



# **SEMINAR ON COMMITMENTS OF MONTENEGRO UNDERTAKEN THROUGH MEMBERSHIP IN THE WORLD TRADE ORGANIZATION**

- AGREEMENT ON GOVERNMENT PROCUREMENT –

PODGORICA, MONTENEGRO

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## SEMINAR ON COMMITMENTS OF MONTENEGRO UNDERTAKEN THROUGH MEMBERSHIP IN THE WORLD TRADE ORGANIZATION

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*Basic documentation*

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<sup>1</sup> The full version of this document (GPA/113) is also available on the WTO website.

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**1.**

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**The conclusion of the renegotiation of the WTO Agreement on  
Government Procurement: what it means for the Agreement and for the  
world economy**

**By**

**Robert D. Anderson\***

**I. INTRODUCTION**

On 15 December 2011, Ministers of the Parties to the 1994 World Trade Organization (WTO) Agreement on Government Procurement ("the GPA" or "the Agreement"), meeting in Geneva in advance of the wider WTO Ministerial Conference, reached a political conclusion to the long-running renegotiation of the Agreement.<sup>1</sup> As set out in a Ministerial Decision adopted at the meeting, the conclusion encompassed: (i) significant additions to the market access ("coverage") commitments of Parties to the Agreement; (ii) agreement by Ministers that the previously-negotiated revised text of the Agreement can now come into effect; and (iii) agreement on a set of Future Work Programmes to improve the administration of the Agreement and share perspectives on issues of continuing interest such as approaches to sustainability and the treatment of small and medium-sized enterprises (SMEs) in relation to procurement under the Agreement.<sup>2</sup>

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<sup>1</sup> On the scope and purposes of the renegotiation, see, generally, Robert D. Anderson and Sue Arrowsmith, "The WTO Regime on Government Procurement: Past, Present and Future," in Sue Arrowsmith and Robert D. Anderson, eds., *The WTO Regime on Government Procurement: Challenge and Reform* (Cambridge University Press and the WTO: 2011), chapter 1, pp. 3-58.

<sup>2</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement, GPA/112 of 16 December 2011*, available at [http://www.wto.org/english/tratop\\_e/gproc\\_e/negotiations\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm), paragraph 4. See also Robert D. Anderson, Steven Schooner and Collin Swan, "Feature Comment: The WTO's Revised Government Procurement Agreement: An Important Milestone Toward Greater Market Access and Transparency in Global Public Procurement Markets," *The Government Contractor*, Vol. 54, No. 1, January 11, 2012, pp. 1-6. In addition to general aspects of the GPA conclusion, the latter article gives particular attention to its significance from a US perspective.

The various elements of the Ministerial Decision are subject to a three month process of "technical verification and review", a standard WTO procedure permitting minor corrections that are necessary to accurately reflect the Parties' intent with regard to the respective elements of the negotiating package. Under the terms of the Ministerial Decision, the corrected results of the negotiations are to be formally adopted by the Parties no later than 31 March 2012.<sup>3</sup>

The conclusion of the GPA renegotiation is important for at least three reasons: first, it has added significant value to the sum of market access commitments by the Parties under the Agreement, in the range of at least \$80-100 billion annually. This represents a very significant achievement for the participating WTO Members and the Organization in the present economic and political environment.

Second, as noted, the conclusion reached has made possible the coming into force of the revised GPA text. This is important in its own right, to modernize the Agreement, and will also facilitate expected future accessions by major emerging economies. Third, the Future Work Programmes relating to the Agreement that have been agreed will promote transparency, the efficient administration of the Agreement and further international convergence around best practices in procurement, over time.<sup>4</sup>

This article explains the content and significance of the conclusion of the renegotiation that was reached in December, in Geneva. Part II summarizes and elaborates on the various aspects of the settlement. Part III reflects on the significance of the conclusion, taking note of both its significance for future accessions to the Agreement and its contribution to the challenges of international governance in a time of economic crisis and disarray. Part IV provides brief conclusions. Key elements of the decision taken by GPA Ministers in December 2011 are set out in Appendix I.<sup>5</sup>

## **II. THE CONCLUSION OF THE GPA RENEGOTIATION: WHAT IT ENTAILED**

As noted, the agreement reached by GPA Ministers in December 2011 concerns the coverage of the GPA, the text of the Agreement and the Future Work Programmes of the WTO body responsible for the administration of the Agreement, the Committee on Government Procurement. The following provides additional information on each of these elements, in turn.

### **(1) Expansion of the coverage of the Agreement (i.e. the Parties' market access commitments)**

The GPA renegotiation was, first and foremost, an international trade negotiation; as such, the expansion of access to the Parties' procurement markets by their respective suppliers was central to the process and to the Agreement reached. The package of additions

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<sup>3</sup> *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement, GPA/112 of 16 December 2011*, id., paragraph 5.

<sup>4</sup> Anderson, Schooner and Swan, above note 2.

<sup>5</sup> The full text of the decision, including the revised text of the Agreement and other elements, is available on the WTO website at [http://www.wto.org/english/tratop\\_e/gproc\\_e/negotiations\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm).

to market access entailed by the conclusion has been provisionally valued by the WTO Secretariat as being worth in the range of \$80-100 billion annually.<sup>6</sup> It comprises:

- Coverage by the Parties of (at a minimum) more than 200 additional central, local and other government agencies under the Agreement. This includes, as just one Party's (Canada's) contribution, the coverage under the Agreement, for the first time, of its sub-central level of government (i.e. its provinces and territories) - already a contribution that has been valued in the tens of billions of dollars.<sup>7</sup> The actual number of additional entities covered by the totality of the Parties will, in all likelihood, turn out to be substantially more than 200, in light of the generic approaches to entity coverage that have been used by some Parties, including the European Union;
- The coverage by three Parties, for the first time, of build-operate-transfer contracts, another very significant addition to coverage;<sup>8</sup>
- Coverage of additional services by almost all of the Parties, for example in the area of telecommunications services;
- Some improvements in the coverage of goods;
- The coverage by all Parties, for the first time, of the full range of construction services, subject to relevant thresholds; and
- Downward adjustments in the thresholds applied under the Agreement by a few Parties, notably Israel, Japan, Korea and the Netherlands with respect to Aruba.

The final details of the above-noted market access package were agreed only at the last minute (in fact, literally on the morning of the day on which the package was adopted by Ministers). The package built, however, on a series of moves made by the Parties throughout the year, pursuant to a "Roadmap" for conclusion of the negotiations that was put forward by the Chairman of the Committee on Government Procurement, Mr Nicholas Niggli (Switzerland), initially in 2010 and then carried forward in 2011. The Roadmap provided for systematic consideration, in parallel fashion, of all elements of the negotiations, namely: (i) coverage; (ii) the revised text; (iii) the Future Work Programmes of the Committee; and (iv) the approach to be followed in bringing the revised agreement into effect. As the year unfolded, expectations for a successful conclusion and resulting pressure on delegations mounted.<sup>9</sup>

In addition to the above-noted specific additions to coverage which will be incorporated in the Parties' revised coverage schedules ("Appendix I Annexes"), aspects of the Future Work Programmes also bear, potentially, on coverage issues. These include the agreed Work Programmes on SMEs, the monitoring of restrictions and exclusions on coverage, and the implications of safety standards in international government procurement markets (see below).

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<sup>6</sup> See Report by the Director-General to the Eighth Ministerial Conference of the WTO, WT/MIN(11)/5, 18 November 2011, p. 3, available at: [http://www.wto.org/english/thewto\\_e/minist\\_e/min11\\_e/min11\\_5\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min11_e/min11_5_e.pdf). It should be noted that not all of this additional coverage will necessarily be available to each of the GPA Parties, due to Party-specific derogations that may apply.

<sup>7</sup> See, for background, David Collins, "Canada's Sub-Central Government Entities and the Agreement on Government Procurement: Past and Present," in Arrowsmith and Anderson, eds., above note 1, chapter 7, pp. 175-196.

<sup>8</sup> The relevant Parties are the European Union, Japan and Korea.

<sup>9</sup> See "Chair says 'time to close the deal' on government procurement," available at [http://www.wto.org/english/news\\_e/news11\\_e/gpro\\_18oct11\\_e.htm](http://www.wto.org/english/news_e/news11_e/gpro_18oct11_e.htm).

## (2) The revised GPA text

An important additional element of the package adopted by Ministers on 15 December 2011 consists in agreement by the Ministers that the previously-negotiated revised GPA text can now come into effect. Agreement in principle on most elements of the revised text had been reached by GPA Parties' negotiators five years previously, in December 2006.<sup>10</sup> However, adoption of the text adopted at that time was subject to agreement on its "Final Provisions" (governing its coming into force) and to a mutually satisfactory outcome in the parallel negotiations to extend the coverage of the Agreement. These requirements have now been fulfilled; hence, it is foreseen that the revised text along with the other elements of the negotiating package (i.e. the revised coverage commitments and Future Work Programmes) will be formally adopted by the Committee no later than 31 March 2012, following the necessary verification process. Furthermore, the GPA Parties' Ministers have also agreed that they "will seek prompt acceptance and implementation of the revised Agreement within [their] respective jurisdictions".<sup>11</sup>

In general, the revised GPA text is based on the same principles and contains the same main elements as the existing Agreement. Nonetheless, it improves on the existing text of the Agreement in various significant ways. For example, the revised text entails a complete revision of the wording of the various provisions of the Agreement to streamline them and make the text easier to understand. It updates the Agreement to take into account developments in current government procurement practice, notably the use of electronic tools. The revised text also sets out related requirements regarding the general availability and interoperability of the information technology systems and software used; the availability of mechanisms to ensure the integrity of requests for participation and tenders; and maintenance of data to ensure the traceability of the conduct of covered procurement by electronic means. It also incorporates 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.<sup>12</sup>

In a key additional change, the transitional measures ("special and differential treatment" or "S&D") that are available to developing countries that accede to the Agreement have been clarified and improved. The transitional measures that are potentially available, subject to negotiations, include: (i) price preferences; (ii) offsets; (iii) phased-in addition of specific entities and sectors; and (iv) thresholds that are initially set higher than their permanent level. Provision has also been made for delaying the application of any specific

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<sup>10</sup> See *Report (2006) of the Committee on Government Procurement*, paragraph 20, available at: [http://www.wto.org/english/tratop\\_e/gproc\\_e/documents\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/documents_e.htm); and Robert D. Anderson, "Renewing the WTO Agreement on Government Procurement: Progress to Date and Ongoing Negotiations," *Public Procurement Law Review*, Issue 4, 2007, p. 255.

<sup>11</sup> *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement, GPA/112 of 16 December 2011*, available at [http://www.wto.org/english/tratop\\_e/gproc\\_e/negotiations\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm), above note 2, paragraph 6.

<sup>12</sup> See, for detailed analysis, Sue Arrowsmith, "The Revised Agreement on Government Procurement: Changes to the Procedural Rules and Other Transparency Provisions," in Sue Arrowsmith and Robert D. Anderson, eds., *The WTO Regime on Government Procurement: Recent Developments and Challenges Ahead*, above note 1, chapter 10, pp. 285-336; Robert D. Anderson, "The WTO Agreement on Government Procurement (GPA): An Emerging Tool of Global Integration and Good Governance," *Law in Transition*, Autumn 2010, pp. 1/8-8/8, at p. 5/8, available at <http://www.ebrd.com/downloads/research/news/lit102.pdf>; Robert D. Anderson, "Renewing the WTO Agreement on Government Procurement: Progress to Date and Ongoing Negotiations," above note 10; and Anderson, Schooner and Swan, above note 2.

obligation contained in the Agreement, other than the requirement to provide equivalent treatment to the goods, services and suppliers of all other Parties to the Agreement, for a period of five years following accession to the Agreement for Least Developed Countries (LDCs) or up to three years for other developing countries. These periods can be extended by decision of the Committee on Government Procurement, on request by the country concerned.<sup>13</sup>

Further to the above, the approach to S&D under the revised GPA differs from the traditional approach to S&D to the WTO in interesting respects. First, the transitional measures noted above are not available "as of right" but are to be awarded on the basis of the specific developmental needs of acceding Parties, subject to negotiation with the other Parties. Second, such S&D as may be awarded is clearly intended to be time-bound. Third, rather than providing for S&D on a "non-reciprocal" basis (i.e. without regard to the preservation of a balance of market access opportunities), the relevant provisions of the revised GPA stipulate that the market access opportunities that will be made available to acceding Parties are "subject to any terms negotiated between [other Parties] and the developing country in order to maintain an appropriate balance of opportunities under this Agreement". Arguably, this approach represents an alternative paradigm for S&D in the WTO that avoids some or all of the problems concerning past approaches that have been highlighted by academic critics.<sup>14</sup>

Another important element of the revised GPA text consists in a specific new requirement for participating governments and their relevant procuring entities to avoid conflicts of interest and prevent corrupt practices. This provision is unique in the context of WTO treaty obligations.<sup>15</sup> The import of this new substantive provision is reinforced by new language, in the Preamble to the Agreement, recognizing the GPA's significance for good governance and the fight against corruption. Together, these elements signal a belief on the part of the Parties that the GPA, while first and foremost an international trade agreement, is directly relevant to the global struggle for good governance.<sup>16</sup>

### **(3) The Future Work Programmes of the Committee on Government Procurement**

An element of the package that has been overlooked by some commentators, but which is nonetheless very significant, concerns the Future Work Programmes of the Committee on Government Procurement, which administers the Agreement. The following Work Programmes are the subject of specific proposed Committee Decisions that are annexed to the Ministerial Decision of 15 December and which, like the other agreed results of the negotiations are to be formally adopted by the end of March 2012:

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<sup>13</sup> See, for an insightful analysis, Anna Caroline Müller, "Special and Differential Treatment and Other Special Measures for Developing Countries under the Agreement on Government Procurement: the Current Text and New Provisions," in Arrowsmith and Anderson, eds. *The WTO Regime on Government Procurement: Challenge and Reform*, above note 1, chapter 11, pp. 339-376.

<sup>14</sup> Robert D. Anderson, "Reflections on Bagwell and Staiger in Light of the Revised WTO Agreement on Government Procurement," to be published in a forthcoming volume edited by Robert C. Feenstra and Alan M. Taylor on Globalization in an Age of Crisis: Multilateral Economic Cooperation in the Twenty-First Century (University of Chicago Press); see also Müller, id.

<sup>15</sup> See Sue Arrowsmith, "The Revised Agreement on Government Procurement: Changes to the Procedural Rules and Other Transparency Provisions," above note 12; see also Anderson, Schooner and Swan, above note 2.

<sup>16</sup> See also related discussion, below.

- (i) A Work Programme to consider best practices with respect to measures and policies that the Parties use to support the participation of small and medium-size enterprises (SMEs) in government procurement;<sup>17</sup>
- (ii) A Work Programme to enable Parties to improve procedures followed in the collection and reporting of statistical data relating to the Agreement;<sup>18</sup>
- (iii) A Work Programme to promote the use of sustainable procurement practices, consistent with the Agreement;<sup>19</sup>
- (iv) A Work Programme to address restrictions and exclusions in Parties' coverage commitments under the Agreement;<sup>20</sup> and
- (v) A Work Programme on safety standards in international procurement.<sup>21</sup>

In addition to the above-noted Work Programmes whose initiation is foreseen following the coming into force of the revised Agreement, a further attachment to the Ministerial Decision calls for the initiation of additional work programmes, at a time to be determined, on the following subjects: (a) a review of the use, transparency and the legal frameworks of public-private partnerships, and their relationship to covered procurement; (b) the advantages and disadvantages of developing common nomenclature for goods and services; and (c) the advantages and disadvantages of developing standardized notices.<sup>22</sup> Yet another attachment implements a new process for electronic notification to the Committee of changes to national laws and regulations.<sup>23</sup>

It will be evident that the foregoing Work Programmes respond both to socio-political concerns shared by all Parties and to continuing negotiating interests of at least some of the Parties. For example, the issue of sustainability in public procurement practices is one of widespread interest. While in some jurisdictions this is viewed as being principally a matter of measures to promote "green procurement", in other jurisdictions, it encompasses social policy considerations, as well.<sup>24</sup>

Similarly, most or possibly all Parties are interested in promoting access to government procurement processes by SMEs; nonetheless, approaches to promoting such access differ and can also be a source of concern from a market access point of view. Restrictions and exclusions from Parties' coverage commitments under the Agreement are of obvious concern from a market access standpoint, and safety standards in international

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<sup>17</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 5.

<sup>18</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 6.

<sup>19</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 7.

<sup>20</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 8.

<sup>21</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 9.

<sup>22</sup> See *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 4.

<sup>23</sup> *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 3.

<sup>24</sup> See also Anderson, Schooner and Swan, above note 2.

procurement are a longstanding issue of interest particularly to the European Union. To be sure, the foregoing Work Programmes are exploratory in nature; they, nonetheless, hold the potential to contribute importantly to the future evolution of the Agreement and/or its administration.<sup>25</sup>

### **III. SIGNIFICANCE OF THE CONCLUSION OF THE GPA RENEGOTIATION FOR THE FUTURE OF THE AGREEMENT, AND FOR THE WORLD ECONOMY**

Upon the conclusion of the GPA renegotiation, it was quickly recognized as an important milestone for the Agreement, and for the WTO. At least three dimensions of this significance should be noted: first, the significance of the conclusion for international trade, market access and the Parties' commitment to open markets; second, its significance for future accessions to the Agreement; and third, its significance for the international struggle for good governance. The following comments on each of these aspects, in turn.

#### **(1) Significance for international trade, market access and the Parties' commitment to open markets**

Clearly, the conclusion reached in December 2011 represents a major victory for the preservation and enhancement of the Parties' market access rights. This is of considerable importance from a systemic point of view, particularly in the context of the ongoing economic crisis. As stated by EU Commissioner Michel Barnier, who led the negotiation for the EU:

"Despite the temptations of protectionism during these times of global crisis, we have broken down barriers, not increased them. This will lead to more trade and benefit all economies, including Europe's."<sup>26</sup>

In a similar vein, United States Trade Representative (USTR) Ron Kirk stated that "this revision demonstrates the WTO's ability, through persistence, hard work, and a spirit of collaboration, to reach agreements that strengthen and clarify rules, and expand opportunities through market access."<sup>27</sup> Canada's Trade Minister, Ed Fast, said that "[c]oncluding these negotiations for a new agreement is proof of the value of the multilateral trading system and that the WTO is an effective vehicle to combat protectionism."<sup>28</sup>

The GPA is, indeed, the main safeguard available to exporting economies to maintain their market-access rights in this crucial sector. The importance of this safeguard was seen,

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<sup>25</sup> As in the original 1994 Agreement, an eventual further round of negotiations is foreseen in the revised Agreement (see Article XXII:7), with the aims of improving the Agreement, progressively reducing and eliminating discriminatory measures, and achieving the greatest possible extension of its coverage among all Parties.

<sup>26</sup> See European Commission, "Successful Conclusion of the WTO's Government Procurement Negotiation: EU Succeeds in Gaining More Market Access," Press Release, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1556&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>27</sup> See USTR, "United States Welcomes Opportunities for U.S. Suppliers Under Newly Revised WTO Government Procurement Agreement", Press Release, available at: <http://www.ustr.gov/about-us/press-office/press-releases/2011/december/united-states-welcomes-opportunities-us-suppliers>.

<sup>28</sup> See Canada, "Canada Welcomes WTO Government Procurement Deal ", Press Release, available at [http://www.international.gc.ca/media\\_commerce/comm/news-communiqués/2011/378.aspx?view=d](http://www.international.gc.ca/media_commerce/comm/news-communiqués/2011/378.aspx?view=d).

for example, in regard to the 2009 US economic stimulus legislation, in which the application of new "Buy American" requirements contained in that legislation was tempered by separate provisions ensuring that those requirements "shall be applied in a manner consistent with United States obligations under international agreements".<sup>29</sup> Clearly, this core purpose of the Agreement has become more important in the present economic environment, in which the threat of retaliatory protectionism in this sector is real.<sup>30</sup>

## (2) Significance for future accessions to the Agreement

Underlying the renegotiation is a hope and belief that it will both encourage and facilitate future accessions to the Agreement. In addition to important benefits for global governance, such accessions are expected to yield huge gains in the value of the market access commitments available under the Agreement. A 2011 analysis by the WTO Secretariat found that the total value of additional market access commitments that would (hypothetically) result from GPA accession by the full range of WTO Members considered in the analysis would be in the range of \$US 380-970 billion annually. The accession of the five "BRICS" countries – Brazil, China, India, Russia and South Africa – would, by itself, add in the range of \$US 233-596 billion annually to that value.<sup>31</sup>

This hope and expectation were affirmed by the WTO Committee on Government Procurement in its annual report for 2011, in which it observed that:

"Future accessions to the Agreement have the potential to add very substantially to the value of market access commitments and the systemic relevance of the Agreement, over time. In order for the Agreement to fulfill its role in the WTO system and to bring into it new WTO Members, conclusion of the present renegotiation and bringing into force of the revised Agreement are of paramount importance."<sup>32</sup>

The membership of the GPA is, indeed, increasing over time. Currently, forty-two (42) WTO Members are covered by the Agreement. These comprise: Armenia, Canada; the European Union, which formally is a single Party that includes Germany, France, the UK and all the other member states of the Union (27 in all); Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; Chinese Taipei and the United States. The accession of Armenia took effect only on September 15, 2011, while that of Chinese Taipei took effect in July 2009.

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<sup>29</sup> See Overview of Developments in the International Trading Environment: Annual Report by the Director-General (World Trade Organization, Trade Policy Review Body, WT/TPR/OV/12 of 18 November 2009), page A-42 and references cited therein.

<sup>30</sup> See Overview of Developments in the International Trading Environment: Annual Report by the Director-General, id.; see also Anderson, Schooner and Swan, above note 2.

<sup>31</sup> See Robert D. Anderson, Philippe Pelletier, Kodjo Osei-Lah and Anna Caroline Müller, *Assessing the Value of Future Accessions to the WTO Agreement on Government Procurement (GPA): Some New Data Sources, Provisional Estimates, and An Evaluative Framework for Individual WTO Members Considering Accession* (WTO Staff Working Paper ERSD-2011-15, October 6, 2011), available at [http://www.wto.org/english/res\\_e/reser\\_e/ersd201115\\_e.htm](http://www.wto.org/english/res_e/reser_e/ersd201115_e.htm). It should be emphasized that, of the BRICS economies, only one (China) currently is actively seeking accession to the GPA. The others were included in the analysis for illustrative purposes only, with no implication that they eventually will or should join the Agreement - a choice which is in their own hands.

<sup>32</sup> *Annual Report (2011) of the WTO Committee on Government Procurement to the General Council*, GPA/11 of 16 November 2011, paragraph 36.

As of the end of 2011, nine WTO Members not currently parties to the Agreement had applied for accession to it and had submitted relevant documentation: Albania, China, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, Panama and Ukraine. A further five WTO Members had provisions regarding accession to the Agreement in their respective Protocols of Accession to the WTO: Croatia, the Former Yugoslav Republic of Macedonia, Mongolia, Saudi Arabia and, most recently, the Russian Federation.<sup>33</sup> The commitment of the latter was adopted only on December 16, 2011, the day after the political agreement was reached to conclude the GPA renegotiation.

The conclusion of the GPA renegotiation is expected to facilitate future accessions in multiple ways.<sup>34</sup> First, by increasing the sum of market access opportunities made available via the Agreement, it has strengthened the incentive for outsiders to join the Agreement. Second, as noted above, the improved S&D provisions that are incorporated in the revised text of the Agreement are intended to facilitate future accessions, by offering an array of possible transitional measures that can be tailored to the needs of specific acceding Parties, without eroding the principles of reciprocity. Third, the new flexibilities contained in the revised Agreement make it easier to implement for all Parties, including new ones. Fourth, the conclusion has resulted in a new arrangement whereby the EU and the US intend to cooperate more closely in respect of pending accessions, notably that of China.<sup>35</sup> Lastly, the conclusion may well have a psychological impact: it has raised the profile of the Agreement, and has also demonstrated the seriousness and results-orientation of the Parties.

To be sure, each accession to the GPA follows its own course. Among the WTO Members currently negotiating accession to the Agreement, clearly the accession of China involves the greatest stakes for the system and raises the most complex issues for Parties' negotiators. China applied for accession to the GPA in December of 2007. Since then, the terms of its accession have been the subject of intensive discussion in the Committee on numerous occasions.<sup>36</sup> Carrying this process forward, toward the end of 2011, China submitted to the GPA Parties its "second revised coverage offer". While the offer has not met all of the expectations of the US and other existing Parties, it clearly responded to requests made to China by the Parties by offering, for the first time, significant proposed coverage of procuring entities at the sub-central (provincial/municipal), in addition to the central, government level.<sup>37</sup>

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<sup>33</sup> *Annual Report (2011) of the WTO Committee on Government Procurement to the General Council*, GPA/11 of 16 November 2011, id., paragraph 6.

<sup>34</sup> See also Anderson, Schooner and Swan, above note 2.

<sup>35</sup> "In conjunction with the conclusion of the GPA revision, the United States and the European Union will establish a Bilateral Procurement Forum that will provide an opportunity to expand our procurement relationship on a bilateral basis. Under this Forum, we will take up procurement regulatory issues and international procurement issues, such as China's accession to the GPA – a key priority for both sides." USTR, Fact Sheet, "Benefits for the United States from the Revised WTO Government Procurement Agreement" (Dec. 15, 2011), <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/december/benefits-united-states-revised-wto-government-procur>. See also Anderson, Schooner and Swan, above note 2.

<sup>36</sup> Robert D. Anderson, "China's Accession to the WTO Agreement on Government Procurement: Procedural Considerations, Potential Benefits and Challenges, and Implications of the Ongoing Re-negotiation of the Agreement," *Public Procurement Law Review*, Issue 4, 2008, pp. 161-174.

<sup>37</sup> Across the membership of the GPA, Parties are now pressing for further movement by China to include greater coverage of entities at the central and sub-central government level, new coverage of state-owned enterprises (SOEs), and other improvements. For example, the USTR has stated that "China still has some distance to go.... For example, [the United States is] urging China to cover state-owned enterprises, add more sub-central entities and services, reduce its thresholds for the size of covered contracts, and remove other broad exclusions." USTR, *Press Release: United States Welcomes Opportunities for U.S. Suppliers Under*

### (3) **Significance for the international struggle for good governance**<sup>38</sup>

Still another consideration is the significance of the conclusion for the international struggle for good governance. There is growing awareness, in current thinking and research on economic development, of the need for adequate governance mechanisms (i.e. appropriate laws and institutions) as a counterpart to market opening and liberalization. In the words of Pascal Lamy, Director-General of the WTO:

"the mere removal of obstacles to trade may not, by itself, ensure optimal performance if rules are not in place to ensure fair procedures, appropriate transparency of markets, and responsible competitive behaviour that is environmentally sustainable. It is time to recognize that such rules are an essential counterpart to market opening."<sup>39</sup>

To be sure, views differ as to what is meant by good governance, and regarding its significance for growth and development.<sup>40</sup> Cutting-edge thinking does, however, highlight the importance of robust governance systems to ensure the stable and effective functioning of markets, and thereby to promote sustainable growth over the long-term.<sup>41</sup> The implementation of citizen-oriented governance mechanisms may also be viewed as a central aspect of the broader concept of "development" (encompassing life-enhancing social and institutional change) as distinct from growth *per se*.<sup>42</sup>

While the GPA can, in its totality, be viewed as a "good governance" measure,<sup>43</sup> specific channels can also be identified through which the Agreement promotes good governance and deters corruption. They include, at a minimum: (i) the general and specific transparency provisions of the Agreement; (ii) the domestic review provisions of the Agreement, which require all Parties to put in place mechanisms to ensure independent, objective review of supplier complaints; and (iii) a new provision in the revised GPA text that imposes a specific requirement on GPA Parties to avoid conflicts of interest and corrupt practices. The latter provision is reinforced by new elements in the revised Preamble to the Agreement which emphasize the importance "of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in

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*Newly Revised WTO Government Procurement Agreement*, above note 27. Parties have also continued to express concerns regarding aspects of China's procurement-related legislation and regulations, and have reiterated the importance that they attach to China's bringing these into conformity with the requirements of the GPA. See also Anderson, Schooner and Swan, above note 2.

<sup>38</sup> See also Robert D. Anderson, "The WTO Agreement on Government Procurement (GPA): An Emerging Tool of Global Integration and Good Governance," above note 12.

<sup>39</sup> Pascal Lamy, "Remarks to a Symposium on 'The WTO Agreement on Government Procurement: Developmental and Trade Significance, Changing Context and Future Prospects'," Centre William Rappard, Geneva, 11 February 2010, available at: [http://www.wto.org/english/news\\_e/sppl\\_e/sppl147\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl147_e.htm).

<sup>40</sup> Dani Rodrik, *One Economics, Many Recipes: Globalization, Institutions and Economic Growth* (Princeton University Press, 2007); William Easterly, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics* (MIT Press, 2001).

<sup>41</sup> "... the key to longer-term prosperity, once growth is launched, is to develop institutions that maintain productive dynamism and generate resilience to external shocks." Rodrik, id., p. 43.

<sup>42</sup> "Good governance, by which I mean transparency, accountability, rule of law, and bureaucratic competence and effectiveness, is clearly desirable as an objective in itself. We might even say that good governance is what development is all about." Dani Rodrik, "Thinking about governance and getting a headache," March 26, 2008, [http://rodrik.typepad.com/dani\\_rodriks\\_weblog/2008/03/thinking-about.html](http://rodrik.typepad.com/dani_rodriks_weblog/2008/03/thinking-about.html).

<sup>43</sup> Lamy, "Remarks to a Symposium on 'The WTO Agreement on Government Procurement: Developmental and Trade Significance, Changing Context and Future Prospects'," above note 39.

accordance with applicable international instruments, such as the United Nations Convention Against Corruption".<sup>44</sup>

Concerning both the GPA's new requirement regarding the avoidance of conflicts of interest and corrupt practices and the general significance of the GPA for good governance, Arrowsmith's comments are pertinent:

"... transparency rules similar to those of the GPA are included in many procurement systems with the specific aim of addressing corruption. Further, the fact that such rules are included in the GPA can have an impact in preventing corruption in Parties to the Agreement and the fact that GPA accession can help states implement such rules against domestic vested interests and lock them into their systems means that *in practice* the GPA can assist states in addressing the problem of corruption. Reducing corruption can itself enhance the GPA's unarguable objective of liberalization of markets. Nevertheless, up to now, addressing conflicts of interest and corruption was not *per se* an objective of the GPA, even as a means of promoting market access, but merely one consequence of it. The new provision and recital, however, recognize not only that conflicts of interest and corruption may impact upon access to markets but also suggest that the GPA aims to address corruption quite apart from any impact on market access – in particular, to ensure more efficient and effective management of resources and to improve the general functioning of Parties' economies."<sup>45</sup>

In other words, with the development of the revised GPA text, the Agreement has to an extent been re-framed to respond directly to current concerns regarding good governance in addition to its core role in maintaining open markets. This is indeed a significant development in the framework of the WTO, which hitherto has largely avoided direct engagement in corruption and public governance concerns, although clearly the general transparency provisions of the WTO Agreements have always been relevant to those issues. As such, the revised Agreement takes on increased importance for both good governance and the effective management of public resources in a time of fiscal and economic crisis.<sup>46</sup>

#### **IV. CONCLUDING COMMENT: TOWARD A MULTILATERALIZATION OF THE GPA?**

This article has reviewed the key elements of the political conclusion to the long-running renegotiation of the 1994 plurilateral Agreement on Government Procurement that was reached by the Parties to the Agreement on December 15, 2011. This conclusion has added significantly to the value of the market access commitments by Parties under the Agreement and has made possible the coming into force of the revised GPA text -- a development which is important in its own right and because it will facilitate expected future accessions by major emerging economies. In addition, a set of work programmes has been initiated in Geneva that will promote transparency and further international convergence around best practices in procurement, over time.

Overall, the conclusion of the renegotiation has substantially raised the profile of the Agreement in the WTO and enhanced its contribution to good governance and the effective

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<sup>44</sup> *Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement*, above note 2, Annex 2, Sixth Recital.

<sup>45</sup> Sue Arrowsmith, "The Revised Agreement on Government Procurement: Changes to the Procedural Rules and Other Transparency Provisions," above note 12, at p. 289.

<sup>46</sup> See also Anderson, Schooner and Swan, above note 2.

management of public resources, in addition to reinforcing its core function in maintaining the openness of the procurement markets covered by the Agreement. The conclusion has provided an important demonstration of the continuing viability of WTO negotiating processes in a difficult period. Doubtless, it will also serve to enhance interest in plurilateral approaches to important international negotiations where these are suitable for the purposes at hand.

In the lead-up to the December meeting of GPA Ministers, the hope was expressed that conclusion of the GPA renegotiation (as has now occurred) could, in due course, open the door to a series of future accessions which would further extend its contribution as an instrument of world trade and development, over time. Indeed, prospects appear good for a significant expansion of the GPA's membership in the coming years. Whether such a trend will lead eventually to an effective multilateralization of the GPA remains, of course, to be seen.

**Attachment - excerpt from WTO document GPA/112 of December 16, 2011**

**"MINISTERIAL-LEVEL MEETING OF THE COMMITTEE ON  
GOVERNMENT PROCUREMENT  
(15 DECEMBER 2011)**

**DECISION ON THE OUTCOMES OF THE NEGOTIATIONS UNDER ARTICLE XXIV:7  
OF THE AGREEMENT ON GOVERNMENT PROCUREMENT**

1. We, the Parties to the WTO Agreement on Government Procurement ("the Agreement")<sup>47</sup>, meeting at Ministerial level in Geneva, are pleased to confirm that we have reached agreement in principle on a revised Agreement, building on comprehensive negotiations conducted over a number of years and encompassing both the text and coverage of the Agreement.
2. We have undertaken this revision in furtherance of our common objectives to modernize the Agreement, expand access to government procurement markets, promote good governance and deter corruption, and facilitate the effective management of public resources, particularly in the present economic environment. The revision recognizes the crucial importance of government procurement as a dimension of economic activity, and its significance for international trade facilitation and development.
3. We equally wish to encourage and facilitate accession to the Agreement by WTO Members that are not yet Parties to it, noting that developing and least developed country Members can benefit from the improved transitional measures in the revised Agreement. In addition, we have developed a number of Future Work Programmes in order to facilitate mutual understanding of Parties' approaches to the implementation of the revised Agreement, and to improve the administration of the Agreement over time.
4. We confirm that the results of the negotiations under Article XXIV:7 of the Agreement comprise the following items set out in the Annexes to this Decision, subject to final verification and legal review:
  - a. Proposed Decision of the Committee on Government Procurement on Adoption of "The Protocol Amending the Agreement on Government Procurement" (Annex 1);
  - b. Revised Text of the Agreement and each Party's Appendix I Annexes. N.B. The revised text is provided in Annex 2 to this Decision; the Parties' Appendix I Annexes are provided in separate Addenda to document GPA/W/315;
  - c. Proposed Decision of the Committee on Government Procurement on Notification Requirements under Articles XIX and XXII of the Revised Agreement (Annex 3);
  - d. Proposed Decision of the Committee on Government Procurement on Adoption of Work Programmes (Annex 4);
  - e. Proposed Decision of the Committee on Government Procurement on a Work Programme for SMEs (Annex 5);

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<sup>47</sup> The Parties to the Agreement comprise Armenia; Canada; the European Union, including its 27 member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei); and the United States.

- f. Proposed Decision of the Committee on Government Procurement on a Work Programme on the Collection and Reporting of Statistical Data (Annex 6);
- g. Proposed Decision of the Committee on Government Procurement on a Work Programme on Sustainable Procurement (Annex 7);
- h. Proposed Decision of the Committee on Government Procurement on a Work Programme on Exclusions and Restrictions in Parties' Annexes (Annex 8); and
- i. Proposed Decision of the Committee on Government Procurement on a Work Programme on Safety Standards in International Procurement (Annex 9).

5. We instruct our officials to work expeditiously to complete the final verification and legal review of the various elements noted above to reflect this Decision, in order that the Committee on Government Procurement can then adopt the elements referred to in paragraph 4 above no later than 31 March 2012.

6. We will seek prompt acceptance and implementation of the revised Agreement within our respective jurisdictions.

7. We invite all WTO Members that are not Parties to the Agreement to become Observers to the Committee on Government Procurement in order to become familiar with the opportunities that membership can provide, and to consider joining the revised Agreement.

8. We recognize and support the efforts of the WTO Secretariat to provide appropriate technical assistance for developing and least developed economy WTO Members considering joining the revised Agreement.

9. Finally, we fully support the Future Work Programmes of the Committee listed above."

**2.**

# **WORLD TRADE ORGANIZATION**

**GPA/113 (EXCERPT)**  
2 April 2012

(12-1744)

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**Committee on Government Procurement**

**ADOPTION OF THE RESULTS OF THE NEGOTIATIONS UNDER ARTICLE XXIV:7 OF  
THE AGREEMENT ON GOVERNMENT PROCUREMENT, FOLLOWING  
THEIR VERIFICATION AND REVIEW, AS REQUIRED BY THE  
MINISTERIAL DECISION OF 15 DECEMBER 2011 (GPA/112),  
PARAGRAPH 5**

**ACTION TAKEN BY THE PARTIES TO THE WTO AGREEMENT ON GOVERNMENT  
PROCUREMENT AT A FORMAL MEETING OF THE COMMITTEE,  
AT THE LEVEL OF GENEVA HEADS OF DELEGATIONS,  
ON 30 MARCH 2012**

**EXCERPT**

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**DECISION ON THE OUTCOMES OF THE NEGOTIATIONS UNDER ARTICLE XXIV:7  
OF THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Decision of 30 March 2012

1. We, the Parties to the WTO Agreement on Government Procurement ("the Agreement"), meeting at Ambassadorial level in Geneva, having completed the final verification and legal review of the results of the negotiations under Article XXIV:7 of the Agreement, are pleased to adopt the elements of the results of the negotiations under Article XXIV:7 of the Agreement, which are set out in two Appendices to this Decision:

- (a) Appendix 1 is comprised of the Decision of the Committee on Government Procurement on Adoption of "The Protocol Amending the Agreement on Government Procurement" ("the Protocol"), which includes the Revised Text of the Agreement and its Appendices; and
- (b) Appendix 2 is comprised of the following Decisions of the Committee:
  - (i) Decision of the Committee on Government Procurement on Notification Requirements under Articles XIX and XXII of the Agreement (Annex A);
  - (ii) Decision of the Committee on Government Procurement on Adoption of Work Programmes (Annex B);
  - (iii) Decision of the Committee on Government Procurement on a Work Programme on SMEs (Annex C);
  - (iv) Decision of the Committee on Government Procurement on a Work Programme on the Collection and Reporting of Statistical Data (Annex D);
  - (v) Decision of the Committee on Government Procurement on a Work Programme on Sustainable Procurement (Annex E);
  - (vi) Decision of the Committee on Government Procurement on a Work Programme on Exclusions and Restrictions in Parties' Annexes (Annex F); and
  - (vii) Decision of the Committee on Government Procurement on a Work Programme on Safety Standards in International Procurement (Annex G).

2. We agree that the Decisions set out in Paragraph 1(b) shall enter into effect at the same time as the Protocol. The Committee at its first meeting after the entry into force of the Protocol shall make a statement confirming that the Decisions have been adopted and entered into effect on the date the Protocol entered into force.

3. We also reiterate the commitment made by our respective Ministers in GPA/112 to seek prompt acceptance and implementation of the Protocol within our respective jurisdictions.

**APPENDIX 1**

**DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT  
ON ADOPTION OF THE TEXT OF "THE PROTOCOL AMENDING THE AGREEMENT  
ON GOVERNMENT PROCUREMENT"**

Decision of 30 March 2012

The Committee on Government Procurement,

*Having regard* to paragraph 9 of Article XXIV of the WTO Agreement on Government Procurement done at Marrakesh on 15 April 1994 ("the 1994 Agreement");

*Having undertaken* further negotiations pursuant to Article XXIV:7(b) and (c) of the 1994 Agreement and reached agreement on amendments to improve the 1994 Agreement;

*Noting* the consensus among the Parties to the 1994 Agreement, all of whom are participating in this Decision, to adopt the text of the Protocol Amending the Agreement on Government Procurement ("the Protocol") attached to this Decision and to submit the Protocol to their respective Governments for acceptance in accordance with their respective internal procedures;

*Considering* that not all the Parties to the 1994 Agreement may be able to conclude their domestic procedures for acceptance of the Protocol by the time the Protocol has entered into force and that therefore, there may be a period when not all the Parties to the 1994 Agreement are Parties to the Protocol;

*Decides* as follows:

1. The text of the Protocol Amending the Agreement on Government Procurement attached to this Decision is hereby adopted, and open for acceptance by Parties to the 1994 Agreement.
2. Pursuant to paragraph 3 of the Protocol and consistent with paragraph 9 of Article XXIV of the 1994 Agreement, the Protocol shall enter into force for those Parties to the 1994 Agreement that have deposited their respective instruments of acceptance thereof, on the 30<sup>th</sup> day following such deposit by two thirds of the Parties to the 1994 Agreement. Thereafter the Protocol shall enter into force for each Party to the 1994 Agreement that has deposited its instrument of acceptance thereof, on the 30<sup>th</sup> day following the date of such deposit.
3. Upon the entry into force of the Protocol,
  - (a) as between a Party to the 1994 Agreement, which is also a Party to the Protocol, and a Party only to the 1994 Agreement, the 1994 Agreement shall apply, including Appendix I of the 1994 Agreement; and
  - (b) a Party that has accepted the Protocol shall only be required to provide access to the procurement that it covers under Appendix I attached to the Protocol to the other Parties that have accepted the Protocol.
4. Any terms of accession to the 1994 Agreement agreed after the date of this Decision, pursuant to paragraph 2 of Article XXIV of the 1994 Agreement, shall provide that, upon entry into force of the Protocol, the acceding WTO Member shall be bound by the Protocol.

## **PROTOCOL AMENDING THE AGREEMENT ON GOVERNMENT PROCUREMENT**

The Parties to the *Agreement on Government Procurement*, done at Marrakesh on 15 April 1994, (hereinafter referred to as "the 1994 Agreement"),

*Having undertaken* further negotiations pursuant to Article XXIV:7(b) and (c) of the 1994 Agreement;

Hereby *agree* as follows:

1. The Preamble, Articles I through XXIV, and Appendices to the 1994 Agreement shall be deleted and replaced by the provisions as set forth in the Annex hereto.
2. This Protocol shall be open for acceptance by the Parties to the 1994 Agreement.
3. This Protocol shall enter into force for those Parties to the 1994 Agreement that have deposited their respective instruments of acceptance of this Protocol, on the 30<sup>th</sup> day following such deposit by two thirds of the Parties to the 1994 Agreement. Thereafter this Protocol shall enter into force for each Party to the 1994 Agreement which has deposited its instrument of acceptance of this Protocol, on the 30<sup>th</sup> day following the date of such deposit.
4. This Protocol shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party to the 1994 Agreement a certified true copy of this Protocol, and a notification of each acceptance thereof.
5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at Geneva this 30th day of March two thousand and twelve in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.

## ANNEX TO THE PROTOCOL AMENDING THE AGREEMENT ON GOVERNMENT PROCUREMENT

### Preamble

The Parties to this Agreement (hereinafter referred to as "the Parties"),

*Recognizing* the need for an effective multilateral framework for government procurement, with a view to achieving greater liberalization and expansion of, and improving the framework for, the conduct of international trade;

*Recognizing* that measures regarding government procurement should not be prepared, adopted or applied so as to afford protection to domestic suppliers, goods or services, or to discriminate among foreign suppliers, goods or services;

*Recognizing* that the integrity and predictability of government procurement systems are integral to the efficient and effective management of public resources, the performance of the Parties' economies and the functioning of the multilateral trading system;

*Recognizing* that the procedural commitments under this Agreement should be sufficiently flexible to accommodate the specific circumstances of each Party;

*Recognizing* the need to take into account the development, financial and trade needs of developing countries, in particular the least developed countries;

*Recognizing* the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption;

*Recognizing* the importance of using, and encouraging the use of, electronic means for procurement covered by this Agreement;

*Desiring* to encourage acceptance of and accession to this Agreement by WTO Members not party to it;

Hereby *agree* as follows:

### Article I      **Definitions**

For purposes of this Agreement:

- (a)      **commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b)      **Committee** means the Committee on Government Procurement established by Article XXI:1;
- (c)      **construction service** means a service that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC);

- (d) **country** includes any separate customs territory that is a Party to this Agreement. In the case of a separate customs territory that is a Party to this Agreement, where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified;
- (e) **days** means calendar days;
- (f) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (g) **in writing** or **written** means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
- (h) **limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (i) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (j) **multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (k) **notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (l) **offset** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- (m) **open tendering** means a procurement method whereby all interested suppliers may submit a tender;
- (n) **person** means a natural person or a juridical person;
- (o) **procuring entity** means an entity covered under a Party's Annex 1, 2 or 3 to Appendix I;
- (p) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (q) **selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (r) **services** includes construction services, unless otherwise specified;
- (s) **standard** means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory.

It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

- (t) **supplier** means a person or group of persons that provides or could provide goods or services; and
- (u) **technical specification** means a tendering requirement that:
  - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
  - (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

## **Article II      Scope and Coverage**

### *Application of Agreement*

1. This Agreement applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Agreement, covered procurement means procurement for governmental purposes:

- (a) of goods, services, or any combination thereof:
  - (i) as specified in each Party's annexes to Appendix I; and
  - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
- (b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;
- (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to Appendix I, at the time of publication of a notice in accordance with Article VII;
- (d) by a procuring entity; and
- (e) that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to Appendix I.

3. Except where provided otherwise in a Party's annexes to Appendix I, this Agreement does not apply to:

- (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

- (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (d) public employment contracts;
- (e) procurement conducted:
  - (i) for the specific purpose of providing international assistance, including development aid;
  - (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
  - (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Agreement.

4. Each Party shall specify the following information in its annexes to Appendix I:

- (a) in Annex 1, the central government entities whose procurement is covered by this Agreement;
- (b) in Annex 2, the sub-central government entities whose procurement is covered by this Agreement;
- (c) in Annex 3, all other entities whose procurement is covered by this Agreement;
- (d) in Annex 4, the goods covered by this Agreement;
- (e) in Annex 5, the services, other than construction services, covered by this Agreement;
- (f) in Annex 6, the construction services covered by this Agreement; and
- (g) in Annex 7, any General Notes.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's annexes to Appendix I to procure in accordance with particular requirements, Article IV shall apply *mutatis mutandis* to such requirements.

#### *Valuation*

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of

totally or partially excluding it from the application of this Agreement; and

- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
  - (i) premiums, fees, commissions and interest; and
  - (ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts"), the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
- (b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- (a) in the case of a fixed-term contract:
  - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
  - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

### **Article III Security and General Exceptions**

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

#### **Article IV      General Principles**

##### *Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to:

- (a) domestic goods, services and suppliers; and
- (b) goods, services and suppliers of any other Party.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

##### *Use of Electronic Means*

3. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

##### *Conduct of Procurement*

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

- (a) is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering;

- (b) avoids conflicts of interest; and
- (c) prevents corrupt practices.

#### *Rules of Origin*

5. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from another Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

#### *Offsets*

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

#### *Measures Not Specific to Procurement*

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

### **Article V      Developing Countries**

1. In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries (collectively referred to hereinafter as "developing countries", unless specifically identified otherwise), recognizing that these may differ significantly from country to country. As provided for in this Article and on request, the Parties shall accord special and differential treatment to:

- (a) least developed countries; and
- (b) any other developing country, where and to the extent that this special and differential treatment meets its development needs.

2. Upon accession by a developing country to this Agreement, each Party shall provide immediately to the goods, services and suppliers of that country the most favourable coverage that the Party provides under its annexes to Appendix I to any other Party to this Agreement, subject to any terms negotiated between the Party and the developing country in order to maintain an appropriate balance of opportunities under this Agreement.

3. Based on its development needs, and with the agreement of the Parties, a developing country may adopt or maintain one or more of the following transitional measures, during a transition period and in accordance with a schedule, set out in its relevant annexes to Appendix I, and applied in a manner that does not discriminate among the other Parties:

- (a) a price preference programme, provided that the programme:
  - (i) provides a preference only for the part of the tender incorporating goods or services originating in the developing country applying the preference or goods or services originating in other developing countries in respect of

which the developing country applying the preference has an obligation to provide national treatment under a preferential agreement, provided that where the other developing country is a Party to this Agreement, such treatment would be subject to any conditions set by the Committee; and

- (ii) is transparent, and the preference and its application in the procurement are clearly described in the notice of intended procurement;
- (b) an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement;
- (c) the phased-in addition of specific entities or sectors; and
- (d) a threshold that is higher than its permanent threshold.

4. In negotiations on accession to this Agreement, the Parties may agree to the delayed application of any specific obligation in this Agreement, other than Article IV:1(b), by the acceding developing country while that country implements the obligation. The implementation period shall be:

- (a) for a least developed country, five years after its accession to this Agreement; and
- (b) for any other developing country, only the period necessary to implement the specific obligation and not to exceed three years.

5. Any developing country that has negotiated an implementation period for an obligation under paragraph 4 shall list in its Annex 7 to Appendix I the agreed implementation period, the specific obligation subject to the implementation period and any interim obligation with which it has agreed to comply during the implementation period.

6. After this Agreement has entered into force for a developing country, the Committee, on request of the developing country, may:

- (a) extend the transition period for a measure adopted or maintained under paragraph 3 or any implementation period negotiated under paragraph 4; or
- (b) approve the adoption of a new transitional measure under paragraph 3, in special circumstances that were unforeseen during the accession process.

7. A developing country that has negotiated a transitional measure under paragraph 3 or 6, an implementation period under paragraph 4 or any extension under paragraph 6 shall take such steps during the transition period or implementation period as may be necessary to ensure that it is in compliance with this Agreement at the end of any such period. The developing country shall promptly notify the Committee of each step.

8. The Parties shall give due consideration to any request by a developing country for technical cooperation and capacity building in relation to that country's accession to, or implementation of, this Agreement.

9. The Committee may develop procedures for the implementation of this Article. Such procedures may include provisions for voting on decisions relating to requests under paragraph 6.

10. The Committee shall review the operation and effectiveness of this Article every five years.

## **Article VI Information on the Procurement System**

1. Each Party shall:
  - (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
  - (b) provide an explanation thereof to any Party, on request.
2. Each Party shall list:
  - (a) in Appendix II, the electronic or paper media in which the Party publishes the information described in paragraph 1;
  - (b) in Appendix III, the electronic or paper media in which the Party publishes the notices required by Articles VII, IX:7 and XVI:2; and
  - (c) in Appendix IV, the website address or addresses where the Party publishes:
    - (i) its procurement statistics pursuant to Article XVI:5; or
    - (ii) its notices concerning awarded contracts pursuant to Article XVI:6.
3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in Appendix II, III or IV.

## **Article VII Notices**

### *Notice of Intended Procurement*

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Appendix III, except in the circumstances described in Article XIII. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice. The notices shall:
  - (a) for procuring entities covered under Annex 1, be accessible by electronic means free of charge through a single point of access, for at least any minimum period of time specified in Appendix III; and
  - (b) for procuring entities covered under Annex 2 or 3, where accessible by electronic means, be provided, at least, through links in a gateway electronic site that is accessible free of charge.

Parties, including their procuring entities covered under Annex 2 or 3, are encouraged to publish their notices by electronic means free of charge through a single point of access.

2. Except as otherwise provided in this Agreement, each notice of intended procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
- (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the time-frame for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- (k) where, pursuant to Article IX, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (l) an indication that the procurement is covered by this Agreement.

*Summary Notice*

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages. The summary notice shall contain at least the following information:

- (a) the subject-matter of the procurement;
- (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

- (c) the address from which documents relating to the procurement may be requested.

*Notice of Planned Procurement*

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Appendix III as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Annex 2 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

**Article VIII Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

- (a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and
- (b) may require relevant prior experience where essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

- (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
- (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

- (f) failure to pay taxes.

## **Article IX Qualification of Suppliers**

### *Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.
2. Each Party shall ensure that:
  - (a) its procuring entities make efforts to minimize differences in their qualification procedures; and
  - (b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.
3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement.

### *Selective Tendering*

4. Where a procuring entity intends to use selective tendering, the entity shall:
  - (a) include in the notice of intended procurement at least the information specified in Article VII:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and
  - (b) provide, by the commencement of the time-period for tendering, at least the information in Article VII:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article XI:3(b).
5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

### *Multi-Use Lists*

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
  - (a) published annually; and
  - (b) where published by electronic means, made available continuously,

in the appropriate medium listed in Appendix III.

8. The notice provided for in paragraph 7 shall include:
- (a) a description of the goods or services, or categories thereof, for which the list may be used;
  - (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;
  - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
  - (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
  - (e) an indication that the list may be used for procurement covered by this Agreement.
9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:
- (a) states the period of validity and that further notices will not be published; and
  - (b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article XI:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

#### *Annex 2 and Annex 3 Entities*

12. A procuring entity covered under Annex 2 or 3 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:
- (a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article VII:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
  - (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VII:2, to the extent such information is available.

13. A procuring entity covered under Annex 2 or 3 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

#### *Information on Procuring Entity Decisions*

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

### **Article X      Technical Specifications and Tender Documentation**

#### *Technical Specifications*

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

*Tender Documentation*

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;
- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;
- (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and
- (h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
- (b) provide, on request, the tender documentation to any interested supplier; and

- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

#### *Modifications*

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

### **Article XI Time-Periods**

#### *General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

#### *Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:

- (a) the procuring entity has published a notice of planned procurement as described in Article VII:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
  - (i) a description of the procurement;
  - (ii) the approximate final dates for the submission of tenders or requests for participation;
  - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
  - (iv) the address from which documents relating to the procurement may be obtained; and
  - (v) as much of the information that is required for the notice of intended procurement under Article VII:2, as is available;
- (b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

8. Where a procuring entity covered under Annex 2 or 3 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

## **Article XII Negotiation**

1. A Party may provide for its procuring entities to conduct negotiations:
  - (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VII:2; or
  - (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
  - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
  - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

## **Article XIII Limited Tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of any other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VII through IX, X (paragraphs 7 through 11), XI, XII, XIV and XV only under any of the following circumstances:

- (a) where:
  - (i) no tenders were submitted or no suppliers requested participation;
  - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
  - (iii) no suppliers satisfied the conditions for participation; or
  - (iv) the tenders submitted have been collusive,

provided that the requirements of the tender documentation are not substantially modified;

- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
  - (i) the requirement is for a work of art;
  - (ii) the protection of patents, copyrights or other exclusive rights; or

- (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest provided that:
  - (i) the contest has been organized in a manner that is consistent with the principles of this Agreement, in particular relating to the publication of a notice of intended procurement; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

#### **Article XIV Electronic Auctions**

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

#### **Article XV Treatment of Tenders and Awarding of Contracts**

##### *Treatment of Tenders*

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

##### *Awarding of Contracts*

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
  - (a) the most advantageous tender; or
  - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Agreement.

## **Article XVI Transparency of Procurement Information**

### *Information Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVII, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

### *Publication of Award Information*

2. Not later than 72 days after the award of each contract covered by this Agreement, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Appendix III. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article XIII, a description of the circumstances justifying the use of limited tendering.

### *Maintenance of Documentation, Reports and Electronic Traceability*

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XIII; and
- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

### *Collection and Reporting of Statistics*

4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Agreement. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

- (a) for Annex 1 procuring entities:
  - (i) the number and total value, for all such entities, of all contracts covered by this Agreement;
  - (ii) the number and total value of all contracts covered by this Agreement awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and
  - (iii) the number and total value of all contracts covered by this Agreement awarded by each such entity under limited tendering;
- (b) for Annex 2 and 3 procuring entities, the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex; and
- (c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.

5. Where a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such statistics.

6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such data.

## **Article XVII Disclosure of Information**

### *Provision of Information to Parties*

1. On request of any other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Agreement, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

### *Non-Disclosure of Information*

2. Notwithstanding any other provision of this Agreement, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Agreement shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

#### **Article XVIII Domestic Review Procedures**

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- (a) a breach of the Agreement; or
- (b) where the supplier does not have a right to challenge directly a breach of the Agreement under the domestic law of a Party, a failure to comply with a Party's measures implementing this Agreement,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

- (b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

- (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
- (b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

## **Article XIX Modifications and Rectifications to Coverage**

### *Notification of Proposed Modification*

1. A Party shall notify the Committee of any proposed rectification, transfer of an entity from one annex to another, withdrawal of an entity or other modification of its annexes to Appendix I (any of which is hereinafter referred to as "modification"). The Party proposing the modification (hereinafter referred to as "modifying Party") shall include in the notification:

- (a) for any proposed withdrawal of an entity from its annexes to Appendix I in exercise of its rights on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence of such elimination; or
- (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided for in this Agreement.

### *Objection to Notification*

2. Any Party whose rights under this Agreement may be affected by a proposed modification notified under paragraph 1 may notify the Committee of any objection to the proposed modification. Such objections shall be made within 45 days from the date of the circulation to the Parties of the notification, and shall set out reasons for the objection.

### *Consultations*

3. The modifying Party and any Party making an objection (hereinafter referred to as "objecting Party") shall make every attempt to resolve the objection through consultations. In such consultations, the modifying and objecting Parties shall consider the proposed modification:

- (a) in the case of a notification under paragraph 1(a), in accordance with any indicative criteria adopted pursuant to paragraph 8(b), indicating the effective elimination of government control or influence over an entity's covered procurement; and
- (b) in the case of a notification under paragraph 1(b), in accordance with any criteria adopted pursuant to paragraph 8(c), relating to the level of compensatory adjustments to be offered for modifications, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement.

### *Revised Modification*

4. Where the modifying Party and any objecting Party resolve the objection through consultations, and the modifying Party revises its proposed modification as a result of those consultations, the modifying Party shall notify the Committee in accordance with paragraph 1, and any such revised modification shall only be effective after fulfilling the requirements of this Article.

### *Implementation of Modifications*

5. A proposed modification shall become effective only where:

- (a) no Party submits to the Committee a written objection to the proposed modification within 45 days from the date of circulation of the notification of the proposed modification under paragraph 1;
- (b) all objecting Parties have notified the Committee that they withdraw their objections to the proposed modification; or
- (c) 150 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification.

### *Withdrawal of Substantially Equivalent Coverage*

6. Where a modification becomes effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage. Notwithstanding Article IV:1(b), a withdrawal pursuant to this paragraph may be implemented solely with respect to the modifying Party. Any objecting Party shall inform the Committee in writing of any such withdrawal at least 30 days before the withdrawal becomes effective. A withdrawal pursuant to this paragraph shall be consistent with any criteria relating to the level of compensatory adjustment adopted by the Committee pursuant to paragraph 8(c).

*Arbitration Procedures to Facilitate Resolution of Objections*

7. Where the Committee has adopted arbitration procedures to facilitate the resolution of objections pursuant to paragraph 8, a modifying or any objecting Party may invoke the arbitration procedures within 120 days of circulation of the notification of the proposed modification:

- (a) Where no Party has invoked the arbitration procedures within the time-period:
  - (i) notwithstanding paragraph 5(c), the proposed modification shall become effective where 130 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification; and
  - (ii) no objecting Party may withdraw coverage pursuant to paragraph 6.
- (b) Where a modifying Party or objecting Party has invoked the arbitration procedures:
  - (i) notwithstanding paragraph 5(c), the proposed modification shall not become effective before the completion of the arbitration procedures;
  - (ii) any objecting Party that intends to enforce a right to compensation, or to withdraw substantially equivalent coverage pursuant to paragraph 6, shall participate in the arbitration proceedings;
  - (iii) a modifying Party should comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c); and
  - (iv) where a modifying Party does not comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage pursuant to paragraph 6, provided that any such withdrawal is consistent with the result of the arbitration procedures.

*Committee Responsibilities*

8. The Committee shall adopt:

- (a) arbitration procedures to facilitate resolution of objections under paragraph 2;
- (b) indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement; and
- (c) criteria for determining the level of compensatory adjustment to be offered for modifications made pursuant to paragraph 1(b) and of substantially equivalent coverage under paragraph 6.

**Article XX Consultations and Dispute Settlement**

1. Each Party shall accord sympathetic consideration to and shall afford adequate opportunity for consultation regarding any representation made by another Party with respect to any matter affecting the operation of this Agreement.

2. Where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of:

- (a) the failure of another Party or Parties to carry out its obligations under this Agreement; or
- (b) the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement,

it may, with a view to reaching a mutually satisfactory solution to the matter, have recourse to the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as "the Dispute Settlement Understanding").

3. The Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, with the exception that, notwithstanding paragraph 3 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in Appendix 1 of the Dispute Settlement Understanding.

## **Article XXI Institutions**

### *Committee on Government Procurement*

1. There shall be a Committee on Government Procurement composed of representatives from each of the Parties. This Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish working parties or other subsidiary bodies that shall carry out such functions as may be given to them by the Committee.

3. The Committee shall annually:

- (a) review the implementation and operation of this Agreement; and
- (b) inform the General Council of its activities, pursuant to Article IV:8 of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and of developments relating to the implementation and operation of this Agreement.

### *Observers*

4. Any WTO Member that is not a Party to this Agreement shall be entitled to participate in the Committee as an observer by submitting a written notice to the Committee. Any WTO observer may submit a written request to the Committee to participate in the Committee as an observer, and may be accorded observer status by the Committee.

## **Article XXII Final Provisions**

### *Acceptance and Entry into Force*

1. This Agreement shall enter into force on 1 January 1996 for those governments<sup>1</sup> whose agreed coverage is contained in the Annexes of Appendix I of this Agreement, and which have, by signature, accepted the Agreement on 15 April 1994, or have, by that date, signed the Agreement subject to ratification and have subsequently ratified the Agreement before 1 January 1996.

### *Accession*

2. Any Member of the WTO may accede to this Agreement on terms to be agreed between that Member and the Parties, with such terms stated in a decision of the Committee. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for a Member acceding to it on the 30<sup>th</sup> day following the deposit of its instrument of accession.

### *Reservations*

3. No Party may enter a reservation in respect of any provision of this Agreement.

### *Domestic Legislation*

4. Each Party shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by its procuring entities, with the provisions of this Agreement.

5. Each Party shall inform the Committee of any changes to its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

### *Future Negotiations and Future Work Programmes*

6. Each Party shall seek to avoid introducing or continuing discriminatory measures that distort open procurement.

7. Not later than the end of three years from the date of entry into force of the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012, and periodically thereafter, the Parties shall undertake further negotiations, with a view to improving this Agreement, progressively reducing and eliminating discriminatory measures, and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, taking into consideration the needs of developing countries.

8. (a) The Committee shall undertake further work to facilitate the implementation of this Agreement and the negotiations provided for in paragraph 7, through the adoption of work programmes for the following items:

- (i) the treatment of small and medium-sized enterprises;
- (ii) the collection and dissemination of statistical data;

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<sup>1</sup> For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Union.

- (iii) the treatment of sustainable procurement;
  - (iv) exclusions and restrictions in Parties' Annexes; and
  - (v) safety standards in international procurement.
- (b) The Committee:
- (i) may adopt a decision that contains a list of work programmes on additional items, which may be reviewed and updated periodically; and
  - (ii) shall adopt a decision setting out the work to be undertaken on each particular work programme under subparagraph (a) and any work programme adopted under subparagraph (b)(i).

9. Following the conclusion of the work programme to harmonize rules of origin for goods being undertaken under the Agreement on Rules of Origin in Annex 1A to the WTO Agreement and negotiations regarding trade in services, the Parties shall take the results of that work programme and those negotiations into account in amending Article IV:5, as appropriate.

10. Not later than the end of the fifth year from the date of entry into force of the Protocol Amending the Agreement on Government Procurement, the Committee shall examine the applicability of Article XX:2(b).

#### *Amendments*

11. The Parties may amend this Agreement. A decision to adopt an amendment and to submit it for acceptance by the Parties shall be taken by consensus. An amendment shall enter into force:

- (a) except as provided for in subparagraph (b), in respect of those Parties that accept it, upon acceptance by two thirds of the Parties and thereafter for each other Party upon acceptance by it;
- (b) for all Parties upon acceptance by two thirds of the Parties if it is an amendment that the Committee, by consensus, has determined to be of a nature that would not alter the rights and obligations of the Parties.

#### *Withdrawal*

12. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date the Director-General of the WTO receives written notice of the withdrawal. Any Party may, upon such notification, request an immediate meeting of the Committee.

13. Where a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect on the date on which it ceases to be a Member of the WTO.

#### *Non-application of this Agreement between Particular Parties*

14. This Agreement shall not apply as between any two Parties where either Party, at the time either Party accepts or accedes to this Agreement, does not consent to such application.

*Appendices*

15. The Appendices to this Agreement constitute an integral part thereof.

*Secretariat*

16. This Agreement shall be serviced by the WTO Secretariat.

*Deposit*

17. This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to Article XIX and of each amendment pursuant to paragraph 11, and a notification of each accession thereto pursuant to paragraph 2 and of each withdrawal pursuant to paragraphs 12 or 13.

*Registration*

18. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

**APPENDIX I\***

**FINAL APPENDIX I OFFERS OF THE GPA PARTIES IN THE  
GPA COVERAGE NEGOTIATIONS<sup>1</sup>**

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\* Available on WTO website.

<sup>1</sup> In original language only./En langue originale seulement./En idioma original solamente.

**APPENDIX II**

ELECTRONIC OR PAPER MEDIA UTILIZED BY PARTIES FOR THE PUBLICATION OF LAWS, REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF GENERAL APPLICATION, STANDARD CONTRACT CLAUSES, AND PROCEDURES REGARDING GOVERNMENT PROCUREMENT COVERED BY THIS AGREEMENT PURSUANT TO ARTICLE VI

[TO BE PROVIDED BY EACH PARTY AT, OR PRIOR TO, THE TIME OF THE DEPOSIT OF ITS INSTRUMENT OF ACCEPTANCE]

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**APPENDIX III**

ELECTRONIC OR PAPER MEDIA UTILIZED BY PARTIES FOR THE PUBLICATION OF NOTICES REQUIRED BY ARTICLES VII, IX:7 AND XVI:2 PURSUANT TO ARTICLE VI

[TO BE PROVIDED BY EACH PARTY AT, OR PRIOR TO, THE TIME OF THE DEPOSIT OF ITS INSTRUMENT OF ACCEPTANCE]

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**APPENDIX IV**

WEBSITE ADDRESS OR ADDRESSES WHERE PARTIES PUBLISH PROCUREMENT STATISTICS PURSUANT TO ARTICLE XVI:5 AND NOTICES CONCERNING AWARDED CONTRACTS PURSUANT TO ARTICLE XVI:6

[TO BE PROVIDED BY EACH PARTY AT, OR PRIOR TO, THE TIME OF THE DEPOSIT OF ITS INSTRUMENT OF ACCEPTANCE]

**APPENDIX 2**

ANNEX A

**DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON  
NOTIFICATION REQUIREMENTS UNDER ARTICLES XIX AND XXII  
OF THE AGREEMENT**

Decision of 30 March 2012

The Committee on Government Procurement,

*Considering* the importance of transparency of laws and regulations relevant to this Agreement, including changes thereto as required by Article XXII:5 of the Agreement;

*Considering* also the importance of maintaining accurate lists of entities covered under a Party's Annexes to Appendix I of the Agreement, in accordance with Article XIX of the Agreement;

*Acknowledging* the challenges to Parties of submitting timely notifications to the Committee of changes to their laws and regulations relevant to the Agreement, as required by Article XXII:5 of the Agreement, and of proposed rectifications to its Annexes to Appendix I, as required by Article XIX:1 of the Agreement;

*Considering* that the provisions of Article XIX of the Agreement distinguish between notifications of proposed rectifications that do not change the mutually agreed coverage provided for in the Agreement and other types of proposed modifications of its Annexes to Appendix I;

*Recognizing* that technological changes have allowed many Parties to make use of electronic means to provide information on their government procurement regimes and to notify Parties of changes to that regime;

*Hereby decides* as follows:

Annual Notifications of Changes in Laws and Regulations

1. Where a Party maintains officially designated electronic media that provide links to its current laws and regulations relevant to this Agreement and its laws and regulations are available in one of the WTO official languages, and such media are listed in Appendix II, the Party may fulfil the requirement in Article XXII:5 by notifying the Committee annually, at the end of the year, of any changes unless such changes are substantive, that is, they may affect the Party's obligations under the Agreement; and in such cases, a notification shall be made immediately.
2. The Parties shall have an opportunity to discuss the annual notification of a Party during the first informal meeting of the Committee in the following year.

Proposed Rectifications of a Party's Annexes to Appendix I

3. The following changes to a Party's Annexes to Appendix I shall be considered a rectification under Article XIX of the Agreement:
  - (a) a change in the name of an entity;
  - (b) merger of two or more entities listed within an Annex; and

- (c) the separation of an entity listed in an Annex into two or more entities that are all added to the entities listed in the same Annex.

4. In the case of proposed rectifications to a Party's Annexes under Appendix I covered under paragraph 3, the Party shall notify the Committee every two years, commencing with the entry into force of the Protocol of Amendment to the Existing (1994) Agreement.

5. A Party may notify the Committee of an objection to a proposed rectification within 45 days from the date of the circulation to the Parties of the notification. In accordance with Article XIX:2, where a Party submits an objection, it shall set out the reasons for the objection, including the reasons why it believes the proposed rectification would affect the mutually agreed coverage under the Agreement and therefore the proposed rectification is not subject to paragraph 3. If there is no written objection, the proposed rectifications become effective 45 days after the circulation of the notification, as provided for in Article XIX:5(a).

6. Within four years of the adoption of this Decision, the Parties shall review its operation and effectiveness, and make any necessary adjustments.

**ANNEX B**

**DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT  
ON ADOPTION OF WORK PROGRAMMES**

Decision of 30 March 2012

The Committee on Government Procurement,

*Noting* that pursuant to Article XXII:8(b), the Committee may adopt a decision listing additional work programmes, which the Committee shall undertake to facilitate the implementation of the Agreement and the negotiations provided for in Article XXII:7 of the Agreement;

Decides as follows:

1. The following work programmes are added to the list of work programmes on which the Committee shall conduct future work:
  - (a) a review of the use, transparency and the legal frameworks of public-private partnerships, and their relationship to covered procurement;
  - (b) the advantages and disadvantages of developing common nomenclature for goods and services; and
  - (c) the advantages and disadvantages of developing standardized notices.
2. The Committee shall develop the scope and timetable for each such work programme at a later date.
3. The Committee shall periodically review this list of programmes and make appropriate adjustments.

## ANNEX C

### DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON SMEs

Decision of 30 March 2012

The Committee on Government Procurement,

*Noting* that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on small and medium-sized enterprises (SMEs);

*Recognizing* the importance of facilitating the participation of SMEs in government procurement; and

*Recognizing* that Parties have agreed in Article XXII:6 to seek to avoid introducing or continuing discriminatory measures that distort open procurement;

*Hereby* adopts the following work programme with respect to SMEs:

1. **Initiation of Work Programme on SMEs:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on SMEs. The Committee shall review measures and policies for SMEs that the Parties use to assist, promote, encourage, or facilitate participation by SMEs in government procurement and prepare a report of the results of the review.

2. **Avoidance of Discriminatory SME Measures:** The Parties shall avoid introducing discriminatory measures that favour only domestic SMEs and shall discourage the introduction of such measures and policies by acceding Parties.

3. **Transparency Programme and SME Survey**

3.1 **Transparency Programme**

Upon entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Parties that maintain in their Appendix I specific provisions on SMEs, including set-asides, shall notify the Committee of such measures and policies. The notification should include a full description of the measures and policies, their relevant legal framework together with their operation and the value of the procurement subject to such measures. In addition, those Parties shall notify the Committee of any substantial change in such measures and policies, in accordance with Article XXII:5 of the Agreement.

3.2 **SME Survey**

(a) The Committee shall survey the Parties, through the use of a questionnaire seeking information regarding the measures and policies used to assist, promote, encourage, or facilitate participation by SMEs in government procurement. The questionnaire should seek information from each Party regarding:

- (i) a description of the measures and policies used by the Party, including the economic, social, and other goals of the measures and policies and how they are administered;
  - (ii) how the Party defines SMEs;
  - (iii) the extent to which the Party has specialized agencies or institutions to assist SMEs with respect to government procurement;
  - (iv) the level of participation in government procurement in terms of both value and number of contracts awarded to SMEs;
  - (v) a description of SME subcontracting measures and policies, including subcontracting goals, guarantees, and incentives;
  - (vi) facilitation of SMEs participation in joint bidding (with other large or small suppliers);
  - (vii) measures and policies focused on providing opportunities for SMEs to participate in government procurement (such as enhanced transparency and availability of government procurement information to SMEs; simplifying qualifications for participation in tendering; reducing contract sizes; and ensuring timely payments for deliveries of goods and services); and
  - (viii) the use of government procurement measures and policies to stimulate SME innovation.
- (b) **Compilation of SME Survey by WTO Secretariat:** The WTO Secretariat shall fix a deadline for the transmission of the responses to the questionnaire by all Parties to the WTO Secretariat. Upon receipt of the responses, the Secretariat shall prepare a compilation of the responses and circulate the responses and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding responses.
- (c) **Exchanges among Parties on Responses to SME Questionnaires:** On the basis of the document prepared by the WTO Secretariat, the Committee shall establish a period for the exchange of questions, requests for additional information, and comments on the responses of the other Parties.

#### **4. Assessment of the Results of SME Survey and Implementation of Its Outcome**

##### **4.1 Assessment of the Results of SME Survey**

The Committee shall identify the measures and policies that it considers to be best practices for promoting and facilitating the participation of SMEs of the Parties in government procurement and prepare a report that includes the best practices of the measures and policies and a list of the other measures.

##### **4.2 Implementation of the Outcome of the SME Survey**

- (a) The Parties shall promote the adoption of the best practices identified in the assessment of the survey to encourage and facilitate participation of SMEs of the Parties in government procurement.

- (b) With respect to other measures, the Committee shall encourage the Parties that maintain such measures to review them with a view to eliminating them or applying them to the SMEs of the other Parties. These Parties shall inform the Committee about the outcome of the review.
- (c) The Parties that maintain other measures shall include the value of the procurement subject to such measures in the statistics that they submit to the Committee pursuant to Article XVI:4 of the Agreement.
- (d) Parties may request the inclusion of such other measures in future negotiations under Article XXII:7 of the Agreement, and such requests shall be favorably considered by the Party maintaining such measures.

## 5. **Review**

Two years after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall review the effect of the best practices on expanding the participation of SMEs of the Parties in government procurement, and consider whether other practices would further enhance participation by SMEs. It may also consider the effect of other measures on the participation by SMEs of the other Parties in the government procurement of the Parties maintaining such measures.

## ANNEX D

### DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON THE COLLECTION AND REPORTING OF STATISTICAL DATA

Decision of 30 March 2012

The Committee on Government Procurement,

*Noting* that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on the collection and reporting of statistical data;

*Considering* the importance of the collection and reporting of statistical data, as required by Article XVI:4 of the Agreement on Government Procurement (Agreement), in providing transparency of procurement covered under the Agreement;

*Considering* that statistical data that illustrate the extent to which the Parties procure goods and services covered by the Agreement from other Parties to the Agreement could be an important tool in encouraging other WTO Members to accede to the Agreement;

*Recognizing* the overall challenges of Parties to the Agreement in collecting data in the area of government procurement and in particular in determining the country of origin of the goods and services that they procure under the Agreement; and

*Recognizing* that Parties use different methodologies in their collection of statistics to meet the reporting requirements in Article XVI:4 of the Agreement, and may use different methodologies in the collection of data for central government entities and sub-central government entities;

*Hereby* adopts the following work programme with respect to the collection and reporting of statistical data:

1. **Initiation of Work Programme on the Collection and Reporting of Statistical Data:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on the Collection and Reporting of Statistical Data. The Committee shall review the collection and reporting of statistical data by the Parties, consider the potential of harmonizing them, and prepare a report of the results.

2. **Submission of Data by the Parties:** The Committee shall agree on a date by which each Party shall submit to the Committee the following information with respect to statistical data on procurement covered by the Agreement:

- (a) a description of the methodology that it uses to collect, evaluate, and report statistical data, above and below Agreement thresholds and for procurement described in paragraph 4.2(c) of the SME Work Programme, including whether it bases the data on procurement covered by the Agreement on the full value of awarded contracts or the total expenditure for procurement in a given time-frame;
- (b) whether the statistical data that it collects includes the country of origin of the goods or services that are procured, and if so, how it determines or estimates the country of origin, and the technical impediments in collecting country of origin data;

- (c) an explanation of the classifications used in statistical reports; and
  - (d) a description of the sources of data.
3. **Compilation of Submissions:** The Secretariat shall prepare a compilation of the submissions and circulate the submissions and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding submissions.
4. **Recommendations:** The Committee shall review the submissions of the Parties and make recommendations on:
- (a) whether the Parties should adopt a common method for collection of statistics;
  - (b) whether the Parties are able to standardize the classifications in the statistical data reported to the Committee;
  - (c) means for facilitating the collection of country of origin of goods and services covered by the Agreement; and
  - (d) other technical issues in government procurement data reporting raised by any Party.
5. The Committee shall develop, as appropriate, recommendations relating to:
- (a) potential harmonization of statistical reporting with the aim of including government procurement statistics in the annual reporting of the WTO;
  - (b) the Secretariat's provision of technical assistance relating to statistical reporting to WTO Members that are in the process of acceding to the Agreement; and
  - (c) means of ensuring that WTO Members that are acceding to the Agreement have the appropriate means for complying with statistical data collection and reporting requirements.
6. **Analysis of data:** The Committee shall consider how the statistical data submitted to the Secretariat annually by Parties may be used for further analyses to facilitate greater understanding of the economic importance of the Agreement, including the impact of thresholds on the performance of the Agreement.

## ANNEX E

### DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON SUSTAINABLE PROCUREMENT

Decision of 30 March 2012

The Committee on Government Procurement,

*Noting* that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on sustainable procurement;

*Recognizing* that several Parties have developed national and sub-national sustainable procurement policies;

*Affirming* the importance of ensuring that all procurement is undertaken in accordance with the principles of non-discrimination and transparency as reflected in the Agreement;

*Hereby* adopts a work programme with respect to sustainable procurement:

1. **Initiation of Work Programme on Sustainable Procurement:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Sustainable Procurement.
2. The work programme shall examine topics that include:
  - (a) the objectives of sustainable procurement;
  - (b) the ways in which the concept of sustainable procurement is integrated into national and sub-national procurement policies;
  - (c) the ways in which sustainable procurement can be practiced in a manner consistent with the principle of "best value for money"; and
  - (d) the ways in which sustainable procurement can be practiced in a manner consistent with Parties' international trade obligations.
3. The Committee shall identify measures and policies that it considers to be sustainable procurement practiced in a manner consistent with the principle of "best value for money" and with Parties' international trade obligations and prepare a report that lists the best practices of the measures and policies.

## ANNEX F

### DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON EXCLUSIONS AND RESTRICTIONS IN PARTIES' ANNEXES

Decision of 30 March 2012

The Committee on Government Procurement,

*Noting* that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on exclusions and restrictions in Parties' Annexes;

*Recognizing* that Parties have included exclusions and restrictions in their respective Annexes to Appendix I of the Agreement (exclusions and restrictions);

*Recognizing* the importance of transparent measures regarding government procurement; and

*Considering* the importance of progressively reducing and eliminating exclusions and restrictions in future negotiations provided for in Article XXII:7 of the Agreement;

*Hereby* adopts the following work programme with respect to exclusions and restrictions in Parties' Annexes:

1. **Initiation of Work Programme on Exclusions and Restrictions:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Exclusions and Restrictions in Parties' Annexes with the objectives of:
  - (a) enhancing transparency with respect to the scope and effect of exclusions and restrictions specified in Parties' Annexes to Appendix I to the Agreement; and
  - (b) providing information relating to exclusions and restrictions to facilitate negotiations provided for in Article XXII:7 of the Agreement.
2. **Transparency Programme:** Each Party shall submit to the Committee, no later than six months following the initiation of the Work Programme, a list of:
  - (a) country specific exclusions it maintains in its Annexes to Appendix I to the Agreement; and
  - (b) any other exclusion or restriction specified in its Annexes to Appendix I to the Agreement that falls within the scope of Article II:2(e) of the Agreement, except for exclusions or restrictions under review in the Work Programme on SMEs or where a Party has a commitment to phase out an exclusion or restriction in an Annex to Appendix I to the Agreement.
3. **Compilation of Submissions:** The Secretariat shall prepare a compilation of the submissions and circulate the submissions and the compilation to the Parties. The Secretariat shall include a list of Parties with outstanding submissions.

4. **Requests for Additional Information:** Any Party may periodically request additional information concerning any exclusion or restriction within the scope of paragraph 2(a) and (b), including measures that fall within the scope of any exclusion or restriction, their legal framework, implementation policies and practices and the value of the procurement subject to such measures. A Party receiving such a request shall promptly provide the requested information.
5. **Compilation of Additional Information:** The Secretariat shall prepare a compilation of the additional information in respect of any Party and shall circulate it to the Parties.
6. **Review by the Committee:** At the annual meeting provided for in Article XXI:3(a) of the Agreement, the Committee shall review the information submitted by Parties with the view to determining whether it provides:
  - (a) the fullest possible degree of transparency with respect to the exclusions and restrictions specified in Parties' Annexes to Appendix I to the Agreement; and
  - (b) satisfactory information to facilitate the negotiations provided for in Article XXII:7 of the Agreement.
7. **New Party Acceding to the Agreement:** A new Party that accedes to the Agreement shall submit to the Committee the list in paragraph 2 within six months of its accession.

## ANNEX G

### DECISION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT ON A WORK PROGRAMME ON SAFETY STANDARDS IN INTERNATIONAL PROCUREMENT

Decision of 30 March 2012

The Committee on Government Procurement,

*Noting* that Article XXII:8(a) of the Agreement on Government Procurement (Agreement) provides that the Parties shall adopt and periodically review a work programme, including a work programme on safety standards in international procurement;

*Noting* that Article X:1 of the Agreement provides that procuring entities "shall not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to international trade";

*Noting* that Article III:2(a) of the Agreement does not prevent Parties from imposing or enforcing measures necessary to protect of public safety, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustified discrimination or a disguised restriction on international trade;

*Recognizing* the need for a balanced approach between public safety and unnecessary obstacles to international trade;

*Recognizing* that diverging practices among the Parties as regards public safety may have an adverse effect on the performance of the Agreement;

*Hereby* adopts the following work programme with respect to safety standards:

1. **Initiation of Work Programme on Safety Standards in International Procurement:** At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Safety Standards in International Procurement.
  2. The Work Programme shall examine topics with the view to sharing best practices on items that include:
    - (a) The manner in which public safety concerns are addressed in legislation, regulations and practices of the Parties and guidelines relating to the implementation of the Agreement by procuring entities;
    - (b) The relationship between the technical specifications provisions in Article X and protection of public safety in Article III of the Agreement and in the Parties' Annexes to Appendix 1;
    - (c) The best practices that may be adopted to protect public safety in light of the provisions on technical specifications and tender documentation in Article X.
  3. The Committee shall develop the scope and timetable for the examination of each topic identified in paragraph 2. The Committee shall prepare a report that summarizes the outcome of its examination of these issues and lists the best practices identified in paragraph 2(c).
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**3.**

## **ASSESSING MARKET ACCESS OPPORTUNITIES OF POTENTIAL INTEREST TO SUPPLIERS OF AN ACCEDING WTO MEMBER TO GPA PARTIES' COVERED PROCUREMENT MARKETS\***

This handout provides information on potential export market opportunities that might be of interest to suppliers of a WTO Member that decides to join the WTO Agreement on Government Procurement (GPA). Based on the market access opportunities in three GPA Parties (i.e. the EU, Japan and the US), it focuses on potential opportunities in thirteen specific sectors: namely: (i) construction services; (ii) pharmaceutical products and health services; and procurement by health-related entities; (iii) computer and related services; (iv) telecommunication services; (v) chemical products; (vi) fuels and petroleum products; (vii) machinery and associated products; (viii) transport equipment; (ix) textiles, clothing and footwear; (x) plastic and rubber products; (xi) metal and associated products; (xii) mineral products; and (xiii) wood products.

Needless to say, the sectors noted above are not at all exhaustive of the market access opportunities in the EU, Japan and the US. These have been highlighted only to promote discussion, **and many other potential opportunities may also be considered.** To facilitate this, the full text of all existing GPA Parties' schedules may be accessed at [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

The information below is derived **entirely from public domain sources.** In particular, all the information below can be verified from the GPA Parties' schedules and statistical reports, which are available at the above-mentioned WTO website.

As a further point of reference, the total value of existing market access opportunities under the GPA has been estimated at around **\$US 1.6 trillion** in 2008.<sup>1</sup> According to statistical reports submitted by GPA Parties, the EU<sup>2</sup> and the US<sup>3</sup> shared approximately 75 per cent of the total value of existing market access opportunities under the GPA, i.e. **\$US 1.2 trillion.** Additional statistical information on the size of covered procurement markets is also available at the above-mentioned WTO website.

To highlight a key finding, and according to the sources noted above, the total value of the possible market access opportunities in the EU, Japan, and the US, in 13 specific sectors of potential interest to GPA suppliers is estimated at around **\$US 686 billion** (see Table I below).<sup>4</sup> Needless to say, these market access opportunities are conditional on the capacity of a Party's suppliers to compete with suppliers from other GPA Parties. **Nonetheless, every one per cent success rate for a WTO Member that decides to join the GPA would translate into approximately \$US 6.86 billion in annual trade gains.** As one indication of the value of such estimates, an official of Chinese Taipei, which joined the GPA only in July 2009, reported that local companies had already secured foreign procurement contracts worth approximately \$US 491 million at the end of 2010.<sup>5</sup>

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**\* This handout has been prepared by the WTO Secretariat for expository purposes only. It has no official status, and is not intended for use outside of the Secretariat's technical assistance workshops.**

<sup>1</sup> Office of the United States Trade Representative (USTR), "*The WTO Government Procurement Agreement: A Tremendous Opportunity for China*", available at <http://shenyang.usembassy-china.org.cn/wto-gpa.html>.

<sup>2</sup> GPA/94/Add.4, dated 15 July 2010.

<sup>3</sup> GPA/102/Add.3, dated 15 July 2010.

<sup>4</sup> It should be emphasized that the methodologies used by the European Union, Japan, and the United States in their statistical reports to derive their respective estimates **may not be directly comparable in all respects. In this handout, these estimates are given equal weight as proxies for the likely magnitude of the potential market access opportunities for suppliers of non-GPA Parties in the government procurement markets of GPA Parties. While such information undeniably has many limitations, it could, nevertheless, be very useful to individual WTO Members in assessing their potential interests in the Agreement.**

<sup>5</sup> FocusTaiwan (2011), "*Taiwan's accession to WTO GPA expected to help local businesses*", 14 July, available at [http://focustaiwan.tw/ShowNews/WebNews\\_Detail.aspx?Type=aECO&ID=201107140035](http://focustaiwan.tw/ShowNews/WebNews_Detail.aspx?Type=aECO&ID=201107140035).

It should also be noted that the information summarized below is based on the existing commitments as at the end of September 2011. In addition, as a result of the conclusion of the GPA coverage negotiations reached in March 2012, new additional market access opportunities worth between **\$US 80 and 100 billion** will become available under the GPA with the entry into force of the revised Agreement.

In addition, it has been estimated that the total value of additional market access opportunities that would result from GPA accession by a number of WTO Members is in the range of **\$US 380-970 billion** annually.<sup>6</sup> In particular, the accession of the five "BRICS" countries – Brazil, China, India, Russia and South Africa – would, by itself, add in the range of **\$US 233-596 billion** annually.<sup>7</sup>

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<sup>6</sup> See Robert D. Anderson, Philippe Pelletier, Kodjo Osei-Lah and Anna Caroline Müller, "Assessing the Value of Future Accessions to the WTO Agreement on Government Procurement (GPA): Some New Data Sources, Provisional Estimates, and An Evaluative Framework for Individual WTO Members Considering Accession" (WTO Staff Working Paper ERSD-2011-15, 6 October 2011), available at [http://www.wto.org/english/res\\_e/reser\\_e/ersd201115\\_e.htm](http://www.wto.org/english/res_e/reser_e/ersd201115_e.htm).

<sup>7</sup> It should be emphasized that, of the BRICS economies, only one (China) currently is actively seeking accession to the GPA. Russia has a commitment, in its 2011 WTO Accession Protocol, to eventually seek GPA accession. See WT/ACC/RUS/70 – WT/MIN(11)/2, dated 17 November 2011, paragraphs 1142-1143. The others were included in the analysis for illustrative purposes only, with no implication that they eventually will or should join the Agreement - a choice which is in their own hands.

**TABLE I - MARKET ACCESS OPPORTUNITIES OF POTENTIAL INTEREST TO SUPPLIERS OF AN ACCEDING WTO MEMBER IN GPA PARTIES' GOVERNMENT PROCUREMENT MARKETS<sup>8</sup>**

<b>Parties</b> <b>Specific Sectors</b>	<b>European Union (2007)<sup>9</sup></b> <i>(for <u>all</u> covered gov. entities)</i> (€1=\$US 1.3705)	<b>Japan (2008)<sup>10</sup></b> <i>(except otherwise specified, for <u>central gov. entities only</u>)</i>	<b>United States (2008)<sup>11</sup></b> <i>(except otherwise specified, for the US Department of Defence (DOD) <u>only</u>)</i>	<b>TOTAL</b>
<b>Construction Services</b>	<b>\$US 125.7 billion</b>	<b>\$US 11 billion</b> <i>(central and sub-central gov. entities only)</i>	<b>\$US 287 billion<sup>12</sup></b> <i>(central gov. entities only)</i>	<b>\$US 423.7 billion</b>
<b>(i) Pharmaceutical Products and Health Services; and (ii) procurement by health-related entities</b>	<b>\$US 15.1 billion</b>	<b>\$US 1.46 billion</b>	<b>\$US 120 billion<sup>13</sup></b>	<b>\$US 136.56 billion</b>
<b>Computer and Related Services</b>	<b>\$US 46.5 billion</b>	<b>\$US 2.1 billion</b>	<b>\$US 1.6 billion</b>	<b>\$US 54.83 billion</b>
<b>Telecommunication Services</b>	<b>\$US 4.1 billion</b>	<b>\$US 531 million</b>		
<b>Chemical Products</b>	<b>\$US 21 billion</b>	<b>\$US 7.2 million</b>	<b>\$US 2.24 billion</b>	<b>\$US 23.25 billion</b>
<b>Fuels and Petroleum Products</b>	<b>\$US 4.5 billion</b>	-	<b>\$US 12.3 billion</b>	<b>\$US 16.8 billion</b>
<b>Machinery and Associated Products</b>	<b>\$US 14 billion</b>	<b>\$US 329 million</b>	<b>\$US 518 million</b>	<b>\$US 14.85 billion</b>
<b>Transport Equipment</b>	<b>\$US 9.6 billion</b>	-	-	<b>\$US 9.6 billion</b>
<b>Textile, Clothing and Footwear</b>	<b>\$US 4.4 billion</b>	<b>\$US 19 million</b>	-	<b>\$US 4.42 billion</b>
<b>Plastic and Rubber Products</b>	<b>\$US 903 million</b>	<b>\$US 3 million</b>	<b>\$US 53 million</b>	<b>\$US 959 million</b>
<b>Metal and Associated Products</b>	<b>\$US 766 million</b>	<b>\$US 18 million</b>	-	<b>\$US 784 million</b>
<b>Mineral Products</b>	<b>\$US 145 million</b>	<b>\$US 129 million</b>	<b>\$US 11 million</b>	<b>\$US 285 million</b>
<b>Wood Products</b>	<b>\$US 195 million</b>	<b>\$US 62 million</b>	-	<b>\$US 257 million</b>
<b>TOTAL</b>	<b>\$US 246.91 billion</b>	<b>\$US 15.66 billion</b>	<b>\$US 423.72 billion</b>	<b><u>\$US 686.3 billion</u></b>

<sup>8</sup> In this Table, where the value of a specific sector has not been clearly identified in a Party's statistical report, the entry has been left blank. This does not necessary mean that such Party does not cover the specified sector.

<sup>9</sup> GPA/94/Add.4, dated 15 July 2010. The exchange rate of €1=\$US 1.3705 applied in this handout is taken from the 2007 EU statistical report (GPA/94/Add.4, dated 15 July 2010).

<sup>10</sup> GPA/102/Add.2, dated 29 January 2010. The reported value was expressed Special Drawing Rights (SDRs) and has been converted to US dollars. The estimate may be affected by variations in exchange rates and related problems of conversion.

<sup>11</sup> GPA/102/Add.3 of 15 July 2010.

<sup>12</sup> This comprises total above threshold procurement at the Annex 1 level, including limited tendering (Art. XV), which is reported on separately.

<sup>13</sup> The US has reported in its statistical reports that the (total) general expenditures, by function, of the 37 States that it covers under the GPA in 2008 were \$US 40 billion for hospitals, and \$US 50 billion for health. Similarly, the value of goods/services covered by the GPA and procured by the US Department of Health and Human Services in 2008 was estimated at around \$US 30 billion.

## I. CONSTRUCTION SERVICES

### (a) Coverage

Construction services (CPC 51) are fully or substantially covered by **all** Parties.

### (b) Value

- The **US** has reported in its statistical reports that the value of construction services above threshold procured by its covered *central* government entities in 2008 was estimated at around **\$US 287 billion**.<sup>14</sup>
- The **EU** has reported that the value of construction services contracts above thresholds awarded by EU *covered government entities* was estimated at **€91.7 billion (\$US 125.7 billion)** in 2007.<sup>9</sup>
- **Japan** has reported that its covered *central and sub-central* government entities procured approximately **\$US 11 billion** (above-threshold procurement) worth of construction services in 2008.<sup>10</sup>

## II. PHARMACEUTICAL PRODUCTS AND HEALTH SERVICES; AND PROCUREMENT BY HEALTH-RELATED ENTITIES

### (a) Coverage

**Goods:** Pharmaceutical products are generally considered to be *goods*; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.<sup>15</sup> None of the GPA Parties currently excludes pharmaceutical products except Israel, which expressly excludes nine types of goods procured by its Ministry of Health.<sup>16</sup>

**Services:** The United States currently covers *health related and social services*.

**Entities:** Almost all Parties expressly cover health-related entities at the central government level (Annex 1), and the majority of Parties with sub-central government level (Annex 2) either covers such entities or does not expressly exclude them (see Table III below). Three Parties also cover other types of health-related government entities (e.g. hospitals).

### (b) Value

- The US has reported in its statistical reports that the value of goods/services above threshold procured by the US Department of Health and Human Services in 2008 was estimated at around **\$US 30 Billion**. In addition, the (total) general expenditures, by

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<sup>14</sup> GPA/102/Add.3, dated 15 July 2010. This comprises total above threshold procurement at the Annex 1 level, including limited tendering (Article XV), which is reported on separately.

<sup>15</sup> **N.B.:** It should be emphasized that this handout focuses on the market access opportunities available under the GPA; it does not consider barriers to market access that could arise outside the scope of the GPA (for example, relating to the rights arising under intellectual property legislation).

<sup>16</sup> Insulin and infusion pumps, audiometers, medical dressings (bandages, adhesive tapes excluding gauze bandages and gauze pads), intravenous solution, administration sets for transfusions, scalp vein sets, hemi-dialysis and blood lines, blood packs, and syringe needles.

function, of the US' covered States (Annex 2) were estimated in 2008 at **\$US 40 Billion** for hospitals, and **\$US 50 Billion** for health.<sup>11</sup>

- The EU has reported in its statistical report for 2007 that EU covered entities procured an estimated **€ 11 Billion (\$US 15.1 billion)** (above-threshold procurement) of medical and laboratory devices, optical and precision devices, watches and clocks, pharmaceuticals and related medical consumables.<sup>9</sup>
- Japan has reported that the value of contracts above thresholds awarded by the Japanese Ministry of Health, Labour, and Welfare in 2008 was estimated at **\$US 1.46 Billion**.<sup>10</sup>

### III. COMPUTER AND RELATED SERVICES

#### (a) Coverage

Computer and related services (CPC 84) are fully or substantially covered by **all** Parties.

#### (b) Value

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€ 34 Billion (\$US 46.5 billion)** (above-threshold procurement) worth of computer and related services in 2007.<sup>9</sup>
- **Japan** has reported that its covered *central* government entities procured approximately **\$US 2.1 billion** (above-threshold procurement) by value of computer and related services in 2008.<sup>10</sup>
- The **US** has reported in its statistical reports that the value of information technology and telecommunication services above threshold procured by the US *Department of Defence*<sup>17</sup> alone was estimated at around **\$US 1.6 billion** in 2008.<sup>18</sup>

### IV. TELECOMMUNICATION SERVICES

#### (a) Coverage

Telecommunication services are fully covered by two Parties and partially covered by all but one of the remaining Parties (see Table V below).

#### (b) Value:

- The **EU** has reported in its statistical reports that EU *covered government entities* procured approximately **€ 3 Billion (\$US 4.1 billion)** (above-threshold procurement) by value of postal and telecommunications services in 2007.<sup>9</sup>

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<sup>17</sup> Even though procurement related to national security and defence is normally excluded from coverage of the Agreement pursuant to Article XXIII, certain non-sensitive items purchased by national security and defence entities are nonetheless covered.

<sup>18</sup> GPA/102/Add.3, dated 15 July 2010. This comprises total above threshold procurement by the Department of Defence of both information technology (computer and related services) and telecommunication services.

- **Japan** has reported that its covered *central* government entities procured some **\$US 531 million** (above-threshold procurement) worth of telecommunication services in 2008.<sup>10</sup>
- The **US** has reported in its statistical reports that the *US Department of Defence alone* has procured an estimated **\$US 1.6 billion** of information technology and telecommunication services (above-threshold procurement) worth in 2008.<sup>18</sup>

## V. CHEMICAL PRODUCTS

### (a) Coverage

Chemical products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### (b) Value

- The **EU** has reported in its statistical reports that *EU covered government entities* procured an estimated **€ 15.3 billion (\$US 21 billion)** (above-threshold procurement) worth of chemicals, chemical products and man-made fibres in 2007.<sup>9</sup>
- The **US** has reported in its statistical reports that the *US Department of Defence alone* has procured approximately **\$US 2.24 billion** (above-threshold procurement) by value of chemicals and chemical products (FSC 68) worth in 2008.<sup>11</sup>
- **Japan** has reported that its covered *central* government entities procured some **\$US 7.2 million** (above-threshold procurement) worth of chemicals and chemical products<sup>19</sup> in 2008.<sup>10</sup>

## VI. FUELS AND PETROLEUM PRODUCTS

### (a) Coverage

Fuels and petroleum products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### (b) Value

- The **US** has reported in its statistical reports that the *US Department of Defence alone* procured approximately **\$US 12.3 billion** (above-threshold procurement) by value of fuel-related products<sup>20</sup> in 2008.<sup>11</sup>
- The **EU** has reported in its statistical reports that *EU covered government entities* procured an estimated **€ 3.3 billion (\$US 4.5 billion)** (above-threshold procurement) worth of petroleum products and fuels in 2007.<sup>9</sup>

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<sup>19</sup> Classification of procured goods and services: No. 3 Products of the chemical and allied industries.

<sup>20</sup> Fuels, Lubricants, and Oils.

## VII. MACHINERY AND ASSOCIATED PRODUCTS

### (a) Coverage

Machinery and associated products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### (b) Value

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€ 10.2 billion (\$US 14 billion)** (above-threshold procurement) worth of machinery, and associated products<sup>21</sup>, in 2007.<sup>9</sup>
- The **US** has reported in its statistical reports that the US *Department of Defence alone* has procured approximately **\$US 518 million** (above-threshold procurement) by value of machinery and associated products worth in 2008.<sup>22</sup>
- **Japan** has reported that its covered *central* government entities procured for some **\$US 329 million** (above-threshold procurement) worth of machinery and related products<sup>23</sup> in 2008.<sup>10</sup>

## VIII. TRANSPORT EQUIPEMENT

### (a) Coverage

Transport equipment is generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### (b) Value

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€7 billion (\$US 9.6 billion)** (above-threshold procurement) worth of transport equipment in 2007.<sup>9</sup>

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<sup>21</sup> CPV 29: Machinery, equipment, appliances, apparatus and associated products, and CPV 31: Electrical machinery, apparatus, equipment and consumables.

<sup>22</sup> FSC 32 - Woodworking Machinery and Equipment; FSC 34 - Metalworking Machinery; FSC 36 - Special Industry Machinery; and FSC 37 - Agricultural Machinery and Equipment. GPA/102/Add.3 of 15 July 2010.

<sup>23</sup> Classification of procured goods and services: No. 11, 12, 13, and 16: Power generating machinery and equipment; Machinery specialized for particular industries; General industrial machinery and equipment, and machine parts; Electrical machinery, apparatus and appliances, and electrical parts thereof.

## IX. TEXTILES, CLOTHING AND FOOTWEAR

### (a) Coverage

Textiles, clothing, and footwear are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### (b) Value

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€ 3.2 billion (\$US 4.4 billion)** (above-threshold procurement) worth of textiles and textile articles, and clothing and footwear in 2007.<sup>9</sup>
- **Japan** has reported that its covered *central* government entities procured some **\$US 19 million** (above-threshold procurement) worth of textiles, and clothing and footwear<sup>24</sup> in 2008.<sup>10</sup>

## X. PLASTIC AND RUBBER PRODUCTS

### (a) Coverage

Plastic and rubber products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### (b) Value

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€ 659 million (\$US 903 million)** (above-threshold procurement) worth of rubber, plastic and film products in 2007.<sup>9</sup>
- The **US** has reported in its statistical reports that the US *Department of Defence alone* has procured approximately **\$US 53 million** (above-threshold procurement) by value of plastics and rubber-fabricated materials worth in 2008.<sup>11</sup>
- **Japan** has reported that its covered *central* government entities procured some **\$US 3 million** (above-threshold procurement) worth of plastic and rubber products<sup>25</sup> in 2008.<sup>10</sup>

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<sup>24</sup> Textiles and textile articles, footwear, headgear umbrellas; sunshades; walking sticks, whips, riding crops and parts thereof; travel goods; hand-bags and similar containers; articles of apparel and clothing accessories, of leather or composition leather.

<sup>25</sup> Artificial resins and plastic materials, cellulose esters and ethers, and articles thereof; rubber, synthetic rubber, factice, and articles thereof; raw hides and skins, leather, furskins and articles thereof, other than articles of apparel and clothing accessories of leather, saddlery and harness, articles of animal gut.

## **XI. METAL AND ASSOCIATED PRODUCTS**

### **(a) Coverage**

Metal and associated products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### **(b) Value**

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€ 559 Million (\$US 766 million)** (above-threshold procurement) worth of basic metals and associated products in 2007.<sup>9</sup>
- **Japan** has reported that its covered *central* government entities procured some **\$US 18 million** (above-threshold procurement) worth of metal and associated products<sup>26</sup> in 2008.<sup>10</sup>

## **XII. MINERAL PRODUCTS**

### **(a) Coverage**

Mineral products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

### **(b) Value**

- The **EU** has reported in its statistical reports that EU *covered government entities* procured an estimated **€ 106 million (\$US 145 million)** (above-threshold procurement) worth of non-metallic mineral products in 2007.<sup>9</sup>
- **Japan** has reported that its covered *central* government entities procured some **\$US 129 million** (above-threshold procurement) worth of mineral products<sup>27</sup> in 2008.<sup>10</sup>
- The **US** has reported in its statistical reports that the US *Department of Defence alone* has procured approximately **\$US 11 million** (above-threshold procurement) by value of ores, minerals, and their primary products<sup>28</sup> worth in 2008.<sup>11</sup>

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<sup>26</sup> Classification of procured goods and services: No. 9 Iron and steel and articles thereof, other than boilers and radiators for central heating, air heaters and hot air distributors not electrically heated.

<sup>27</sup> Classification of procured goods and services: No. 2 Mineral products, and No. 10 Non-ferrous metals and articles, other than lamp and lighting fittings.

<sup>28</sup> FSC (96)

### **XIII. WOOD PRODUCTS**

#### **(a) Coverage**

Wood products are generally considered to be "goods"; accordingly, unless otherwise specified, they are normally considered as covered by the GPA when purchased by entities listed in the Parties' schedules, in value above the relevant thresholds, etc.

#### **(b) Value**

- The **EU** has reported in its statistical reports that the value of wood products<sup>29</sup> above thresholds procured by EU *covered government entities* was estimated at around **€142 million (\$US 195 million)** in 2007.<sup>9</sup>
- **Japan** has reported that its covered *central* government entities procured some **\$US 62 million** (above-threshold procurement) worth of wood products<sup>30</sup> in 2008.<sup>10</sup>

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<sup>29</sup> Wood, wood products, cork products, basketware and wickerwork.

<sup>30</sup> Wood and articles of wood; wood charcoal, cork and articles of cork; paper making material; paper and paperboard and articles thereof; manufactures of straw of esparto and of other planting materials, basketwork and wickerwork.

**4.**

## WTO SECRETARIAT - INFORMATION SHEET<sup>1</sup>

### ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT: PROCESS, PROCEDURES AND RELATED INFORMATION

#### 1 PART I INTRODUCTION

The WTO Agreement on Government Procurement (GPA) is a plurilateral agreement, which means that it is binding only on those WTO Members that have accepted to be bound by it. At present, it has 15 Parties comprising 42 WTO Members.<sup>2</sup> It is administered by a Committee on Government Procurement composed of all the Parties to the Agreement.

The GPA provides a framework for the conduct of international trade in government procurement markets among the participating Parties. It also serves broader purposes of promoting the efficient and effective management of public resources, through facilitating good governance and the attainment of value for money in national procurement systems.

On 30 March 2012, the Parties to the GPA formally adopted the outcomes of the renegotiation of the Agreement.<sup>3</sup> The revised Agreement, when it comes into force, will replace and supersede the 1994 Agreement.<sup>4</sup> This Information Sheet provides background information and sets out the basic steps regarding the GPA accession process, in light of the Committee's past practices and relevant provisions of the revised GPA text.<sup>5</sup> It also identifies a "generic" list of potential benefits and costs from accession to the Agreement.

In the Ministerial-Level Decision of the Committee concluding the GPA renegotiations that was adopted on 15 December 2011, the Ministers of the GPA Parties invited "*all WTO Members that are not Parties to the Agreement to become Observers to the Committee on Government Procurement in order to become familiar with the opportunities that membership can provide, and to consider joining the revised Agreement*".<sup>6</sup> The Preamble of the revised GPA also clearly states the Parties' desire to "*encourage acceptance of and accession to [the] Agreement by WTO Members not party to it*". This Information Sheet is offered in that spirit.

The remainder of this Information Sheet is structured as follows: **Part II** provides general information on: (i) the legal basis and other requirements for accession; (ii) the key stages of the accession process; (iii) the submission of an application for accession and relevant information; (iv) the bilateral and plurilateral consultations; and (v) the Committee decision on the terms of accession, the submission of the instrument of accession and the entry into force of the GPA for the acceding WTO Member. **Part III** provides complementary information on the following accession-related issues: (i) observer status in the GPA Committee<sup>7</sup>; (ii) the information required in the Checklist of issues; (iii) the accession coverage offer; (iv) the structure of the Appendix I Annexes to the Agreement; (v) the minimum financial value thresholds; and (vi) the flexibilities available for developing countries. To round out the discussion, **Part IV** identifies a "generic" list of potential benefits and costs of accession to the Agreement. Finally, **Part V** outlines other

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<sup>1</sup> This note has been prepared for informal use in the context of the WTO Secretariat's technical assistance activities relating to government procurement. **It is provided for educational purposes only, has no official status, and is without prejudice to the views or interests of Parties to the WTO Agreement on Government Procurement and to other WTO Members.** In particular, it should be recognized that each accession to the GPA will follow its own course, and is under the ultimate supervision of the Committee on Government Procurement. Queries or requests for further information may be directed to the following persons: Mr Robert Anderson, Team leader for government procurement (email: [robert.anderson@wto.org](mailto:robert.anderson@wto.org)); Mr Kodjo Osei-Lah (email: [Kodjo.Osei-Lah@wto.org](mailto:Kodjo.Osei-Lah@wto.org)); Ms Anna Caroline Müller (email: [Anna.Mueller@wto.org](mailto:Anna.Mueller@wto.org)); Mr Jianning Chen (email: [Jianning.Chen@wto.org](mailto:Jianning.Chen@wto.org)); and Mr Philippe Pelletier (email: [Philippe.Pelletier@wto.org](mailto:Philippe.Pelletier@wto.org)) (see also Part VI below).

<sup>2</sup> At the time of writing, the Parties to the Agreement are: Armenia; Canada; the European Union (including its 27 Member States); Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; Chinese Taipei; and the United States.

<sup>3</sup> GPA/113, dated 2 April 2012.

<sup>4</sup> See Protocol Amending the Agreement on Government Procurement, and the Annex to that Protocol (GPA/113, dated 2 April 2012, APPENDIX 1).

<sup>5</sup> Some documents referenced in this information sheet (notably, GPA/1 and GPA/35) continue to have references to provisions in the 1994 Agreement.

<sup>6</sup> GPA/112, dated 16 December 2011.

<sup>7</sup> Observer status in the GPA Committee offers for the observer an opportunity to become acquainted with and learn more about the GPA **without incurring any obligation**.

sources of information and introduces the technical assistance activities provided by the WTO Secretariat in relation with the GPA.

## **2 PART II GENERAL INFORMATION**

### **2.1 Legal Basis and other Requirements for Accession**

Pursuant to Article XXII:2 of the revised Agreement, any WTO Member is eligible to accede to the Agreement (see Box 1).<sup>8</sup>

#### **Box 1: Legal basis for accession to the Agreement (Article XXII)**

##### *Accession*

2 Any Member of the WTO may accede to this Agreement on terms to be agreed between that Member and the Parties, as set out in a decision of the Committee. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for a Member acceding to it on the 30<sup>th</sup> day following the deposit of its instrument of accession.

Completion of the accession process involves two or, in the case of developing countries, three key elements. These are:

- conformity of the acceding Member's domestic legislation with the requirements of the GPA, pursuant to Article XXII:4 of the revised GPA;
- agreement with the existing Parties on a mutually satisfactory coverage offer; and
- in the case of developing countries, agreement on transitional measures, if any, that will apply (see also Part II:F below).

### **2.2 The GPA Accession Process: Overview of Key Steps**

The accession process comprises the following key steps:

- submission by the acceding Member of an application for accession and relevant supporting information (see also section C below);
- consultations with the Parties and in the Committee on Government Procurement (the Committee or GPA Committee) to agree on the terms of accession;
- adoption by the Committee of a Decision reflecting the terms so agreed and inviting the Member to accede to the Agreement;
- deposit by the acceding Member of its instrument of accession with the Director General of the WTO;
- entry into force of the Agreement for the acceding Member on the 30<sup>th</sup> day following the deposit of its instrument of accession.

The timeframe for completion of the accession process varies. While the most recent Party to accede to the Agreement, Armenia, completed its substantive negotiations with Parties within a year, in other cases, accessions may well take longer to complete.

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<sup>8</sup> Annex to the Protocol Amending the Agreement on Government Procurement, (GPA/113, dated 2 April 2012, APPENDIX 1).

## **2.3 The Submission of an Application for Accession and Relevant Supporting Information: Further details<sup>9</sup>**

The acceding Member submits its application for accession and relevant information having regard to the provisions of the Agreement, in particular, Article II of the revised Agreement (on scope and coverage) and, where relevant (i.e. with regard to developing countries) Article V (see also Part II:F below).<sup>10</sup> The relevant information comprises:

- information regarding the acceding Member's domestic legislation, in the form of replies to the Checklist of Issues set out in document GPA/35 (see also Part III:B below); and
- an initial coverage offer comprising the entities, goods and services (including construction services) that the acceding Member proposes to cover under the Agreement (see also Part III:C-F below).

There is a high degree of flexibility with regard to this process. The acceding Member may submit its application with either or both of the additional information above, or may furnish the additional information separately and in any order.

## **2.4 Consultations with parties, and in the Committee on Government Procurement**

Following submission of relevant information as described in Part C above, the Parties and the acceding WTO Member engage in a series of bilateral and plurilateral consultations, the purpose of which is to arrive at mutually acceptable terms of accession. The bilateral consultations are held with individual Parties and provide an opportunity for the Parties to seek clarifications on any aspect of the acceding Member's offer or of its domestic procurement legislation.

The plurilateral consultations are held in informal meetings of the GPA Committee as a whole. They afford an opportunity for an exchange of views with the acceding Member and facilitate: (i) the collective review of the coverage offer; (ii) the review of the acceding Member's domestic legislation to ensure its conformity to the requirements of the GPA; and (iii) the transparency and oversight of the overall process.

During this period, the acceding Member will typically find it necessary to submit one or more revised offers in order to respond appropriately to any requests for clarification or improvement that it may receive from the Parties. Further information on relevant legislation and, depending on the circumstances, amendments planned to such legislation, may also need to be submitted.

## **2.5 Committee Decision, Submission of Instrument of Accession and Entry into Force**

Once the terms of accession have been agreed between the Parties and the acceding Member, the Committee adopts a decision inviting the Member to accede to the Agreement. The decision specifies the terms so agreed, and provides a timeframe for the acceding Member to deposit its instrument of accession with the Director-General of the WTO (e.g., three to six months with possible extensions).

As provided for in Article XXII:2 of the revised Agreement, the Agreement enters into force for the acceding Member on the 30<sup>th</sup> day following the deposit of its instrument of accession.

# **3 PART III SUPPLEMENTARY INFORMATION**

## **3.1 Observer Status on the GPA Committee<sup>11</sup>**

Any WTO Member not Party to the GPA and wishing to follow the proceedings of the Committee in an observer capacity may do so pursuant to Article XXI:4 of the revised GPA, subject

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<sup>9</sup> In addition to the documentation referred to in this section, other documents that may be of relevance are: (i) GPA/87, dealing with nomenclature and terminology used in a decision of accession to the Agreement; and (ii) GPA/W/109/Rev.2, which deals with reporting and other aspects of the accession process.

<sup>10</sup> See also GPA/1, Annex 2.

<sup>11</sup> See also, the Information sheet on Observer status in the Committee on Government Procurement, available upon request.

only to a written notice to the Committee. A WTO observer may also, on request, be accorded observer status in the Committee.

Observer status in the GPA Committee offers for the observer an opportunity to become acquainted with and learn more about the GPA without incurring any obligation. In particular, it is not a requirement for accession, nor does it impose any obligation on an observer to undertake any commitments with regard to the GPA or accession to the Agreement.

### 3.2 Information Required in the Checklist of Issues

The information sought in GPA/35 falls under the following general headings:

- the domestic legal framework regarding government procurement;
- scope and coverage of the domestic legislation;
- application of the non-discrimination principles;
- information on transparency, procedural rules and other relevant aspects of the domestic legislation;
- information on domestic review procedures regarding supplier challenges; and
- other relevant matters, such as any contact point or website address for further information.

### 3.3 The Accession Coverage Offer: What is "Covered Procurement"?

Pursuant to Article II:1 of the revised GPA, the Agreement "applies to any measure regarding covered procurement, ...". The concept of covered procurement is defined in Article II:2 (see Box 2 below).

#### Box 2: Covered procurement - Article II of the revised GPA

2. For the purposes of this Agreement, covered procurement means procurement for governmental purposes:

- (a) of goods, services, or any combination thereof:
  - (i) as specified in each Party's annexes to Appendix I; and
  - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
- (b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;
- (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to Appendix I, at the time of publication of a notice in accordance with Article VII;
- (d) by a procuring entity; and
- (e) that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to Appendix I.

A number of general exclusions are set out in Article II:3, and general and security exceptions are set out in Article III of the revised Agreement. The information in Articles II and III is particularly relevant to the preparation of an accession coverage offer.

### 3.4 Structure of Appendix I

The coverage commitments under the Agreement are set out in Appendix I to the Agreement. Pursuant to Article II:4 of the revised Agreement, each Party shall specify its coverage commitments in its annexes to Appendix I (see Box 3 below).

#### Box 3: Information to be provided in Appendix I, pursuant to Article II:4

Annex	Information to be Provided
1	The central government entities whose procurement is covered by the Agreement
2	The sub-central government entities whose procurement is covered by the Agreement
3	All other entities whose procurement is covered by the Agreement
4	The goods covered by the Agreement
5	The services, other than construction services, covered by the Agreement
6	The construction services covered by the Agreement
7	Any General Notes

### 3.5 Thresholds in Appendix I

Subject to negotiation, each Party in its annexes to Appendix I specifies the minimum financial value thresholds to which the Agreement applies in IMF Special Drawing Rights (SDR). While there are some variations, the majority of Parties have specified threshold values at the general levels illustrated in Box 4 below.

#### Box 4: GPA thresholds (expressed in SDR) - General levels<sup>12</sup>

Entity Level	Goods	Services	Construction Services
<b>Annex 1 (Central government)</b>	130,000	130,000	5,000,000
<b>Annex 2 (Sub-central government)</b>	200,000	200,000	5,000,000
<b>Annex 3 (Other entities)</b>	400,000	400,000	5,000,000

### 3.6 Developing countries

As provided for in Article V of the revised text and on request, the Parties shall accord special and differential treatment to least developed countries ("LDCs"), and any other developing country, where and to the extent that this special and differential treatment meets their development needs. It is important to note that Article V of the revised Agreement is already being applied to pending accessions to the GPA, even though the revised text as a whole has not yet entered into force.<sup>13</sup> In the revised text, additional flexibilities and transitional measures have been provided for developing countries that accede to the Agreement, and the circumstances in which such measures will be available have been more clearly spelled out (see Box 5 below).

<sup>12</sup> These figures provide an indication of the benchmark levels against which Parties may review the threshold levels proposed by an acceding member in its coverage offer.

<sup>13</sup> The revised Agreement will enter into force 30 days after the required instruments of acceptance has been submitted by GPA Parties to the WTO Secretariat. GPA negotiators have already indicated that they intend to use the revised text as the basis for ongoing consultations and other work relating to the accession of new parties. See WTO, Committee on Government Procurement, Report (2006) of the WTO Committee on Government Procurement to the General Council (GPA/89, 11 December 2006), para.21. It should be noted that Article IV of the previous version of the revised text (GPA/W/297) on transitional measures has been renumbered as Article V in the version of the revised text adopted on 30 March 2012 (GPA/113 of 2 April 2012, available at: [http://www.wto.org/english/tratop\\_e/gproc\\_e/gproc\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm) [Accessed 27 April 2012]), without any changes in content.

**Box 5: The transitional measures that are available for developing countries<sup>14</sup>**

The transitional measures that are available, subject to negotiations, include:

- i. price preferences;*
- ii. offsets<sup>15</sup>;*
- iii. phased-in addition of specific entities and sectors; and*
- iv. thresholds that are initially set higher than their permanent level.*

Provision has also been made for **delaying the application of any specific obligation contained in the Agreement**, other than the requirement to provide equivalent treatment to the goods, services and suppliers of all other Parties to the Agreement, for a period of five years following accession to the Agreement for LDCs or up to three years for other developing countries. These periods can be extended by decision of the Committee on Government Procurement, on request by the Party concerned.<sup>16</sup>

**4 PART IV ASSESSING THE BENEFITS AND COSTS OF GPA ACCESSION FOR INDIVIDUAL WTO MEMBERS**

The potential benefits and costs (advantages and disadvantages) involved in GPA accession are likely to vary from country to country, and each acceding Member must take responsibility for assessing its own potential interests vis-à-vis the Agreement. To facilitate consideration of these matters, this part of the Information Sheet identifies a "generic" list of potential benefits and costs of accession to the Agreement (see Box 6, below). The list of such benefits and costs builds on the analysis published as a WTO Staff Working Paper (2011).<sup>17</sup> Again, it is for potential acceding Parties to assess how far these benefits and costs apply in their respective situations.

**Box 6: Potential benefits and costs from GPA accession and factors impacting on their magnitude: an overview**

A. Potential Benefits	Relevant factors
1. Export market gains and a safeguard against protectionist or "buy national" measures introduced by other GPA Parties, based on legal guarantees of rights to participate in other GPA Parties' procurement markets.	<ul style="list-style-type: none"> <li>• GPA accession opens up possibilities for export market gains; the actual gains to be achieved also depend on underlying competitiveness of the acceding Party;</li> <li>• The value of legal guarantees of market access rights may itself be increasing with the apparent trend toward "buy national" or other potentially access-limiting measures.</li> </ul>
2. Enhanced efficiency/value for money in the acceding Party's own procurement markets, through: <ul style="list-style-type: none"> <li>(a) strengthening of competition;</li> <li>(b) improved</li> </ul>	<ul style="list-style-type: none"> <li>• Possibly the most important set of benefits for some acceding Parties (those with limited internal competition/particular governance challenges);</li> <li>• Some evidence that these gains may exceed 20 % of the value of covered procurements, depending on related circumstances;</li> </ul>

<sup>14</sup> See, for a detailed analysis, Anna Caroline Müller, "Special and differential treatment and other special measures for developing countries under the Agreement on Government Procurement: the current text and new provisions" in Arrowsmith and Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform* (2011), pp.339–376.

<sup>15</sup> In the revised text, offsets are defined as "any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements" (Article I(I)).

<sup>16</sup> As a result, developing countries do not have to face the entire cost of legislative and institutional adaptation immediately upon accession, but can implement any GPA compliant reform process step-by-step over a longer, but pre-defined period of time.

<sup>17</sup> See Robert D. Anderson, Anna Caroline Müller, Kodjo Osei-Lah and Philippe Pelletier, *Assessing the Value of Future Accessions to the WTO Agreement on Government Procurement (GPA): Some New Data Sources, Provisional Estimates, and An Evaluative Framework for Individual WTO Members Considering Accession*. (2012) 21 P.P.L.R. 83. An early version of the article was circulated as World Trade Organization Staff Working Paper ERSD-2011-15, dated 6 October 2011, available at [http://www.wto.org/english/res\\_e/reser\\_e/ersd201115\\_e.htm](http://www.wto.org/english/res_e/reser_e/ersd201115_e.htm).

<p>governance/deterrence of corruption; (c) locking in of internal reforms and greater coherence across internal regions/sub-central governments.</p>	<ul style="list-style-type: none"> <li>Generally, achievement of these benefits also depends on necessary internal reforms and institution-building (but GPA accession can be a catalyst for these).</li> </ul>
<p>3. Other benefits: (a) Ability to influence the terms of other GPA accessions; (b) Ability to influence the future evolution of the Agreement.</p>	<ul style="list-style-type: none"> <li>Potentially a significant consideration for WTO Members with interests in the procurement markets of future accession candidates (e.g. other major emerging economies, beyond China);</li> <li>Built-in possibilities for review of the Agreement.</li> </ul>
<p><b>B. Potential costs</b></p>	<p><b>Relevant factors</b></p>
<p>1. Negotiating costs, including necessary internal studies and consultation.</p>	<ul style="list-style-type: none"> <li>Likely to be small as compared to potential benefits, but still a factor especially for small delegations;</li> <li>Some possibilities for assistance e.g. from governance-focused organizations.</li> </ul>
<p>2. Costs of necessary legislative/institutional adaptations.</p>	<ul style="list-style-type: none"> <li>Relevant costs may already have been incurred (i.e. necessary adaptations already made) e.g. due to participation in bilateral or regional agreements incorporating GPA-type provisions, or at the suggestion of development lending organizations.</li> </ul>
<p>3. Impact on local industry/workers.</p>	<ul style="list-style-type: none"> <li>Strong likelihood that foreign suppliers, when they win a contract, will sub-contract with local firms/workers.</li> <li>Possible spillover benefits from foreign market entry (e.g. technology transfer).</li> <li>Possibility of transitional measures/negotiated exclusions from coverage to limit exposure of sensitive sectors.</li> </ul>

## 5 PART V FURTHER INFORMATION

Further information about the GPA is available from the government procurement gateway of the WTO website,<sup>18</sup> or may be obtained from any of the following persons: Mr Robert Anderson, Team leader for government procurement (email: [robert.anderson@wto.org](mailto:robert.anderson@wto.org)); Mr Kodjo Osei-Lah (email: [Kodjo.Osei-Lah@wto.org](mailto:Kodjo.Osei-Lah@wto.org)); Ms Anna Caroline Müller (email: [Anna.Mueller@wto.org](mailto:Anna.Mueller@wto.org)); Mr Jianning Chen (email: [Jianning.Chen@wto.org](mailto:Jianning.Chen@wto.org)); and Mr Philippe Pelletier (email: [Philippe.Pelletier@wto.org](mailto:Philippe.Pelletier@wto.org)).

The WTO Secretariat also provides technical assistance in the form of seminars, workshops and symposia on government procurement in the WTO generally as well as on the GPA more specifically. Participation in these programmes is normally open to officials nominated by participating WTO Member governments or observers. **National seminars** can be organized for individual WTO Members/observers with particular needs, on specific request by those Members/observers to the Secretariat. The **regional workshops**, to which all WTO Members and observers in a particular region are invited, are organized for all regions of the developing world/the economies in transition generally according to a two-year cycle.

<sup>18</sup> [http://www.wto.org/english/tratop\\_e/gproc\\_e/gproc\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm).

**5.**

**WORLD TRADE  
ORGANIZATION**

**GPA/35**  
21 June 2000

(00-2516)

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**Committee on Government Procurement**

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION  
RELATING TO ACCESSION TO THE AGREEMENT  
ON GOVERNMENT PROCUREMENT**

To facilitate consultations relating to accession to the Agreement on Government Procurement, please provide a description of the government procurement regime applied in your country by replying, to the extent possible, to the questions in the checklist of issues below. If there is no specific provision on a particular issue, the response should state this.

The information to be provided in this context is without prejudice to any additional information which Parties may wish to request from acceding governments on any other aspects of their procurement regimes. For each item on the checklist, please identify any legal or administrative actions that will need to be taken in order to align your government procurement regime with the requirements of the GPA and ensure full implementation of the Agreement following accession.

If your government is aware of any need for training or other capacity-building efforts relating to any of the items on this checklist, please describe the need in as specific and concrete terms as possible, and describe any steps your government is taking, whether independently or in cooperation with other Members or international organizations, to address that need.

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**I. LEGAL FRAMEWORK**

1. Is there a single central law on procurement? If so, please specify?
2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.
3. To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.

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<sup>1</sup> N.B.: For convenience, the relevant Articles of the revised text of the Agreement (GPA/113, dated 2 April 2012) have been shown in parentheses following each reference to corresponding Articles of the unamended 1994 GPA.

## **II. SCOPE AND COVERAGE**

4. Please summarize the organization of the government in your country at each level.
5. Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.
6. What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?
7. Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type entities) owned and controlled by the government that engage in procurement? Specify.
8. Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will your government ensure the implementation of the Agreement by such entities below the central/federal government level?
9. Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defence or security reasons? Please provide details.
10. Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.

## **III. NATIONAL TREATMENT AND NON-DISCRIMINATION**

11. Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement (IV:1 of the revised text).
12. Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.
13. Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or service being supplied.
14. Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.
15. Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.

#### **IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES**

16. Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.

17. Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII (IX of the revised text) and selection of suppliers in terms of Article X (IX of the revised text). Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?

18. In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?

19. What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement (XIII of the revised text)? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?

20. Article XIV of the Agreement (XII of the revised text) allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?

21. Article XI (XI of the revised text) sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.

22. Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?

23. Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.

24. Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.

#### **V. INFORMATION**

25. Article XIX:1 of the Agreement (VI of the revised text) foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the relevant publication(s) and indicate the media used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.

26. Article IX:1 of the Agreement (VII:1 of the revised text) foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the

relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.

27. Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions of your legislation.

28. Article IX:1 of the Agreement (IX:7 of the revised text) foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the relevant publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such lists are published.

29. Article XVIII:1 of the Agreement (XVI:2 of the revised text) foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.

30. Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.

31. Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2 (XVI:1 of the revised text), the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.

## **VI. BID CHALLENGE PROCEDURES**

32. Please provide information on existing challenge procedures.

33. Are there specific provisions enabling access of foreign suppliers to challenge procedures?

34. To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:

- (i) The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in your domestic legislation?
- (ii) What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:
  - How are its members selected?
  - Are its decisions subject to judicial review?
  - If not, how will the requirements of paragraph 6 of Article XX (XVIII of the revised text) be taken into account?
- (iii) What is the applicable law by reference to which the challenge body will examine complaints?
- (iv) Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?

- Do these measures include the possibility to suspend the procurement process? On what conditions?
- (v) How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?
- (vi) Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.
- (vii) What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?

## **VII. OTHER MATTERS**

35. To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.

36. Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.

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**6.**

## OVERVIEW OF GPA COVERAGE: THE STRUCTURE OF APPENDIX I

This handout provides information regarding coverage under the Agreement on Government Procurement (GPA). From a general perspective, the GPA does not automatically apply to all government procurement of the Parties. Rather, the Agreement only applies to any procurement undertaken for governmental purposes of goods, services, or any combination thereof, as specified in each Party's Annexes to Appendix I (see Box 1 below for a description of the basic structure of Appendix I). In particular, and as specified in Article II, the Agreement applies to procurement:

- by the procuring entities that each Party has listed in its schedule in Annexes 1 to 3 of Appendix I, relating respectively to central government entities, sub central government entities and other entities such as utilities;
- of goods listed in Annex 4 of Appendix I;
- of services and construction services that are specified in lists, found respectively, in Annexes 5 and 6 of Appendix I; and
- for contracts above certain thresholds values. Each Party indicates in its Annexes to Appendix I the levels of minimum thresholds that apply to the procurement of goods and services by Annex 1, 2 and 3 entities.

In addition, when reading the schedules in Appendix I to ascertain whether a particular proposed procurement is covered by the Agreement, it is important to check the specific notes at the end of most Parties' Annexes and the General Notes in Annex 7, which provide for a number of exceptions, including from the rules of non-discrimination (e.g. reciprocity notes). It should be noted that exceptions from the obligations of the Agreement are also allowed for security and certain public policy reasons (see Article III).

### Box 1: The structure of GPA Coverage Schedules ("Appendix I Annexes")

For each Party, Appendix I comprises the following seven Annexes (see Article II:4):

**Annex 1**, the central government entities whose procurement is covered by this Agreement;

**Annex 2**, the sub-central government entities whose procurement is covered by this Agreement;

**Annex 3**, all other entities whose procurement is covered by this Agreement;

**Annex 4**, the goods covered by this Agreement;

**Annex 5**, the services, other than construction services, covered by this Agreement;

**Annex 6**, the construction services covered by this Agreement; and

**Annex 7**, any General Notes.

The Annexes also specify the threshold values above which individual procurements are subject to the GPA disciplines. In addition, the Annexes of most Parties contain notes that qualify the application of the Agreement. Goods are covered if procured by a covered entity and not excluded specifically.

In practice, Parties are free to choose their approaches to define the coverage. It is observed that two broad approaches are adopted in the scheduling of Parties' coverage commitments: a list approach and a generic approach. There is no one mandated approach and a Party's coverage may be based on one or more of the above basic approaches. An overview of the main approaches to the listing by Parties of entities is provided in Box 2 below.

**Box 2: Approaches to Coverage of Entities in Annex 2**

Two broad approaches to coverage are observed in Parties' Annexes: a list approach and a generic approach.

1. A *list* can be positive (i.e. the items that are covered are individually listed) or negative (the items that are covered are the ones not included in the list specified), and may be exhaustive (in which case it represents the full extent of a Party's coverage commitments), or indicative (in which case it is illustrative of what is covered).
2. Further, a *generic (or functional) approach* to scheduling can be achieved by way of:
  - a. a general description (e.g. "executive branch agencies"; "State universities"); or
  - b. definition (e.g. "Bodies governed by public law"). This definition can further be linked by reference to specified domestic law (e.g. "covered by the Local Autonomy Law"). It may also be qualified by a so-called "catch-all clause" (e.g. "All prefectural governments").

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