



The revised WTO Agreement on Government Procurement: Present and future

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

Objectives of the GPA

(see Preamble)



- Trade aspect: a guarantee of market access; assurance of fair treatment for all suppliers (foreign and domestic)
- Governance aspect:
 - Integrity and predictability of government procurement systems;
 - Efficient and effective management of public resources;
 - Prevention of conflicts of interest and corrupt practices.
- Avoidance of conflict: promotion of compatible procurement systems worldwide



The policy context

- Enhanced importance of the procurement sector in light of: (i) the global economic crisis; and (ii) emerging economies' infrastructure needs.
- Also greater emphasis on procurement and good governance as an underpinning of development.
- Increased pressures for policies potentially limiting access to important procurement markets.
- *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.*



Increasing membership of the Agreement

- Currently, the GPA covers 43 WTO Members including the EU and its 28 member States; most other developed countries (i.e. US, Canada, Japan; Liechtenstein, Norway and Switzerland); plus Hong Kong, China; Iceland; Israel; Korea; Singapore; Chinese Taipei; Aruba and Armenia.
- **Chinese Taipei and Armenia joined only in the past 5 years.**
- Ten more WTO Members currently seeking accession (Albania, China, Georgia, Jordan, the Kyrgyz Republic, Moldova, Montenegro, New Zealand, Oman, and Ukraine).
- Five additional WTO Members have commitments to seek GPA accession (eventually), as part of their WTO accession protocols: the former Yugoslav Republic of Macedonia, Mongolia, the Russian Federation, Saudi Arabia and Tajikistan.



Breaking news:

- Montenegro was invited to submit its final offer!
- New Zealand close to finalization of its accession negotiations.
- EBRD GPA Technical Assistance Facility to support future accessions.



Synergies with other international instruments, and national legislation

- GPA a distillation of best practices internationally, as seen by the participating WTO Member governments.
- Carefully harmonized with the UNCITRAL Model Law
- Of interest in current review of the World Bank Procurement Guidelines.
- Entry into force coincides with adoption of new EU Directives
- The model for procurement chapters in bilateral FTAs and regional trade agreements worldwide.
- A benchmark for national procurement reforms for acceding countries.



II. Entry into force of the Revised Agreement

The recent entry into force of the revised GPA: overview



- The revised GPA has entered into force on 6 April!
- “Political conclusion” to the negotiations reached by GPA Ministers on 15 December 2011, following intensive negotiations over almost a decade.
- Formal adoption of the results of the negotiations on 30 March 2012, following a verification process.
- Elements of the deal:
 - Market access enhancement package valued at \$80-100 billion annually.
 - Revised GPA text.
 - Package of Agreed Work Programmes on issues such as SMEs and sustainability.

The recent entry into force of the revised GPA: the political dimension



- Submission of instruments of 2/3 of Parties required.
- The role of the Bali Ministerial Meeting:
 - By the Bali Ministerial, seven parties had ratified: Liechtenstein, Norway, Canada, Chinese Taipei, the United States, Hong Kong-China and the European Union.
- Iceland; Singapore and Israel follow suit to complete the required numbers.
- Entry into force for Japan on 16 April.
- Missing: Armenia, Korea, Switzerland
- Legal effect: Co-existence of the GPA 1994 and the revised Agreement!

Co-existence: legal foundation & implications



- Article 40 of the Vienna Convention: Amendment of multilateral treaties

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4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

a. Be considered as a party to the treaty as amended; and

b. Be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

- These principles are reflected in the decision on the Outcomes of the re-negotiation.
- Implications for: obligations & notification of existing Parties, acceding WTO Members.

The new GPA market access deal: highlights



- Additional coverage more than **400 new entities** (in total, across Parties);
- Additional coverage of **goods and services (over 50 new services sectors)**, including new coverage of **telecommunications services** by nine Parties;
- New coverage of **BOTs/public works** concessions by three Parties;
- **Full coverage of construction services** by all Parties
- **Reductions** by several Parties in the **thresholds** applied under the 1994 Agreement.
- **Deletion of country-specific derogations**

Key improvements in the revised GPA text



- Core principles of the revised text are the same as the existing one (non-discrimination, transparency, procedural fairness). However, revised text incorporates:
 - 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;
 - Updating of the text of the Agreement to take into account developments in current government procurement practice, notably the use of electronic tools;
 - 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.

Key improvements in the revised GPA text (cont'd)



- More explicit recognition of the GPA's significance for *good governance and the fight against corruption*, including in 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
- Revised and improved transitional measures ("special and differential treatment") for new Parties that accede to the Agreement. Under the revised provisions, such measures are to be tailored to the particular developmental needs of the individual accession candidates.



III. Agreed Work Programmes



The Agreed Work Programmes

- Integral element of the outcomes of the re-negotiation!
- Relate to the administration and possible further evolution of the Agreement, over time.
- Subject-matters addressed:
 - facilitating participation by small and medium-sized enterprises;
 - promoting sustainability in the procurement processes;
 - improving the available statistical data;
 - exclusions and restrictions in Parties' Annexes; and
 - safety standards.
- Work schedule was determined at the recent GPA Committee meeting on 25 June.



Summary

- The changing global context of the GPA: factors increasing its importance as an underpinning of the global economy;
- Entry into force of the Revised Agreement;
- Agreed Work Programmes.