mobility for qualified professional engineers, including the APEC Engineer Coordinating Committee and the Engineers Mobility Forum.<sup>258</sup>

<sup>255</sup> National Council of Examiners for Engineering and Surveying (NCEES) online information. Viewed at: [http://www.ncees.org/licensure/licensing\\_boards/](http://www.ncees.org/licensure/licensing_boards/).

<sup>256</sup> NCEES online information. Viewed at: <http://www.ncees.org/exams/>.

<sup>257</sup> National Society of Professional Engineers online information. Viewed at: <http://www.nspe.org/pd-home.asp>.

<sup>258</sup> USCIEP online information. Viewed at: <http://www.usciep.org/>.

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## S.1587

### Federal Acquisition Streamlining Act of 1994 (Enrolled as Agreed to or Passed by Both House and Senate)

#### SEC. 32. PROCEDURES APPLICABLE TO PURCHASES BELOW MICRO-PURCHASE THRESHOLD.

(a) REQUIREMENTS- (1) The head of each executive agency shall ensure that procuring activities of that agency, in awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), section 2323 of title 10, United States Code, and section 7102 of the Federal Acquisition Streamlining Act of 1994.

(2) The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to any purchases with a price exceeding the micro-purchase threshold.

(b) EXCLUSION FOR MICRO-PURCHASES- A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and the Buy American Act (41 U.S.C. 10a-10c).

(c) APPLICABILITY OF CERTAIN PROVISIONS- For purposes of section 27, an officer or employee of an executive agency, or a member of the Armed Forces of the United States, shall not be considered a procurement official if--

(1) the contracting authority of the officer, employee, or member does not exceed \$2,500; and

(2) the head of the contracting activity concerned (or a designee of the head of the contracting activity concerned) determines that the duties of the position of that officer, employee, or member are such that it is unlikely that the officer, employee, or member will be required to conduct procurements in a total amount greater than \$20,000 in any 12-month period.

(d) PURCHASES WITHOUT COMPETITIVE QUOTATIONS- A purchase not

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greater than \$2,500 may be made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable. D

`(e) **EQUITABLE DISTRIBUTION**- Purchases not greater than \$2,500 shall be distributed equitably among qualified suppliers.

`(f) **IMPLEMENTATION THROUGH FAR**- This section shall be implemented through the Federal Acquisition Regulation.

`(g) **MICRO-PURCHASE THRESHOLD DEFINED**- For purposes of this section, the micro-purchase threshold is the amount of \$2,500.'

(b) **EXCEPTION TO BUY AMERICAN ACT FOR MICRO-PURCHASES**- Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by adding at the end the following: `This section shall not apply to manufactured articles, materials, or supplies procured under any contract the award value of which is less than or equal to the micro-purchase threshold under section 32 of the Office of Federal Procurement Policy Act.'

(c) **EFFECTIVE DATE**- Notwithstanding any other provision of law--

(1) section 32 of the Office of Federal Procurement Policy Act, as added by subsection (a); and

(2) the amendment made by subsection (b);

shall take effect on the date of the enactment of this Act and shall be implemented in the Federal Acquisition Regulation not later than 60 days after such date of enactment.

### **Subtitle E--Conforming Amendments**

## **SEC. 4401. ARMED SERVICES ACQUISITIONS.**

(a) **SIMPLIFIED ACQUISITION PROCEDURES**- Section 2304(g) of title 10, United States Code, is amended--

(1) in paragraph (1), by striking out `small purchases of property and services' and inserting in lieu thereof `purchases of property and services for amounts not greater than the simplified acquisition threshold';

(2) by striking out paragraph (2);

(3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(4) in paragraph (2), as so redesignated--

(A) by striking out `small purchase threshold' and inserting in lieu thereof `simplified acquisition threshold'; and

(B) by striking out `small purchase procedures' and inserting in lieu thereof `simplified procedures'; and