



WTO accession and GPA accession: links and recent experience

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WTO SEMINAR ON WTO ACCESSIONS RULES

Geneva, Switzerland, from 4 to 15 February 2019

Contents of presentation



- I. **Significance of government procurement: economic, social and trade dimensions**
- II. **What is the WTO Agreement on Government Procurement?**
- III. **The elements of the GPA**
- IV. **The revised GPA: significance of its recent entry into force**
- V. **Accession to the GPA**
- VI. **The changing global context of the GPA**
- VII. **GPA and WTO Accession**
- VIII. **Reflection on the relevance of the GPA**



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



Why procurement regimes matter ?

Economic, social and trade dimensions

- **Big !** A large proportion of Gross Domestic Product (15-20 % in most countries, more in some cases)
- **Important !** 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
 - National security
- Importance for “**good governance**”.
- Significance as a component of **international trade**



What are the benefits of open and transparent procurement systems?

- **More potential suppliers** – results in more competition – lower prices/better quality goods and services for the public.
- **Access to technology that may only be available abroad:** important for optimal infrastructure creation; health care provision, etc.
- **Ability to provide more, better government services for same resources.**
- **Opportunities for domestic firms:**
 - access to prime or sub-contracts;
 - longer-term local industry development; and
 - subsequent increased access to foreign markets, if done through the GPA or a similar instrument.



II. What is the WTO Agreement on Government Procurement?

Trade and government procurement in the WTO: the evolving policy interface



- **Government procurement excluded** from the core disciplines on non-discrimination in the 1947 General Agreement on Tariffs and Trade (**GATT**) and the 1994 General Agreement on Trade in Services (**GATS**).
- A **gap that is gradually being filled**, over time:
 - 1979: the **Tokyo Round** Government Procurement Code
 - **GPA 1994**: improved rules, expanded coverage.
 - **Work on Transparency** in GP (1997-2004).
 - **The GPA 2012**: a multi-dimensional tool for the 21st century (e-procurement, greater flexibility, more emphasis on good governance, improved S&D for DCs).

What is the GPA?: Basic nature of the Agreement



- An internationally recognized tool that promotes:
 - Access to other GPA Parties' procurement markets;
 - Improved value for money in each participating Member's procurements;
 - Good governance (transparency, fair competition and an absence of corruption in covered procurement markets).
- A **plurilateral agreement** within the WTO system (not all WTO Members participate)
 - Part of the WTO system (and enforceable under the DSU!) via Annex 4 of the Marrakesh Agreement.
 - Membership increasing over time. Several developing/transition economies pursuing/pondering accession.



III. Main elements of the Agreement



Five main elements of the Agreement

1. Rules on **national treatment and non-discrimination** with respect to participation in each Party's covered procurement markets.
2. **Coverage** defined through detailed schedules (Annexes) in "**Appendix I**". Specify covered entities, thresholds, covered services, specific exclusions, etc.
3. **Detailed provisions** on aspects of the procurement process, **to ensure transparency and open competition**. Includes provisions on:
 - a) Tendering procedures;
 - b) Qualification of suppliers;
 - c) Time limits, documentation, opening of tenders and contract award procedures.

Note: The GPA complements, and does not replace, national GP legislations.



Five main elements of the Agreement (cont'd)

4. **Enforcement:** provisions on application of the WTO-DSU and domestic review procedures (bid challenge or remedy systems).
5. **Special and differential treatment (S&D)** and other provisions to facilitate accession to the Agreement



IV. Significance of the entry into force of the revised Agreement

The entry into force of the revised GPA: overview



- The revised GPA entered into force on 6 April 2014.
- Elements of the revision:
 1. **Modernized text.**
 2. **Market access** enhancement package valued at \$80-100 billion annually.
 3. Package of Agreed **Work Programmes** on issues such as SMEs and sustainability.
- **Now in force for all Parties except Switzerland.**



V. GPA Accession to the Agreement on Government Procurement

Substantive requirements for GPA accession



1. **Acceding Party's coverage offer** (to be negotiated)
 - Includes any special **transitional measures** to be offered
2. **Consistency of national legislation with GPA requirements**
 - may require changes to legislative framework and fulfilment of institutional requirements (domestic review system)



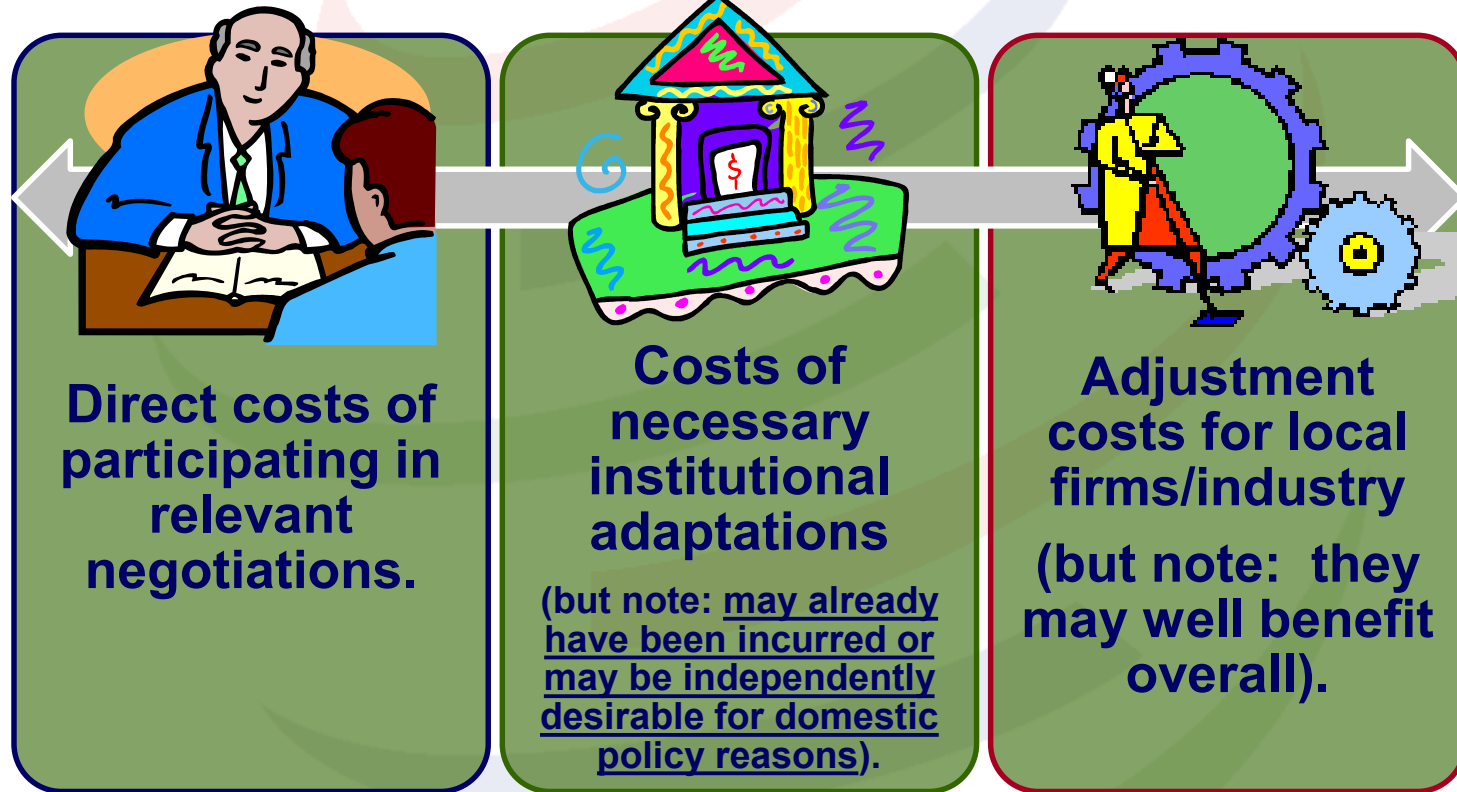
Potential benefits of GPA accession for developing/emerging countries: presenter's perspective*

- ❑ **Potential trade gains from assured access to other Parties' procurement markets.**
- ❑ **Possibilities for achieving enhanced value for money in acceding countries' own procurement systems, through strengthened competition.**
- ❑ **Potentially increased incentives for inbound foreign direct investment.**
- ❑ **Opportunity to influence the terms of other Parties' accessions.**
- ❑ **Opportunity to influence the future evolution of the Agreement.**

*NB: each acceding WTO Member must ultimately assess the relevance of these benefits for itself.



Potential costs of accession*



*It is recognized that each acceding WTO Member must ultimately assess these for itself.



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

Two Factors:

- 1. synergies** with other international instruments, and national legislation; and
- 2. increasing membership** of the Agreement worldwide.



Factors currently enhancing the importance of the GPA (1): synergies with other international instruments, and national legislation

- GPA a distillation of **best practices internationally**, as seen by the participating WTO Member governments.
- An important benchmark for national procurement reforms.
- Carefully harmonized with the **UNCITRAL Model Law**.
- Recognised for use under Alternative Procurement Arrangements in the **World Bank's New Procurement Framework**.
- The model/key reference document for procurement chapters in bilateral **FTAs and regional trade agreements** worldwide, at least compatible with most.



Factors currently enhancing the importance of the GPA (2):

Increasing membership of the Agreement worldwide

- Currently, the GPA covers 47 WTO Members:

GPA Parties

Armenia	Korea, Republic of	Singapore
Canada	Liechtenstein	Switzerland
European Union, including its 28 member States	Moldova, Republic of	Chinese Taipei
Hong Kong, China	Montenegro	Ukraine
Iceland	the Netherlands w.r.t. Aruba	United States
Israel	New Zealand	
Japan	Norway	

WTO Members currently in the process of acceding to the GPA

Albania	the Kyrgyz Republic
Australia	Oman
China	the Russian Federation
Georgia	Tajikistan
Jordan	the former Yugoslav Republic of Macedonia

WTO Members with GPA accession commitments that have yet to initiate their accessions

Afghanistan	Saudi Arabia
Kazakhstan	Seychelles
Mongolia	

Usefulness of the Observer Status in as an initial step



Cameroon

Jordan *

Russian Federation
*

Viet Nam

- **Belarus** is the only observer which is in the process of accession to the WTO (approved by the Committee on 27 June 2018);

Rights/obligations of GPA observer status



How ? Observer status can be requested by simple letter to the Chairman of the GPA Committee.

Rights

Participation in the discussions in the Committee, e.g. related to Work Programmes

Gaining access to relevant information, e.g. with regard to accession negotiations

Becoming acquainted with the operation and administration of the Agreement, e.g. in order to assess its interest in the GPA, as well as the relevance of the Agreement to its economy

Receiving directly information regarding upcoming meetings, meeting documents, and post-meeting summaries and reports

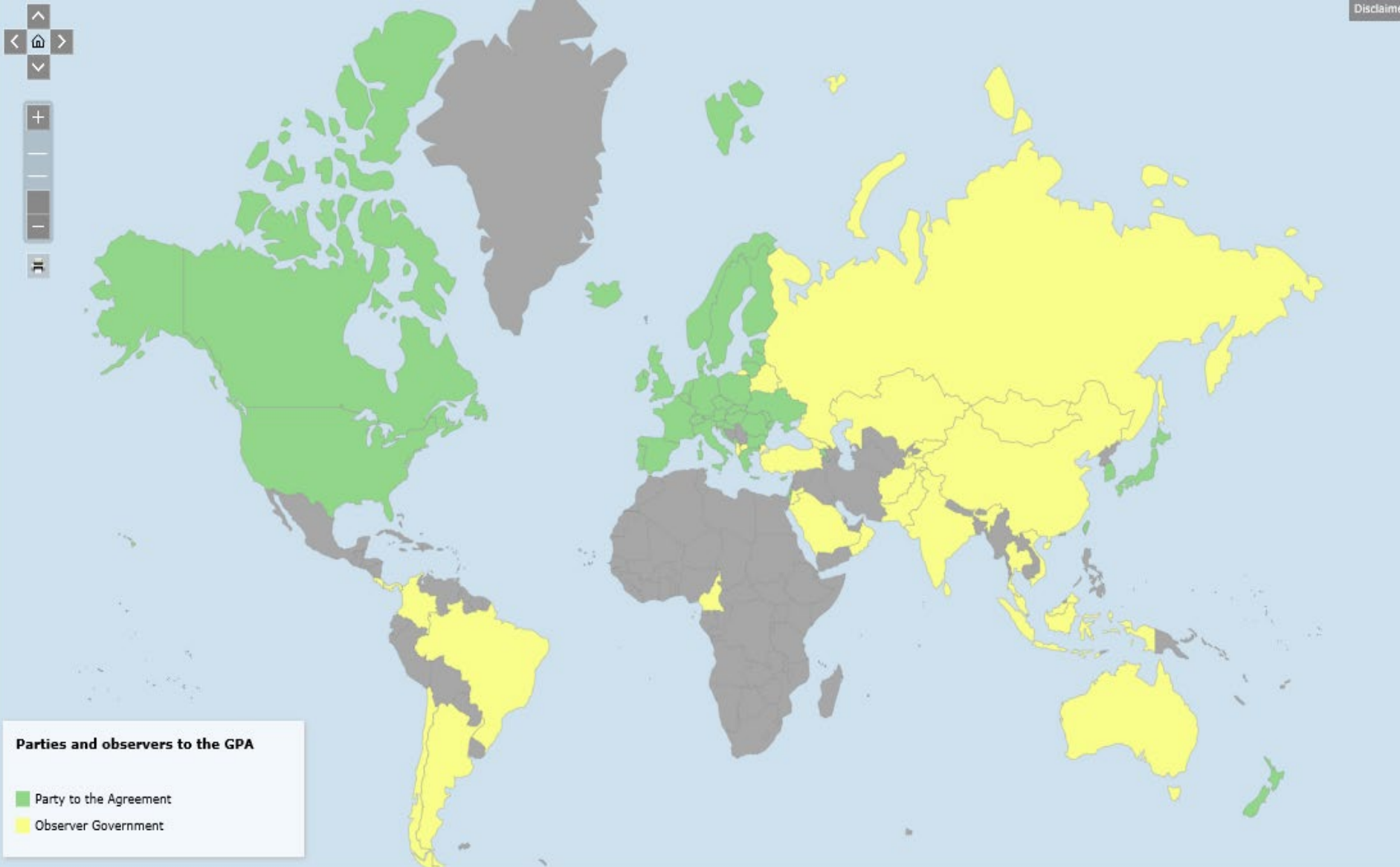
Obligations

None

Parties et observateurs à l'AMP



Disclaimer



Parties and observers to the GPA

- Party to the Agreement
- Observer Government



VII. GPA and WTO Accession

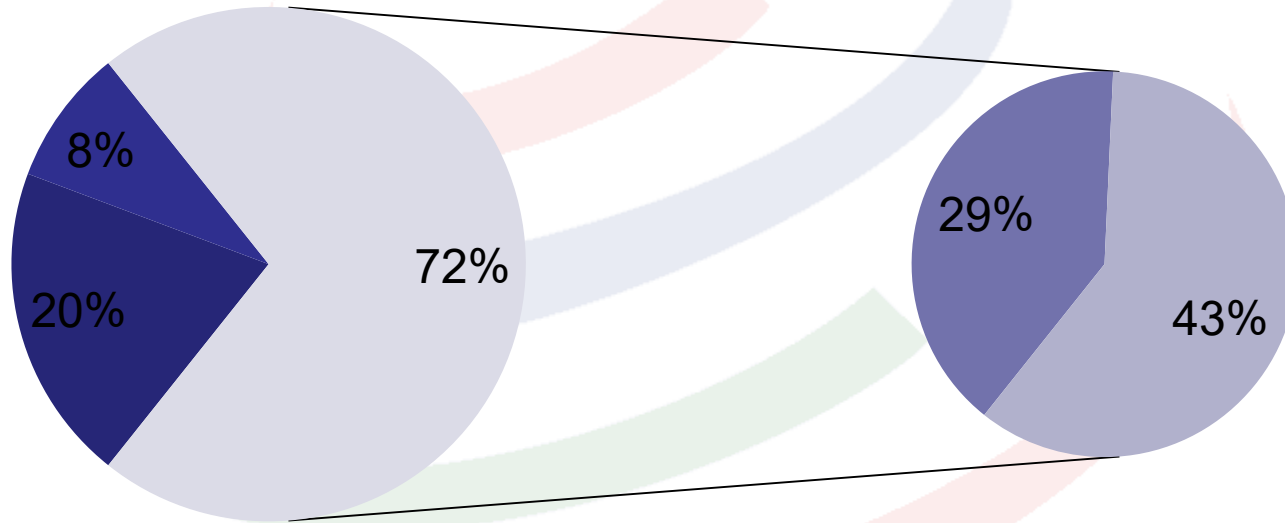
GPA and WTO Accession



- Increasingly, newly acceding WTO Members take on commitments, at the time of their accession to the Organization, to eventually join the GPA;
- **25 out of 36 (70%)** of newly acceded Members have undertaken GPA-related commitments;
 - including 9 (36%) which subsequently **completed their accessions to the GPA**; and
 - **8 (32%)** currently negotiating their GPA accessions;



Overview of GPA-related commitments by new WTO Members



- GPA accession not envisaged (8: Cambodia; Ecuador; Liberia, Nepal; Samoa; Tonga; Vanuatu; Yemen)
- GPA accession considered, but no commitment (3: Lao People's Democratic Republic; Viet Nam; Cabo Verde)
- Accession complete (10: Armenia; Bulgaria; Croatia; Estonia; Latvia, Lithuania, Moldova, Montenegro, Chinese Taipei and Ukraine)
- Accession on-going/outstanding (8 ongoing, 6 outstanding, 1 withdrawal of application for accession to the GPA)



Country examples: Montenegro – accession completed (in around 3 years)

- “The representative of Montenegro confirmed that Montenegro would **initiate negotiations** for membership in the WTO Agreement on Government Procurement upon accession by tabling an entity offer at that time. She also confirmed that, **if** the results of the negotiations were satisfactory to Montenegro and the other members of the Agreement, Montenegro would **complete negotiations for membership** in the WTO Agreement **by 31 December 2013**. The Working Party took note of these commitments.”
- Montenegro became the **154th WTO** member on **29 April 2012**.
- Montenegro applied for **observership** in the GPA Committee on **18 July 2012** and became an observer on **31 October 2012**.
- Montenegro applied for **GPA accession** on **4 October 2013**.
- The Committee adopted a **decision** inviting Montenegro to accede to the GPA on **29 October 2014**.
- **Montenegro submitted its instrument of accession on 15 June 2015** and became a Party to the GPA 30 days later, i.e. on **15 July 2015**.



Country examples: Tajikistan – accession ongoing



- “The representative of Tajikistan confirmed Tajikistan's willingness to accede to the WTO Agreement on Government Procurement. Tajikistan would become an **observer** to the Agreement upon accession, and submit an **application for membership with a coverage offer within one year after accession to the WTO**. The Working Party took note of these commitments.”
- Tajikistan became the 159th WTO member on **2 March 2013**.
- Tajikistan applied for observership in the GPA Committee on **22 May 2014** and became an observer on **25 June 2014**.
- Tajikistan applied for accession to the GPA on **11 February 2015** and is making fast progress in its accession negotiations.
- The Chairman of the Committee expects a conclusion of this accession in principle hopefully in 2019.



Country examples: the Russian Federation – accession process starting

- “The representative of the Russian Federation confirmed the intention of the Russian Federation to join the WTO Agreement on Government Procurement [...]. He also confirmed that the Russian Federation would request **observership** in the WTO Agreement on Government Procurement **at the time of its accession** to the WTO and would **initiate negotiations** for membership in the WTO Agreement on Government Procurement by tabling an Appendix 1 offer **within four years of accession**. He confirmed that, if the results of the negotiations were satisfactory to the interests of the Russian Federation and the other Members of the Agreement, the Russian Federation would accede to that Agreement. The Working Party took note of these commitments.”
- The Russian Federation became the 156th WTO member on **22 August 2012**.
- The Russian Federation applied for observership in the GPA Committee on **15 May 2013** and became an observer on **29 May 2013**.
- The Russian Federation applied for accession to the GPA on **19 August 2016** and has submitted its initial offer on **7 June 2017**.

Country examples: Kazakhstan – observership granted



- “The representative of Kazakhstan confirmed the intention of the Russian Federation to join the WTO Agreement on Government Procurement [...]. He also confirmed that Kazakhstan would request **observership** in the WTO Agreement on Government Procurement **at the time of its accession** to the WTO and would **initiate negotiations** for membership in the WTO Agreement on Government Procurement by tabling an Appendix 1 offer **within four years of accession**. He confirmed that, if the results of the negotiations were satisfactory to the interests of the Kazakhstan and the other Members of the Agreement, the Kazakhstan would accede to that Agreement. The Working Party took note of these commitments.”
- Kazakhstan became the 162th WTO member on **30 November 2015**.
- Kazakhstan applied for observership in the GPA Committee on **1 September 2016** and became an observer on **19 October 2016**.
- Kazakhstan has confirmed its intention to request accession to the GPA in line with its commitments.



Country examples: Afghanistan

- “The representative of Afghanistan confirmed Afghanistan's willingness to accede to the WTO Agreement on Government Procurement. Afghanistan would become an **observer** to the Agreement upon accession, and submit an **application for membership with a coverage offer** *after accession to the WTO*. He indicated that Afghanistan would consider initiation of negotiations on joining the WTO Agreement on Government Procurement ***within one year from the date of accession to the WTO***. The Working Party took note of these commitments.”
- Afghanistan became the 164th WTO member on **29 July 2016**.
- Afghanistan obtained observer status in **October 2017**.





GPA and WTO Accession

- Important complementarities exist between GPA accession and disciplines under other elements of the WTO Agreements.
- While not a substitute for domestic reforms, accession to the GPA can reinforce reforms that enhance transparency and competition internally.
- GPA accession can encourage inward foreign-direct investment, by signalling a country's commitment to good governance and the fair treatment of all players.
- **BUT**: Costs and benefits exist (remember our previous discussion). In many cases, however, WTO newly Members contemplating accession to the GPA will already have incurred many of the relevant costs related to legislative and institutional adaptations or the implications of market opening for local suppliers.

A tale of progress and change



- Many countries in the region and worldwide are reforming their government procurement system.
- International instruments and institutions can provide guidance, while leaving room for legislative and political flexibility to adapt to specific country systems.
- Relevance of sound procurement for trade and growth: progress comes with change.
- Use of international obligations, incentives to push for desired internal reform.



**VIII. Reflection on the relevance of the GPA
for your country and other developing
/transition economies**

Reflection on the relevance of the GPA

- Are you sceptical of the usefulness/relevance of the GPA for your country? If so, what is underlying this perception?
- Might one believe that the GPA is actually GOOD for development, not bad? On what basis?



Is a rich countries' club?

Imposes excessive regulatory burdens?

Lacks interest in terms of export market potential?

Erodes national sovereignty/could actually hold developing countries back?

Any other points of concern?

Are mandatory standards of transparency/anti-corruption requirements pro or anti-development?

Is more competition in developing countries' infrastructure/other procurement markets good or bad? What are its likely effects?

What impact on local suppliers?

Nature and extent of export market opportunities available under the Agreement.





Concluding observations

- **Strong link between WTO accession commitments and GPA accession!**
- **Many rights to use as an observer!**
- Pace of accession to the GPA depends on the WTO Member in question: the acceding candidate is in the driver's seat!
- **Technical assistance**, e.g. WTO national and regional activities have proved to be very useful for GPA accessions – also in partnership with regional development banks (e.g. EBRD) .
- Modernized GPA, harmonization with other international standards and instruments (e.g. UNCITRAL Model Law) makes GPA accession a tool to support internal reform in line with international best practices.



<https://e-gpa.wto.org/>

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