

Understanding the WTO Agreement on Government Procurement

**Jianning Chen, Legal Affairs Officer
World Trade Organization**

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I. What is the WTO Agreement on Government Procurement?



What is the WTO Agreement on Government Procurement?

Trade and government procurement in the WTO: the evolving policy interface

- **Government procurement excluded** from the core discipline on non-discrimination in the 1947 General Agreement on Tariffs and Trade (**GATT**) and the 1994 General Agreement on Trade in Services (**GATS**).
- A gap that is gradually being filled, over time:
 - 1979: the **Tokyo Round** Government Procurement Code
 - **GPA 1994**: improved rules, expanded coverage
 - **Work on Transparency** in GP (1997-2004)
 - **The GPA 2012**: a multi-dimensional tool for the 21st century



What is the GPA?:

Basic nature of the Agreement

- A **plurilateral agreement** within the WTO system.
 - Part of the WTO system (and enforceable under the DSU!).
 - Membership increasing over time. No longer a rich countries' club!
- An internationally recognized tool that **promotes**:
 - **Access to** other GPA Parties' procurement **markets**;
 - Improved **value for money** in each participating Member's procurements;
 - **Good governance** (transparency, fair competition and an absence of corruption in covered procurement markets).

II. The changing global context of the GPA: factors increasing its importance as an underpinning of the global economy.

Factors currently enhancing the significance of the GPA for the multilateral trading system (1): **increasing membership of the Agreement worldwide**

- As of the date, **18 Parties (46 WTO Members)** including Armenia; Aruba; Canada; the EU and its 28 member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; Montenegro; New Zealand; Norway; Singapore; Switzerland; Chinese Taipei; Ukraine; and the US.
- **29 WTO Members** are **observers** to the GPA Committee.



Factors currently enhancing the significance of the GPA for the multilateral trading system (1): **increasing membership of the Agreement worldwide (cont'd)**

- Moldova approved for accession in September 2015!
- 8 observers currently seeking accession.

Albania;	Australia;
China;	Georgia;
Jordan;	Kyrgyz Republic;
Oman;	Tajikistan.



- 6 WTO Members have commitments to accede to the GPA:
Kazakhstan, the former Yugoslav Republic of Macedonia; Mongolia; the Russian Federation; Saudi Arabia; and Seychelles.
Plus: Afghanistan (accession package adopted in Nairobi in December 2015).

Factors currently enhancing the importance of the GPA for the global economy: **the policy context**

- Enhanced importance of the procurement sector worldwide in light of: (i) aftermath of the **global economic crisis**; and (ii) emerging economies' **infrastructure needs**.
- Increased pressures for **policies potentially limiting access** to important procurement markets.
- Greater emphasis on procurement and good governance as an underpinning of **development**.
- GPA and/or bilateral/regional agreements embodying similar disciplines are the main tool of exporting economies to **preserve market access rights** in this crucial sector.

Factors currently enhancing the importance of the GPA for the global economy (3): **synergies with other international instruments, FTAs and national legislation**

- GPA a **distillation of best practices** internationally, as seen by the participating WTO Member governments.
- An important **benchmark for national procurement reforms**.
- Carefully **harmonized with the UNCITRAL Model Law**.
- Referenced in the new **World Bank Procurement Guidelines**.
- The **model for procurement chapters** in bilateral FTAs and regional trade agreements worldwide.

III. Main elements of the Agreement



Five main elements of the Agreement: general principles

1. Rules on national treatment and non-discrimination with respect to participation in each Party's covered procurement markets.
 - Suppliers from other GPA Parties shall not be discriminated against, i.e., have to be treated the same as national companies.
 - Companies from different GPA Parties have to be treated the same.
 - Foreign direct investment welcome: No discrimination on the basis of foreign affiliation.

Five main elements of the Agreement: coverage

2. **Coverage** defined through detailed Party-specific schedules. Structure of each Party's market access commitments:

- Annex 1: central government **entities** (ministries)
- Annex 2: sub-central government entities (states/provinces, municipalities/counties, districts, etc.)
- Annex 3: other entities (public utilities, SOEs)
- Annex 4: covered **goods** (list)
- Annex 5: covered **services** (list)
- Annex 6: covered **construction services** (list)
- Annex 7: general notes (**exemptions & exclusions**)

Five main elements of the Agreement: coverage (cont'd)

2. **Coverage** defined through detailed Party-specific schedules. Another important element in the schedules: **thresholds**. Only procurements above the thresholds are covered by the GPA.

Generally applied thresholds:

Entities	Goods	Services	Construction Services
Annex 1	130,000	130,000	5,000,000
Annex 2	200,000	200,000	5,000,000
Annex 3	400,000	400,000	5,000,000

Currency: SDR



Five main elements of the Agreement: procedural rules

3. **Detailed provisions** on aspects of the procurement process, **to ensure transparency and procedural fairness**. Includes provisions on:

- ↓ Notice as invitation to participate:
- ↓ Selection/Qualification of suppliers
- ↓ Tender documentation
- ↓ Opening/Submission/Receipt of tenders
- ↓ Negotiation (optional)
- ↓ Award of Contracts

All aim at ensuring that all suppliers, domestic or foreign, compete on a level playing field.

Five main elements of the Agreement: enforcement

4. **Enforcement:** ensured by domestic bid challenge mechanism, peer-review in the GPA Committee and, if necessary, the WTO dispute settlement mechanism:
- **domestic bid challenge or remedy mechanism** required by the GPA (administrative or judicial);
 - **peer-review in the GPA Committee:** 3 - 4 regular meetings each year with *ad hoc* ones convened whenever necessary;
 - **WTO dispute settlement mechanism** (3 dispute cases under GPA 1994).

Five main elements of the Agreement: continuous evolution

5. Built-in commitment to future negotiations to improve the Agreement, broaden its coverage, etc.

Article XXII:7: Further negotiation of the Agreement to be initiated in April 2017.

Work programmes (next page).

Five main elements of the Agreement: continuous evolution (cont'd)

- **Why the work programmes?** Essential to find the required **balance** in the negotiations
- **Relate to the administration and possible further evolution of the Agreement, over time.**
- **Subject-matters to be addressed include many topical issues:**
 - **access to procurement markets by small and medium-sized enterprises;**
 - **sustainability in public procurement;**
 - **safety standards;**
 - **improvement of the available statistical data; and**
 - **exclusions and restrictions in Parties' Annexes.**
- **Future work programmes on: PPP; nomenclature for goods and services; and standardised notices.**



IV. Recent renegotiation



The recent renegotiation of the Agreement (1): overview

- Revised Agreement entered into force on 6 April 2014 ! Now in force for all Parties except Switzerland.
- **Three main elements** of the deal:
 1. **GPA text** overhauled and modernized.
 2. Additional **market access** package valued at \$80-100 billion annually.
 3. Package of **New Work Programmes** as explained previously.

The recent renegotiation of the Agreement (2): Highlights of the revised text

Core principles of the revised text are the same as the existing one (non-discrimination, transparency, procedural fairness). However, the revised text contains **several distinct improvements**:

- 1) **A complete revision of the wording** of the provisions of the Agreement with a view to making them more streamlined, easier to understand and user-friendly;
- 2) **Updating of the text of the Agreement** to take into account developments in current government procurement practice, notably the use of electronic tools;

The recent renegotiation of the Agreement (2): Highlights of the revised text (cont'd)

- 3) **Additional *flexibility*** for Parties' procurement authorities, for example in the form of shorter notice periods when electronic tools are used. **Shorter time-periods** have also been allowed for procuring goods and services of types that are available on the commercial marketplace;
- 4) **The GPA's significance for good governance and the fight against corruption is more explicitly recognized**, including new substantive provisions that require participating governments to carry out their GPA-covered procurements in ways that avoid conflicts of interest and prevent corrupt practices; and

The recent renegotiation of the Agreement (2): Highlights of the revised text (cont'd)

5) **Revised and improved transitional measures** ("special and differential treatment") for developing countries that accede to the Agreement.

- ✓ price preferences
- ✓ use of offsets
- ✓ phased-in addition of specific entities or sectors
- ✓ initial higher thresholds
- ✓ deferred implementation of specific obligation

Such measures are to be tailored to the particular needs of the individual accession candidates.

V. Pending accessions to the Agreement: state of play on Australia, China, Tajikistan, Russia and others.

Pending accessions to the Agreement: state of play

○ **Australia**

- 2 June 2015: application for accession;
- 8 September 2015: initial market access offer;
- 24 September 2015: replies to the checklist of issues;
- 16 September 2015 and 17 February 2016: discussions at the GPA Committee;
- Bilateral inter-sessional discussions;
- A revised offer to be circulated in the coming months.
- High ambition: to be concluded by the end of 2016.

Pending accessions to the Agreement: state of play (cont'd)

○ China

- 28 December 2007: application for accession;
 - 15 May 2008: initial market access offer;
 - 16 September 2008: replies to the checklist of issues;
 - 9 July 2010: revised offer;
 - 30 November 2011: second revised offer;
 - 29 November 2012: third revised offer;
 - 6 January 2014: fourth revised offer;
 - 5 January 2015: fifth revised offer;
 - Discussions at each GPA Committee meeting since 2008;
 - Bilateral intersessional discussions.
- Challenges: non-sensitive defence procurement; local governments; SOEs; exclusions.

Pending accessions to the Agreement: state of play (cont'd)

○ Tajikistan

- 10 February 2015: application for accession;
 - 16 February 2015: initial market access offer;
 - 15 September 2015: circulation of the draft Law on Public Procurement;
 - 12 November 2015: replies to the Checklist of Issues;
 - 10 February 2016: revised offer;
 - 3 June 2015, 16 September 2015 and 17 February 2016: discussions at the GPA Committee;
 - Bilateral inter-sessional discussions.
- Ambition: Tajikistan hopes to conclude the negotiation in 2016.

Pending accessions to the Agreement: state of play (cont'd)

○ **Kyrgyz Republic**

- 19 May 1999: initial market access offer;
 - 2009: replies to the Checklist of Issues;
 - 7 January 2016: circulation of the Law on Public Procurement;
 - 19 January 2016: revised initial offer;
 - 17 February 2016: discussions at the GPA Committee;
 - Bilateral inter-sessional discussions.
- Ambition: Kyrgyz Republic also hopes to conclude the negotiation in a timely manner.

Pending accessions to the Agreement: state of play (cont'd)

○ Albania

- 19 May 1999: initiated;
- Expected to be resumed in the near future.

○ Georgia

- 17 October 2002: initiated;
- Expected to be resumed in the near future.

○ Jordan

- 19 July 2000: initiated.

○ Oman

- 12 July 2001: initiated.

Further information

- GPA website: www.wto.org/gpa
- E-GPA portal: <http://e-gpa.wto.org/>
- My email: jianning.chen@wto.org