



The revised WTO Agreement on Government Procurement (GPA): global context, content of the Agreement and considerations for Montenegro

Robert Anderson

**Counsellor, WTO Secretariat (team leader for government
procurement and competition policy)**

**WTO National Seminar on the Agreement on Government
Procurement for Montenegro**

Podgorica

4-5 June 2013

Presentation 1



Contents of presentation

- Significance of government procurement: economic, social and trade dimensions
- The changing global context of the GPA: factors increasing its importance as an underpinning of the global economy
- Objectives of the Agreement, core principles and main elements
- Recent renegotiation
- Accession process (key elements)



I. Significance of government procurement: economic, social and trade dimensions

Why procurement regimes matter: economic, social and trade dimensions



- A large proportion of Gross Domestic Product (15-20 % in most countries, more in some cases)
- Supports essential functions of government, vital for development and social policy purposes:
 - Provision of transportation and other vital infrastructure (airports, highways, ports)
 - Public health (hospitals, medicines, water and sewer systems)
 - Schools and universities
- Significance as a component of international trade
- Importance for “good governance”.

Benefits of open and transparent procurement systems



- More potential suppliers – results in more competition – lower prices/better quality goods and services for the public.
- Encourages inbound foreign direct investment (FDI).
- Ability to provide more, better government services for same resources
- Potential for increased access to foreign markets by (your own) domestic producers, if done through the GPA or a similar instrument.



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

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



- Currently, the GPA covers 42 WTO Members including the EU and its 27 member States; most other developed countries (i.e. US, Canada, Japan; Norway and Switzerland); plus Hong Kong, China; Iceland; Israel; Korea; Singapore; Chinese Taipei; Aruba and Armenia.
- **Chinese Taipei and Armenia joined only in the past 3 years.**
- **Ten more WTO Members** currently seeking accession (Albania, China, Georgia, Jordan, the Kyrgyz Republic, Moldova, New Zealand, Oman, Panama and Ukraine).
- **Seven additional WTO Members** have commitments to seek GPA accession (eventually), as part of their WTO accession protocols: Croatia, the former Yugoslav Republic of Macedonia, Mongolia, Montenegro, the Russian Federation, Saudi Arabia and Tajikistan.

Factors enhancing the significance of the GPA (2): synergies with other international instruments, and national legislation



- GPA a distillation of best practices internationally, as seen by the participating WTO Member governments.
- Important relationship with EU procurement directives (EU (formerly EC) an important “pillar” and guiding influence).
- GPA the model for procurement chapters in bilateral FTAs and regional trade agreements worldwide.
- An important benchmark for national procurement reforms (but not a substitute for national legislation).

Factors currently enhancing the significance of the GPA for the multilateral trading system (3): the policy context



- Enhanced importance of the procurement sector in light of: (i) the global economic crisis; and (ii) emerging economies' infrastructure needs.
- Also greater emphasis on procurement and good governance as an underpinning of development.
- Increased pressures for policies potentially limiting access to important procurement markets, e.g.:
 - “Buy American” measures in 2009 US stimulus package;
 - Pending EU reciprocity initiative.
- *GPA membership an effective “insurance policy” to preserve market access rights in this environment.*



III. Core Principles and Main Elements of the Agreement

Core principles of the Agreement (basis for all legal elements)



- Three core principles:
 - Non-discrimination (especially between foreign and domestic suppliers);
 - Transparency of the procurement system and of individual procurements;
 - Procedural fairness for suppliers/potential suppliers

NB: Above three principles underlie/explain all elements of the Agreement

Main elements of the Agreement (1)



- General rules on non-discrimination, national treatment and transparency with respect to each Party's "covered procurement markets".
- Coverage defined through detailed schedules (Annexes) in "Appendix I". Specify covered entities, thresholds, covered services, specific exclusions, etc.
- Minimum standards (based on international best practices and with much flexibility) on aspects of the procurement process, to ensure transparent and open competition. Includes provisions on:
 - Tendering procedures;
 - Qualification of suppliers and technical standards;
 - Time limits, documentation and contract award procedures.



Main elements of the Agreement (2)

- Enforcement: provisions on application of the WTO-DSU and independent domestic review procedures (bid challenge or remedy systems).



IV. Recent renegotiation of the Agreement

The recent conclusion of the GPA renegotiation: overview



- “Political conclusion” to the negotiations reached by GPA Ministers on 15 December 2011, following intensive negotiations over almost a decade.
- Formal adoption of the results of the negotiations on 30 March 2012, following a verification process.
- **Elements of the deal:**
 - Market access enhancement package valued at \$80-100 billion annually.
 - Agreement that the previously-negotiated revised GPA text may now come into effect.
 - Package of Future Work Programmes on issues such as SMEs and sustainability.



The recent conclusion of the GPA renegotiation (2): key improvements in the revised GPA text

- Core principles of the revised text are the same as the existing one (non-discrimination, transparency, procedural fairness). However, revised text incorporates:
 - A complete revision of the wording of the provisions of the Agreement with a view to making them more streamlined, easier to understand and user-friendly;
 - Updating of the text of the Agreement to take into account developments in current government procurement practice, notably the use of electronic tools;
 - Additional *flexibility* for Parties' procurement authorities, for example in the form of shorter notice periods when electronic tools are used. Shorter time-periods have also been allowed for procuring goods and services of types that are available on the commercial marketplace.

The recent conclusion of the GPA renegotiation (3): improvements in the revised GPA text (cont'd)



- More explicit recognition of the GPA's significance for *good governance and the fight against corruption*, including in new substantive provisions that require participating governments to carry out their GPA-covered procurements in ways that avoid conflicts of interest and prevent corrupt practices; and
- Revised and improved transitional measures ("special and differential treatment") for new Parties that accede to the Agreement. Under the revised provisions, such measures are to be tailored to the particular developmental needs of the individual accession candidates.

The recent conclusion of the GPA renegotiation (4): the Future Work Programmes



- Integral element of the outcomes of the re-negotiation!
- Relate to the administration and possible further evolution of the Agreement, over time.
- Subject-matters addressed:
 - small and medium-sized enterprises;
 - sustainable procurement practices;
 - statistical data;
 - exclusions and restrictions in Parties' Annexes; and
 - safety standards.
- Work to begin upon entry into force of the Protocol of Amendment.



V. Accession process

The accession process: key considerations



- Just three elements to be considered (or perhaps just two!):
 - Coverage commitments (market access package) – must be agreed with the Parties, following a bargaining process.
 - National legislation and institutions – must be consistent with the GPA
 - Transitional measures needed (if any)

Summary: what we have covered



- Significance of government procurement: economic, social and trade dimensions
- The changing global context of the GPA: factors increasing its importance as an underpinning of the global economy
- Core principles and main elements of the Agreement
- Recent renegotiation
- Elements of the accession process