

At the crossroads between Market Opening, Rules Making and Governance Promotion: The Revised WTO GPA Agreement

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Outline

- The WTO GPA - What is it about and why do we care?
- Why is the 15 Dec. 2011 Ministerial decision and its 30 Mar. 2012 confirmation highly significant in this time of economic, fiscal and governance crisis?
- Is the best possibly still lying ahead of us?

The «inefficiencies» story...

And how to address (part of) it!

GPA?

- Plurilateral legally binding Agreement covering government procurement (GP).
- Rules guaranteeing fair and non-discriminatory conditions of international competition in GP.
- States usually spend around 15-25 % GDP on GP.
- GPA covers 42 WTO Members. Estimated value of markets open to competition: 1.6 trillion \$/Year.
- Decisive contribution to promotion of good governance and fight against corruption.

A little bit of historic background

- GP Excluded from GATT coverage in 1947
- First GATT-based GP negotiations during the Tokyo Round (1976-1979), based largely on OECD disciplines
- First major GPA revision and extension of scope in parallel to the Uruguay Round (1987-1994)
- Art. XXIV.7 b) and c) of 1994 GPA calls for a second re-negotiation of the GPA

Art.XXIV.7 b) and c): a negotiation with two pillars

- *(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.*

The «Rules» pillar

Improving the Agreement included, inter alia:

- being more reader friendly across the board;
- being XXIst century proof (Art. XIV e-procurement);
- no one size fits all (Art. V developing countries);
- the first explicit recognition of the importance of fighting corruption.

Good governance (I):

- ***Preamble:***

Recognizing the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption;

Good governance (II):

- **Art. IV.4:**

A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

- **General transparency procedures** (Across the Agreement);

- **Independent domestic review procedures** (Art. XVIII)

The «Market Access» pillar

To create an appropriate and balanced extension of coverage by Parties, we had to, inter alia:

- build a process that creates transparency and holds every Party accountable;
- manage diverse levels of ambition and political sensitivities (in a period of profound crisis);
- Leave nobody behind and forcing Parties to address requests with the required seriousness;
- convince political leaders that it is worth doing short term sacrifices to get long term benefits.

A tale of red, orange and green...

25 May 2011:

Towards summer, it becomes more & more green...

	CANADA	EU	HK, CHINA	ICELAND	ISRAEL	JAPAN	KOREA	LIECHTENSTEIN	ARUBA	NORWAY	SINGAPORE	SWITZERLAND	CHINESE TAIPEI	UNITED STATES
CANADA			?											
EU			?											
HK, CHINA	?	?		?	?	?	?	?			?	?	?	?
ICELAND			?											
ISRAEL			?											
JAPAN			?											
KOREA			?											
LIECHTENSTEIN			?											
ARUBA														
NORWAY														
SINGAPORE			?											
SWITZERLAND			?											
CHINESE TAIPEI			?											
UNITED STATES			?											

Legend

	Parties that have settled or presumptively settled
	Parties that are close to conclusion
	Parties with outstanding issues to resolve
?	Situation not yet clear because Hong Kong, China has still to circulate its offer

25.5.2011

	57%
	19%
	12%
?	12%





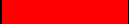
17 October 2011: No more white patches, at last!

Where anticyclical thinking is needed...

	ARMENIA	CANADA	EU	HK, CHINA	ICELAND	ISRAEL	JAPAN	KOREA	LIECHTENSTEIN	ARUBA	NORWAY	SINGAPORE	SWITZERLAND	CHINESE TAIPEI	UNITED STATES
ARMENIA	Black	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
CANADA	Green	Black	Green	Yellow	Yellow	Green	Green	Green	Yellow	Green	Green	Green	Green	Green	Green
EU	Green	Green	Black	Yellow	Green	Yellow	Red	Yellow	Green	Yellow	Green	Yellow	Green	Yellow	Red
HK, CHINA	Green	Yellow	Yellow	Black	Yellow	Green	Green	Green	Yellow	Green	Green	Green	Yellow	Yellow	Yellow
ICELAND	Green	Yellow	Green	Yellow	Black	Green	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Yellow
ISRAEL	Green	Green	Yellow	Yellow	Green	Black	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Yellow
JAPAN	Green	Green	Red	Yellow	Yellow	Yellow	Black	Green	Yellow	Green	Yellow	Green	Yellow	Green	Green
KOREA	Green	Green	Yellow	Yellow	Yellow	Yellow	Green	Black	Yellow	Green	Yellow	Green	Yellow	Yellow	Green
LIECHTENSTEIN	Green	Yellow	Green	Yellow	Green	Green	Yellow	Yellow	Black	Green	Green	Green	Green	Yellow	Red
ARUBA	Green	Green	Yellow	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green
NORWAY	Green	Green	Green	Green	Green	Green	Yellow	Yellow	Green	Green	Black	Green	Green	Green	Red
SINGAPORE	Green	Green	Yellow	Yellow	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green
SWITZERLAND	Green	Green	Green	Yellow	Green	Green	Yellow	Yellow	Green	Green	Green	Green	Black	Yellow	Yellow
CHINESE TAIPEI	Green	Green	Yellow	Yellow	Green	Green	Green	Yellow	Yellow	Green	Green	Green	Yellow	Black	Yellow
UNITED STATES	Green	Green	Red	Yellow	Yellow	Yellow	Green	Green	Red	Yellow	Red	Green	Yellow	Yellow	Black
												17.10.2011			
Legend	Green	Parties that have settled or presumptively settled										Green	63%		
	Yellow	Parties that are close to conclusion										Yellow	33%		
	Red	Parties with outstanding issues to resolve										Red	4%		

At the end of the day: Green is fashionable!

STATE OF PLAY REGARDING THE GPA COVERAGE NEGOTIATIONS AS AT 15 December 2011 (and confirmed on 30 March 2012): PARTY-BY-PARTY OVERVIEW

Detailed Table															
	ARMENIA	CANADA	EU	HK, CHINA	ICELAND	ISRAEL	JAPAN	KOREA	LIECHTENSTEIN	ARUBA	NORWAY	SINGAPORE	SWITZERLAND	CHINESE TAIPEI	UNITED STATES
ARMENIA	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
CANADA	Green	Black	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
EU	Green	Green	Black	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
HK, CHINA	Green	Green	Green	Black	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
ICELAND	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
ISRAEL	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green	Green	Green	Green	Green
JAPAN	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green	Green	Green	Green
KOREA	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green	Green	Green
LIECHTENSTEIN	Green	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green	Green
ARUBA	Green	Green	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green	Green
NORWAY	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green	Green
SINGAPORE	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green	Green
SWITZERLAND	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Black	Green	Green
CHINESE TAIPEI	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Black	Green
UNITED STATES	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Black
												30.03.2012			
Legend		Parties that have settled or presumptively settled											100%		
		Parties that are close to conclusion											0%		
		Parties with outstanding issues to resolve											0%		

Are two pillars good enough?

The two ways to overcome extensive difficulties:

- dealing with unfinished business as a follow-up to the negotiations;
- enriching the recipe rather than fighting over the existing ingredients by adding a **third ingredient**, in the form of the creation of a series of politically and substantially worthy future work programmes.

The 15 Dec. 2011 Ministerial decision and its 30 March 2012 confirmation: a historic milestone

- Decade long negotiation successfully concluded.
(details available in doc. GPA/113 on WTO Website – http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)
- New market access opportunities agreed to by GPA Parties: worth around 100 billion \$ / year.
- Agreement simplified, modernized and contributing even more forcefully to promotion of good governance and fight against corruption.
- Future work programmes to keep a dynamic approach
- Provisions tailor-made to enlarge the Membership of the GPA during the coming years.

A triple response to the economic crisis

- Helps the States to better utilize the scarce resources they have at their disposal and increases their political, economic and fiscal options, while still allowing them to tightening their belts.
- Further opens markets, contributes significantly to the fight against protectionism and therefore offers political stability, new opportunities for private industry by creating growth and employment.
- Enhances the States' commitment to good governance and their willingness to fight against corruption.

... and a (very partial) response to the multilateral trading system crisis?

- Trade rules that are not modernized from time to time become obsolete. The GPA re-negotiation has been quite effective in this context.
- Parties proved that it is possible to get ambitious Market Access negotiations finalized, even in very difficult political and economic circumstances
- Does the GPA «coalition of the willing» model prove to be a possible way forward? Is it possibly transposable to other WTO files?

GPA's «gradual multilateralization» process: Is the best possibly still lying ahead of us?

- All the fastest growing regions of the world are still not Members of the GPA. They have tremendous infrastructure needs.
- Negotiations with China have started in 2007 and are already well advanced. Jordan's accession process too.
- Other major emerging and many more developing countries will certainly follow in the coming years.
- Market access gains from future enlargements are estimated to be worth several hundreds of billions \$ / year.

Why joining the club? (part I)

As a political leader / government, you might be interested in:

- pushing reforms on GP forward (not always that easy without the external pressure) or getting the appropriate credit for unilateral reforms already done;
- receiving market access opportunities for your companies, perhaps complementing the opportunities already negotiated through FTA / PTA negotiations;
- getting protection against protectionism, thanks to the GPA rights and obligations umbrella;

Why joining the club? (part II)

- getting the «good governance stamp» associated with GPA Membership, therefore attracting more FDI;
- being part of an Agreement that will gain in importance, at a time when the entry price is still affordable;
- being on the «comfortable side» of the table when further WTO Members / competitors are negotiating their accession;
- having the opportunity to keep shaping the Agreement in the coming decade.

A few final thoughts

- With the rise of new technologies and social networks, the world is changing fast. Governments are increasingly held accountable by societal actors (and the market forces obviously).
- An enhanced global commitment to good governance and to the fight against corruption could significantly help to promote political stability and economic growth around the World.
- GPA, which is at the crossroads between market opening, rules making and good governance promotion has now the potential to become a pillar of the multilateral trading system.

**Thank you very much
for your kind attention!**

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