Understanding the WTO Agreement on Government Procurement

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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:
  - GPA 1994: improved rules, expanded coverage
  - 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:

<table>
<thead>
<tr>
<th>Entities</th>
<th>Goods</th>
<th>Services</th>
<th>Construction Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex 1</td>
<td>130,000</td>
<td>130,000</td>
<td>5,000,000</td>
</tr>
<tr>
<td>Annex 2</td>
<td>200,000</td>
<td>200,000</td>
<td>5,000,000</td>
</tr>
<tr>
<td>Annex 3</td>
<td>400,000</td>
<td>400,000</td>
<td>5,000,000</td>
</tr>
</tbody>
</table>

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/Qulification 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**;
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.
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 2915, 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

- 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