

<b>1 ARTICLE XXIV</b> .....	<b>1</b>
1.1 Text of Article XXIV .....	1
1.2 Article XXIV:2 .....	4
1.3 Article XXIV:3 .....	4
1.4 Article XXIV:5 .....	5
1.5 Article XXIV:6 .....	5
1.5.1 General .....	5
1.6 Article XXIV:7 .....	6
1.6.1 Article XXIV:7(a): annual review .....	6
1.6.2 Article XXIV:7(b): further negotiations .....	6
1.6.3 Article XXIV:7(c): elimination of discriminatory measures and practices .....	7

## 1 ARTICLE XXIV OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

### 1.1 Text of Article XXIV

#### Article XXIV

##### *Final Provisions*

#### 1. *Acceptance and Entry into Force*

This Agreement shall enter into force on 1 January 1996 for those governments<sup>8</sup> whose agreed coverage is contained in Annexes 1 through 5 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 subsequently ratified the Agreement before 1 January 1996.

*(footnote original)* <sup>8</sup> For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.

#### 2. *Accession*

Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a contracting party to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30th day following the date of its accession to the Agreement.

#### 3. *Transitional Arrangements*

- (a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.
- (b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive<sup>9</sup> provisions of the 1988

Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.

*(footnote original)* <sup>9</sup> All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.

- (c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.
- (d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.
- (e) Prior to the date of entry into force of the WTO Agreement, references to WTO bodies shall be construed as referring to the corresponding GATT body and references to the Director-General of the WTO and to the WTO Secretariat shall be construed as references to, respectively, the Director-General to the CONTRACTING PARTIES to GATT 1947 and to the GATT Secretariat.

4. *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement.

5. *National Legislation*

- (a) Each government accepting or acceding to this Agreement 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 the entities contained in its lists annexed hereto, with the provisions of this Agreement.
- (b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

6. *Rectifications or Modifications*

- (a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.
- (b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the

event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.

7. *Reviews, Negotiations and Future Work*

- (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.
- (b) Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.
- (c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.

8. *Information Technology*

With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.

9. *Amendments*

Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.

10. *Withdrawal*

- (a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.
- (b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.

11. *Non-application of this Agreement between Particular Parties*

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

12. *Notes, Appendices and Annexes*

The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.

13. *Secretariat*

This Agreement shall be serviced by the WTO Secretariat.

14. *Deposit*

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 paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.

15. *Registration*

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

*Done* at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four 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.

## 1.2 Article XXIV:2

1. At its meeting of 27 February 1996, the Committee on Government Procurement adopted the Procedures for Accession to the Agreement.<sup>1</sup>

2. In June 2000, with respect to the process of accession to the Agreement on Government Procurement ("GPA"), the Committee on Government Procurement adopted a Checklist of issues for the provision of information by applicant governments.<sup>2</sup> In October 2015, the Committee adopted a revised checklist of issues for provision of information relating to accession to the Agreement on Government Procurement, as amended by the Protocol Amending the Agreement on Government Procurement. This checklist supersedes the earlier one contained in document [GPA/35](#).

3. By way of streamlining the accession process, the Committee agreed to an Indicative Time-frame for Accession Negotiations and Arrangements for Reporting on the Progress of Work in document [GPA/W/109/Rev.2](#).<sup>3</sup> On 2 June 2006, the Committee adopted a Decision on the Modalities of Accession to the GPA.<sup>4</sup>

## 1.3 Article XXIV:3

4. At its meetings of 18 February 1998 and 25 June 1998, the Committee on Government Procurement discussed the legal and procedural aspects of the relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement on the basis of a Note prepared by the WTO Secretariat in response to the Committee's request.<sup>5</sup>

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<sup>1</sup> [GPA/M/1](#), Section B. The text of the decision can be found in [GPA/1](#), Annex 2.

<sup>2</sup> [GPA/M/13](#), Section G, and [GPA/M/14](#), Section C. The text of the adopted document can be found in [GPA/35](#).

<sup>3</sup> [GPA/58](#), para. 22 and [GPA/M/15](#), paras. 15-16. See also [GPA/W/109](#) of 28 Feb. 2000, [GPA/W/109/Rev.1](#) of 26 June 2000 and [GPA/W/109/Rev.2](#) of 3 January 2001.

<sup>4</sup> [GPA/87](#).

<sup>5</sup> [GPA/M/8](#), Section C and [GPA/M/9](#), Section B. The text of the Note can be found in [GPA/W/65](#) of 9 January 1998.

#### 1.4 Article XXIV:5

5. At its meeting on 4 June 1996, the Committee on Government Procurement adopted the Procedures for the Notification of National Implementing Legislation.<sup>6</sup>

#### 1.5 Article XXIV:6

##### 1.5.1 General

6. In accordance with the procedures established by the Committee on Government Procurement at its meeting of 24 February 1997<sup>7</sup>, parties proposing to make rectifications and modifications to their appendices should notify them to the Committee in the form of relevant replacement or additional pages identifying the proposed changes to be inserted in the loose-leaf system for the Appendices to the GPA that was established by the Committee at that time.<sup>8</sup>

7. At its meeting of 23 April 2004, the Committee on Government Procurement adopted a Decision Pursuant to Article XXIV:6(a) of the GPA<sup>9</sup>, approving the modification to the Appendices of the European Communities proposed in document GPA/MOD/EEC/1. This modification resulted in the extension of coverage under the GPA to the ten new member States of the European Communities, i.e. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Following the adoption of that decision, the European Communities made a statement clarifying the content of its modifications made in view of its enlargement.<sup>10</sup> The decision entered into force on 1 May 2004, on the same date as the enlargement of the European Communities to the ten countries listed above.

8. At its meeting of 16 December 2004, the Committee on Government Procurement adopted a Decision Pursuant to Article XXIV:6(a) of the GPA.<sup>11</sup> The Decision allows Israel to extend by one year the period to reduce its offsets from 30 to 20 per cent. Under its previous Note to Appendix I of the Agreement, Israel was authorized to require offsets in any form up to 30 per cent of the value of a contract until the end of 2004, and should have further reduced this level to 20 per cent of the value of a contract as of 1 January 2005. Based on Israel's proposed modification to its Note to Appendix I<sup>12</sup>, and subsequent informal consultations with other parties, a draft Decision was submitted to, and adopted by, the Committee without further discussion. According to this Decision, Israel may extend by one year the period to reduce its offsets to 20 per cent and shall submit a report concerning the implementation of its modified Note to Appendix I at the end of 2005.

9. At its meeting of 21 December 2005, the Committee on Government Procurement adopted a second Decision Pursuant to Article XXIV:6(a) of the Agreement on Government Procurement<sup>13</sup> regarding Israel's offset regime. The Decision allows Israel to keep but gradually reduce its offsets from 35 per cent of the contract going down to 30 per cent after five years, 28 per cent after ten years, and 20 per cent after 13 years, beginning from the date on which Israel implements the Agreement. Furthermore, the Decision sets Israel's thresholds for construction services across Annexes at 5,000,000 SDR during the period from 1 January 2006 until 31 December 2008 and its permanent threshold at 8,500,000 SDR.

10. At its meeting of 8 December 2006, the Committee on Government Procurement adopted a Decision Pursuant to Article XXIV:6(a) of the Agreement on Government Procurement<sup>14</sup>, approving the modification to the Appendices of the European Communities proposed in document

<sup>6</sup> [GPA/M/2](#), para. 7. The text of the decision can be found in [GPA/1/Add.1](#).

<sup>7</sup> [GPA/M/5](#), Section D. See also [GPA/W/35/Rev.1](#), para. 4.

<sup>8</sup> See also the Note by the Secretariat on Procedures for Future Changes to the Loose-Leaf System for Appendices to the Agreement ([GPA/W/110](#) of 7 March 2000). Proposals and any supplementary documents relating to them are circulated [GPA/MOD/\\*](#) document series (formerly in the [GPA/W/\\*](#) series). Once a proposal has been approved, the new or amended page(s) is certified in a [WT/LET/\\*](#) document and the relevant documentation derestricted. An up-to-date electronic copy of the loose-leaf system is available on the WTO website ([www.wto.org](http://www.wto.org)).

<sup>9</sup> [GPA/M/22](#), paras. 14-28. The text of the decision can be found in [GPA/78](#).

<sup>10</sup> [GPA/M/22](#), para. 17, including the text of the statement.

<sup>11</sup> [GPA/M/25](#), paras. 2-3. The text of the decision can be found in [GPA/83](#).

<sup>12</sup> [GPA/MOD/ISR/1](#).

<sup>13</sup> [GPA/M/29](#), paras. 4-14. The text of the decision can be found in [GPA/86](#).

<sup>14</sup> [GPA/M/31](#), paras. 15-23. The text of the decision can be found in [GPA/90](#).

GPA/MOD/EEC/2. This modification resulted in the extension of coverage under the Agreement on Government Procurement to Bulgaria and Romania. Following the adoption of that decision, the European Communities made a statement clarifying the content of its modifications made in view of its enlargement.<sup>15</sup> The decision became effective on 1 January 2007, on the same date as the enlargement of the European Communities to the two countries listed above.

11. At its meeting of 27 June 2013, the Committee on Government Procurement adopted a Decision Pursuant to Article XXIV:6(a) of the Agreement on Government Procurement<sup>16</sup>, approving the modification to the Appendices of the European Union proposed in documents [GPA/MOD/EEC/25](#) and [GPA/MOD/EEC/25/Add.1](#). This modification resulted in the extension of coverage under the GPA to Croatia. The decision became effective on 1 July 2013, on the same date as the enlargement of the European Union to this country.

## 1.6 Article zXXIV:7

### 1.6.1 Article XXIV:7(a): annual review

12. Pursuant to Article XXIV:7(a), the Committee has reviewed annually the implementation and operation of the Agreement on Government Procurement and has annually informed the WTO General Council of developments during the periods covered by such reviews.<sup>17</sup>

### 1.6.2 Article XXIV:7(b): further negotiations

13. Pursuant to Articles XXIV:7(b) and XXIV:7(c) of the GPA, the parties to the Agreement undertook further negotiations under that Agreement.

14. At the formal meeting of the Committee on Government Procurement on 8 December 2006, the Chairman reported that the negotiators had agreed upon an understanding on the revision of the text of the GPA as contained in Job No. 6259, dated 8 December 2006 (circulated to all WTO Members as [GPA/W/297](#)). The agreement of the negotiators was provisional based on the following considerations:

- First, the provisions of the text remained subject to a final legal check. In other words, rectifications of a purely formal character that do not affect the substance or meaning of the text might be needed. It would also be necessary to draw up and ensure the linguistic consistency of the texts in the other two WTO languages.
- Secondly, it was subject to a mutually satisfactory outcome to the coverage negotiations. In other words, some negotiators might continue discussions on the relationship between certain aspects of the aforementioned text, in particular in relation to Annexes 2 and 3, and the coverage negotiations.<sup>18</sup>

15. An updated version of the provisional revised text of the GPA was circulated on 16 December 2010 as WTO document [GPA/W/313](#)<sup>19</sup>, along with the following introductory note:

"This document contains the text of the revision of the 1994 Agreement on Government Procurement (Articles I-XXI) following completion of the "legal check" and verification of the equivalency of the English, French and Spanish versions of the text. As with the previous version of the revised text ([GPA/W/297](#) of 11 December 2006), adoption of the text contained herein is subject to the conditions outlined in paragraphs 20-21 of the Committee's 2006

<sup>15</sup> [GPA/M/31](#), para. 19, including the text of the statement.

<sup>16</sup> [GPA/M/52](#), para. 3.1-3.19. The text of the decision can be found in [GPA/118](#).

<sup>17</sup> These reviews are available in the following documents: [GPA/8](#) and [Add.1](#) for 1996; [GPA/19](#) for 1997; [GPA/25](#) for 1998; [GPA/30](#) for 1999; [GPA/44](#) for 2000; [GPA/58](#) for 2001; [GPA/73](#) for 2002; [GPA/75](#) for November 2002 to June 2003; [GPA/82](#) for July 2003 to November 2004; [GPA/85](#) for December 2004 to October 2005; [GPA/89](#) for November 2005 to December 2006; [GPA/92](#) for 2007; [GPA/95](#) for 2008; [GPA/103](#), [Add.1](#) and [Corr.1](#) for 2009; [GPA/106](#) for 2010; [GPA/110](#) and [Corr.1](#) for 2011; [GPA/116](#) for 2012; [GPA/121](#) for 2013; [GPA/126](#) and [Corr.1](#) for 2014; [GPA/134](#) for 2015; [GPA/141](#) and [Corr.1](#) for 2016; [GPA/145](#) and [Corr.1](#) for 2017; [GPA/AR/1](#) for 2018; and GPA/AR/2 for 2019.

<sup>18</sup> [GPA/89](#), paras. 20-21.

<sup>19</sup> See also [GPA/W/313/Corr.1](#) of 13 January 2011.

Report to the General Council ([GPA/89](#) of 11 December 2006). In particular, it should be noted that the final adoption of the text is subject to a mutually satisfactory outcome to the related negotiations on the coverage of the Agreement.

Article XXII of the revised Agreement (Final Provisions) remains subject to discussion by the negotiators and will be made available at a later date."

16. On 15 December 2011, the Committee on Government Procurement adopted a decision at the Ministerial level on the Outcomes of the Negotiations under Article XXIV: 7 of the GPA.<sup>20</sup>

17. In line with this decision, on 30 March 2012 the Committee on Government Procurement adopted<sup>21</sup> the Protocol Amending the Agreement on Government Procurement, as contained in document [GPA/W/316](#).<sup>22</sup>

### 1.6.3 Article XXIV:7(c): elimination of discriminatory measures and practices

18. At its meeting of 16 July 2004, the Committee on Government Procurement adopted a Decision on Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices.<sup>23</sup> According to this decision, the Committee as a whole will address the provisions in the draft revised text of the GPA referred to as "market access issues", as well as issues relating to the presentation and structure of the appendices to the Agreement. At the same time, negotiations on the extension of coverage of each party's Appendix I and on the elimination of discriminatory measures and practices in such Appendices will be largely pursued bilaterally but subject to monitoring by the Committee as a whole. On 21 July 2005, the Committee on Government Procurement adopted a further Decision on the subject, extending the deadlines for submission of initial offers and the negotiations in the light of the fact that the preparation of initial offers as called for by the Committee's previous Decision required extensive research and internal consultation and, therefore, was taking longer than initially foreseen.<sup>24</sup>

Current as of: March 2020

<sup>20</sup> [GPA/112](#).

<sup>21</sup> [GPA/M/46](#), para. 7.

<sup>22</sup> A numbering error in the French version of the Protocol was rectified on 4 June 2012 ([WT/LET/854](#)). The certified and rectified true copy of the Protocol was circulated in [WT/LET/858](#) on 12 June 2012. The package adopted by the Committee on 30 March 2012 was also reproduced in three separate language versions in [GPA/113](#).

The Chair noted the following "understandings" before gaveling the decision:

- "Following deposit of the required instruments of acceptance, the schedules of the Parties, circulated in document [GPA/W/316](#) of 27 March 2012, would need to be reformatted. At that stage, the titles that appeared over each Party's Appendix I offer or Appendix I future commitments in that document would be deleted in favour of a simple reference to the name of the relevant Party. Furthermore, the content of Appendices II-IV, which each Party was required to submit, at the latest, at the time of deposit of its instrument of acceptance, would be filled in. These changes would, in due course, need to be certified by the Director-General. Parties would be kept informed throughout the process." ([GPA/M/46](#), para. 4); and
- "With regard to the offer of Armenia, the text relating to Armenia's offer that could be found on page 38 of document [GPA/W/316](#) of 27 March 2012 under the heading "Final Appendix I Offer of the Republic of Armenia" would be replaced by the updated offer that had just been circulated, in document GPA/O/RFO/ARM/1 of 30 March 2012." ([GPA/M/46](#), para. 5).

<sup>23</sup> [GPA/M/23](#), paras. 2-6. The text of the decision can be found in [GPA/79](#).

<sup>24</sup> [GPA/79/Add.1](#).