The revised WTO GPA: an emerging pillar of twenty-first century trade and development

Policy coherence - The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

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The 2011 UNCITRAL Model Law on Public Procurement: synergies and complementarities with the revised GPA

UNCITRAL & the WTO

- Promoting international trade
  - Non-discrimination
- State-to-State relations
- Private law transactions
- Active in public procurement since 1980s
- Harmonisation of public procurement law at the national level
- Minimum standards of transparency, competition and objectivity/procedural fairness
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**International legal framework for PP**

- UN Convention Against Corruption
- WTO GPA (& regional FTAs)
- UNCITRAL Model Law on Public Procurement
- EU Directives
- MDBs Policies/Rules

National systems are generally based on one or more of these texts
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The UNCITRAL Model Law

- UNCITRAL mandate: to further the progressive harmonization and unification of the law of international trade
- Purpose of Model Law: a model for national procurement legislation
  - Universal application
    - Main consumers: economies in transition/developing countries
    - Covers all “public procurement”
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**The GPA**

- Objective: multilateral framework for government procurement … [to achieve] greater liberalization and expansion of world trade

- Minimum procedural standards for member countries’ national systems
- Agreement on “covered procurement”
- Plurilateral text
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Why both GPA and UNCITRAL?

- UNCITRAL designed Model Law to be compatible with GPA
- UNCITRAL main focus
  - Appropriate procedures at the national level
  - Default rule – open procurement
  - No thresholds

- GPA main focus
  - Non-discrimination through binding State-to-State agreements
  - Larger procurements
  - Implementation through procedures
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Objectives

• UNCITRAL: economy and efficiency, participation and competition, fair and equitable treatment, integrity, public confidence, transparency

• GPA “cornerstone principles”: non-discrimination, transparency
• Openness

Implemented through norms at the national level
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Scope and nature of national (Model) Law

- A framework law: all essential principles, rules and procedures
- For a national system
- Flexible, non-prescriptive

Law = skeleton of system, which also needs

- Procurement regulations, additional rules
- Supporting infrastructure and institutions
- Guidance on implementation and use
- Rules and guidance on planning and contract management

All these are discussed in detail in the Guide to Enactment and other UNCITRAL documents
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- Both GPA and UNCITRAL focus on transparency, competition and objective criteria in decision-making/procedural fairness

For example
- Full prior disclosure of terms of procurement
  - Needs description
  - Who can participate
  - How winner will be determined
  - Main contract terms
- Mandated procedures
- Public award notice
- Public challenge/review mechanism
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Government socio-economic or horizontal policies

- Conflict with national treatment, non-discrimination and special and differential treatment?
  - UNCITRAL permits eg price preferences, only for declared national policies
  - GPA: available for below-threshold procurement/non-covered procurement
  - Under both texts, requirement for transparency in application
  - Concept of temporary measures
Relationship between UNCITRAL ML and GPA

- Consistent policy objectives
- Consistent procedures
- Hence UNCITRAL Model Law can be used as one way to fulfil GPA legal requirements
- and as a template for the more detailed needs of a national system
- Secretariats and other donors working together in partnership
Procurement & Infrastructure Development

Model laws

- UNCITRAL Model Law on Public Procurement (2011)
  - Guide to Enactment (2012)
  - Guidance on Procurement Regulations (2013)
  - Glossary (2013)


Legislative guides and recommendations


Model provisions


Explanatory texts

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For more information

http://www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html

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THANK YOU