

New 2012 Updates to U.S. Free Trade Agreements Expected; No Progress With China

February 13, 2012 by [David Gallacher](#)

With the dawn of a new year, there look to be a number of changes on deck regarding U.S. free trade agreements, most particularly relating to an expanded scope for the World Trade Organization Government Procurement Agreement ("WTO GPA"), as well as updates to the dollar thresholds at which the various free trade agreements will apply. For government contracts, the updated dollar thresholds are particularly important because the dollar thresholds determine when a contract is governed by the Buy American Act ("BAA") or the Trade Agreements Act ("TAA"). Perhaps the most hoped for expansion of the WTO GPA – the accession of China to the agreement – remains stalled. But at least there has been a little progress in 2011.

Updated Dollar Thresholds

On December 8, 2011, the U.S. Trade Representative ("USTR"), Ronald Kirk, announced new dollar thresholds at which free trade agreements ("FTAs") will apply to U.S. procurements. See 76 Fed. Reg. 76808. The USTR has adjusted the thresholds as follows:

Trade Agreement	Supply Contract (equal to or exceeding)		Service Contract (equal to or exceeding)		Construction Contract (equal to or exceeding)	
	Old	New	Old	New	Old	New
WTO GPA	\$203,000	\$202,000	\$203,000	\$202,000	\$7,804,000	\$7,777,000
FTAs						
Australia FTA	\$70,079	\$77,494	\$70,079	\$77,494	\$7,804,000	\$7,777,000
Bahrain FTA	\$203,000	\$202,000	\$203,000	\$202,000	\$9,110,318	\$10,074,262
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	\$70,079	\$77,494	\$70,079	\$77,494	\$7,804,000	\$7,777,000
Chile FTA	\$70,079	\$77,494	\$70,079	\$77,494	\$7,804,000	\$7,777,000
Morocco FTA	\$203,000	\$202,000	\$203,000	\$202,000	\$7,804,000	\$7,777,000
NAFTA						
—Canada	\$25,000	\$25,000	\$70,079	\$77,494	\$9,110,318	\$10,074,262
—Mexico	\$70,079	\$77,494	\$70,079	\$77,494	\$9,110,318	\$10,074,262
Oman FTA	\$203,000	\$202,000	\$203,000	\$202,000	\$9,110,318	\$10,074,262
Peru FTA	\$203,000	\$202,000	\$203,000	\$202,000	\$7,804,000	\$7,777,000
Singapore FTA	\$70,079	\$77,494	\$70,079	\$77,494	\$7,804,000	\$7,777,000

As we discussed previously in this blog when the thresholds were last adjusted in 2010, it is unclear whether the regulations will need to be amended to incorporate the new thresholds or whether the new thresholds truly become "effective January 1, 2012" (as directed by the USTR). It seems likely that the FAR Councils will issue an interim rule by January or February 2012 to update FAR Subpart 25.4, with a subsequent final rule to formalize the changes. But it could easily take even longer for a Contracting Officer to update an individual contract, or even for a Contracting Officer to agree that modifications to existing contracts are appropriate in the first place.

Pending Updates to the WTO GPA

In December 2011, the members of the WTO met in Geneva to revise the WTO GPA. [Ever since Canada and the U.S. negotiated amendments to the U.S.-Canada FTA allowing Canada greater access to procurements by state and local governments](#) (one of the primary outlets for stimulus funds through 2009 and 2010), members of the WTO have clamored for expanded access under the GPA. Where FTAs typically only apply to governmental agencies that are specifically listed in the agreement, the new December 2011 agreement allows expanded access by foreign companies to procurements conducted by twelve previously uncovered federal agencies (including the Social Security Administration and the Transportation Security Administration). In exchange, U.S. companies will gain access to hundreds of foreign "central and sub-central" government procurements in countries such as Japan, South Korea, Israel, and many other E.U. countries. The new WTO agreement is expected to open significant international procurement markets, and the USTR hailed the new agreement as a major breakthrough for free trade. The changes to the WTO GPA are expected to be formalized by March 2012.

Meanwhile, in November 2011, China updated its submission to accede to the WTO GPA, but the submission fell short of U.S. and E.U. expectations, setting extremely high dollar thresholds and exempting a large number of Chinese sub-central agencies and state-run enterprises. China joined the WTO in 2001 and China has reiterated that it intends to accede to the WTO GPA. However, [China has been unable to make the kind of aggressive offers demanded by the international community](#) to make its accession a reality. As such, for the time being at least, products made in China will continue to be noncompliant under the Trade Agreements Act.

Current signatories to the WTO GPA include more than 40 countries: the U.S., the 27 member states of the European Union, Canada, Armenia, Aruba, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Norway, Singapore, South Korea, Switzerland, and Taiwan.