Growing Significance of Regional Trade Agreements in Opening Public Procurement Markets

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Introduction

- Evolution of treatment of procurement in multilateral and plurilateral agreements
- WTO Government Procurement Agreement: expansion of membership
- Prospects for multilateral commitments on procurement
- Architecture of international procurement agreements
- Regional trade agreements
  - U.S. FTAs
  - TPP & TTIP
  - EU RTAs
  - Asian RTAs: RCEP; Pacific Alliance
Treatment of Procurement in International Agreements

Exclusion from Multilateral Agreements
GATT Procurement Code
WTO Plurilateral Agreement

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Exclusion of Procurement from Multilateral Agreements

- Exclusion from national treatment obligations
  - General Agreement on Tariffs and Trade (GATT 1947): goods
  - WTO General Agreement on Trade in Services (GATS 1995): services

- Plurilateral agreements
Plurilateral Procurement Agreements

1981 GATT Code on Government Procurement
- Special rules for government procurement
- Limited membership: 21 GATT Members
- Limited scope: central government entities and goods

1994 WTO Government Procurement Agreement (GPA)
- Entry into force in 1996 (for most GATT Code parties)
- Expanded covered procurement to include:
  - Sub-central entities
  - Utilities, government enterprises and other entities
  - Services, including construction services

Revised GPA, entered into force in 2014
Revised GPA

- 2012: Revision of GPA approved
- 2014: Entry into force (2/3 parties)

Modernized text
- Adopted a structure that corresponds with procurement process
- Clarified obligations
- Removed ambiguities and redundancies
- No change in fundamental obligations or rights

Expanded covered procurement
- All parties added to GPA coverage
- Estimated value of new procurement at approximately $80 billion to $100 billion annually

Model for bilateral and regional trade agreements
Current GPA Membership

- 19 Parties, comprising 47 WTO members

Armenia; Canada; Hong Kong, China; European Union (and 28 Member States), Iceland; Israel; Japan; Korea; Liechtenstein; Moldova; Montenegro; Netherlands with respect to Aruba; New Zealand; Norway; Singapore; Switzerland; Chinese Taipei; Ukraine; and United States

**EU’s 28 Member States:** Austria, Belgium, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and United Kingdom
Architecture of International Procurement Agreements

Text: Principles & Procedures
Annexes: Market Access Commitments
Fundamental Requirements

- Non-discrimination
  - National treatment
  - Most-favored nation treatment

- Prohibition of offsets

- Transparency and procedural obligations
  - Ensure procurement is conducted in transparent, predictable, fair and non-discriminatory manner
  - Procedures apply to each step of procurement process
Key Procedural Safeguards

- Apply at each stage of procurement process (through contract award)
  - Publication of procurement laws and regulations
  - Three types of procurement procedures: open, selective and limited
  - Conditions for participation
  - Qualification of suppliers
  - Development of specifications and tender documentation
  - Publication of notices of intended procurement
  - Minimum tendering periods
  - Treatment of tenders and contract awards
  - Domestic review procedures for suppliers to challenge procurement
Market Access Annexes or Schedules

- **Entities**
  - ✿ Central government
  - ✿ Sub-central government
  - ✿ Other government entities

- **Goods**

- **Services**

- **Construction services**

- **General Notes**
Scope of Procurement Covered under Agreements

- **Covered procurement**
  - Procurement for governmental purposes, not for commercial sale or resale
  - Procurement by any contractual means: purchase; lease, rental, with or without option to buy
  - Procurement specified by each party

- **Elements of coverage**
  - Thresholds
  - Entities
  - Goods
  - Services
  - Construction Services
  - Exclusions/Reservations

- **Excluded procurement**
  - Acquisition or rental of land and existing buildings
  - Public employment contracts
  - Procurement below the relevant threshold

- **Reciprocity**
Expansion of GPA Membership

Accession
EU Enlargement
WTO Commitments
Expansion of GPA Membership

Accession: Any WTO Member may negotiate accession

- WTO members commitment to seek GPA membership when join WTO
- Voluntary accession

EU enlargement: 13 member states

- 2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia & Slovenia
- 2006: Bulgaria & Romania
- 2013: Croatia
WTO Commitments to Seek GPA Membership

- WTO commitment to seek GPA membership: 2/3 of countries that joined WTO since 1995

- WTO commitments: Afghanistan, Albania, China, Georgia, Jordan, Kazakhstan, Kyrgyz Republic, Mongolia, Oman, Panama, Russian Federation, Saudi Arabia, Seychelles, Tajikistan & former Yugoslav Republic of Macedonia

  - Five accessions are active: China, Former Yugoslav Republic of Macedonia, Kyrgyz Republic, Russian Federation & Tajikistan

  - Four accessions inactive: Albania, Jordan, Georgia & Oman

  - Five members have not yet initiated accession: Afghanistan, Georgia, Kazakhstan, Mongolia, Saudi Arabia & Seychelles

  - Panama applied for accession, but withdrew from negotiations (2013)
Current Status of GPA Accession Negotiations

- **Australia**: terms of accession approved on Oct. 17, 2018

- **Active negotiations** of members with GPA commitments
  - **China**: commenced negotiations in 2007; submitted six offers, latest in 2014
  - **Kyrgyz Republic**: reactivated negotiations after 15-year lapse; submitted latest offer in June 2018
  - **Russian Federation**: submitted initial offer in June 2017
  - **Former Yugoslav Republic of Macedonia**: applied for accession in 2017; initial offer in 2018
  - **Tajikistan**: applied for accession with initial offer in 2015; latest offer in 2017
Prospects for Accession to GPA

Observers to WTO procurement committee

Afghanistan, Albania, Argentina, Australia, Bahrain, Belarus, Brazil, Cameroon, Chile, China, Colombia, Costa Rica, Georgia, India, Indonesia, Jordan, Kazakhstan, the Kyrgyz Republic, Malaysia, Mongolia, Oman, Pakistan, Panama, Russian Federation, Saudi Arabia, Seychelles, Sri Lanka, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Turkey & Vietnam

All OECD countries are GPA parties, except Chile, Colombia Mexico & Turkey

Latin America & Africa: no GPA parties; few in Asia
Multilateral Procurement Prospects

➢ WTO Transparency in Government Procurement

➢ WTO GATS Mandate for Negotiations on Procurement for Services
Regional Trade Agreements

U.S. FTAs
EU RTAs
CPTPP/TTIP
RCEP
U.S. Procurement Agreements

- U.S. FTAs
- 2010 US-Canada Procurement Agreement
Trump Administration Trade Agreements

- **Withdrawal from Trans-Pacific Partnership (TPP):** Jan. 2017

- **US-Korea FTA Revision:** did not include procurement

- **U.S.-Mexico-Canada Agreement (USMCA):** NAFTA Renegotiation
  - Negotiations concluded Sept. 30; sign by Nov. 30
  - Mexico & US replicated NAFTA procurement commitments
  - Procurement chapter: upgraded, follows CPTPP
  - Canada not covered by procurement obligations
    - US & Canada: GPA partners
    - Mexico & Canada: CPTPP partners
Trump Administration Trade Negotiations

➢ Withdrawal from Trans-Pacific Partnership (TPP): Jan. 2017

➢ FTA Negotiations
  ♦ US-Korea FTA revision: did not include procurement
  ♦ U.S.-Mexico-Canada Agreement (USMCA): Renegotiation of NAFTA Renegotiation
    o Mexico & US replicated NAFTA procurement commitments
    o Canada not covered by procurement obligations

➢ Initiation of Trade Negotiations
  ♦ US notified intent to negotiate trade agreements on Oct. 16 with EU, Japan & UK
  ♦ Japan & EU: may be in stages
  ♦ UK: expected to be full FTA
Comprehensive & Progressive Trans-Pacific Agreement (CPTPP)

- **11 signatories**: Australia, Canada, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore & Vietnam

- Procurement text: follows GPA

- Market access
  - Malaysia & Vietnam open procurement of first time, significant transitional measures

- Entry into force
  - 60 days after ratification by 6 or 50% of signatories
  - Expected by early 2019
  - Ratifications to date: Japan, Mexico & Singapore
Transatlantic Trade and Investment Partnership (TIPP)

- Negotiations between 2013-16

- No agreement before end of Obama administration; little interest by Trump administration

- Procurement
  - Priority for EU; not for U.S.
  - U.S. unable to respond to EU’s requests, e.g., expansion of sub-central entity coverage
EU RTAs

- EU-Canada Comprehensive Economic & Trade Agreement (CETA)

- EU-Japan Economic Partnership Agreement (EPA)

- EU-Vietnam FTA
  - Covers two sub-central entities
  - Transitional measures (comparable to CPTPP)
  - Text in line with GPA rules

- EU-Mexico Trade Agreement
  - Mexico committed to seek minimum coverage of its states
GPA-Plus Coverage in EU RTAs

Canada’s GPA-plus coverage under CETA
- 20 more federal entities
- MASH sector (municipalities, school boards, health & social service entities)
- Most Crown corporations – federal & provincial
- Expanded access to mass transportation
- Reduced sub-central entity threshold

Japan’s GPA-plus coverage in EU EPA
- Expanded sub-central coverage to include all local independent administrative agencies (51 universities, 25 hospitals/medical centers & 11 research centers
- Core cities (population of 300,000)
- Withdrew operational safety of transportation exclusion for sub-central entities & five railway entities
- Expands covered services
Regional Comprehensive Economic Partnership (RCEP)

- 10 members of ASEAN plus 6 countries with which ASEAN has an FTA: Australia, China, India, Japan, Korea, New Zealand

- Launched negotiations in 2012; seeking package of outcomes by end of 2018

- Government procurement
  - Excluded from initial negotiations
  - Added in 2017
  - Limited to transparency and cooperation; no market access commitments
Other RTAs

Asian FTAs, include

- Indonesia-Korea RTA
- Korea-Colombia RTA: Korea used negative list of services
- Australia-Peru RTA
- RTA negotiations among number of Asian countries

Pacific Alliance

- Regional trading bloc established in 2011 by Chile, Colombia, Mexico & Peru
- 2017 invited Australia, Canada, New Zealand & Singapore to become associate members in preparation for negotiation of trade agreement
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