

CHANGING DEFINITION OF PUBLIC PROCUREMENT IN INTERNATIONAL
TRADE: FROM THE PERSPECTIVE OF THE REVISED GPA

-LIPI SARIN*

Introduction

Public procurement or Government procurement can simply be defined as the process through which the public or local authorities purchase either goods or services or both from companies. Over the past decade, government procurement has come to be one of the most central pillars of International Trade. Various governments have gradually begun to recognise the concept of procurement as an essential aspect of economic development of their countries. One of the reasons could be the lack of properly well-defined rules and regulations that govern this sector. The absence of a “value for money” system in government procurement services resulted into the formation of the very first binding agreement under the WTO called as the Agreement on Government Procurement (GPA or the Agreement).

The Uruguay Round of multilateral trade negotiations resulted in the implementation of the Agreement on Government Procurement (GPA or “the agreement”) on 1st January, 1994.¹ GPA is a plurilateral Agreement, which means that it is not binding on all the WTO members, but only on the parties that have signed it. It essentially controls and puts rules and regulations on the “purchasing activities of the public bodies” of these parties.² The fundamental objective of this plurilateral agreement is to encourage the development of government procurement markets amongst its parties. This goal is achieved by imposing rules and regulations on the participating members in order to prevent discrimination against the products and services of other members. This would in turn lead to a greater liberalisation of trade and expansion of the world economy.

* III Year, BA.LLB. (HONS), Hidayatullah National Law University, Raipur.

¹ *Government procurement - the plurilateral agreement on government procurement (GPA)* (2012): https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm (last updated Apr. 20, 2016).

² ROBERT D. ANDERSON & SUE ARROWSMITH, *THE WTO REGIME ON GOVERNMENT PROCUREMENT: CHALLENGE AND REFORM 3* (1ST ED. 2011).

So far, the GPA is the only legally binding agreement under the WTO which deals with laws related to government procurement. The agreement aims to open public procurement to international trade and competition, with a specific focus on the principles of transparency and non-discrimination.³ The scope of government procurement is limited to both goods and services, and is also inclusive of construction ser

VICES. Further, the working of the GPA is based on its contribution towards administering the already existing agreements that come under the umbrella of the WTO. Market access by foreign companies to the domestic procurement markets of the fellow GPA parties, can be said to be one of the cornerstones of the Agreement.

Changing definition of public procurement: the revised agreement

We cannot solve our problems with the same thinking we used when we created them – Albert Einstein

i. What was the need of a new Agreement?

Over the past couple of years, the GPA has established itself as one of the key mechanisms in regulating international trade under the World Trade Organisation (WTO). The World Trade Organisation Committee on Government Procurement adopted the revised Agreement on Government Procurement (GPA) on 30th March, 2012.⁴ After a series of informal plurilateral sessions and various negotiations, the protocol for amendment of the agreement was finally adopted by two-thirds of the 15 parties. The revised GPA, therefore, came into force nearly two years later after it was adopted, that is, on 6th April, 2014.⁵

³ Agreement on Government Procurement, Apr. 15, 1994, 1867 U.N.T.S. 14, 33 I.L.M. 1143 (1994) [hereinafter as 'GPA'].

⁴ *Government procurement - the plurilateral agreement on government procurement (GPA)* https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm (last updated Apr. 20, 2016).

⁵ *Revised WTO Agreement on Government Procurement to come into force on 6 April 2014*, WTO NEWS ITEM, https://www.wto.org/english/news_e/news14_e/gpro_11mar14_e.htm (last updated Mar. 11, 2014).

The reason for the coming of the new Agreement was mainly that the old Agreement failed to address a large number of procurement related issues, whether they were procedural or whether they questioned the very foundation of the International law that the GPA was derived from. Initially, the need to regulate a certain amount of transparency was first recognised at the Singapore Ministerial Conference of 1996. At the meeting, it was agreed upon by the ministers to “establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies and, based on this study, to develop elements for inclusion in an appropriate agreement.”⁶ The conference was soon followed by the Doha Ministerial Conference in 2001, and it was eventually concluded in 2004 that the issues related to curbing of corruptive practices in government procurement would not form part of the Doha Work Programme.⁷ Therefore, it can be said that the all the efforts taken by the WTO to enhance transparency and reduce anti-corruptive practices in government procurements had been unsuccessful so far.⁸ This was one of the reasons why a new GPA was required. The inception of the revised GPA aimed to aimed to introduce all these changes, at least on a plurilateral level.

ii. Changes brought in the Revised Agreement

As already discussed, the revised Agreement adopted a more modern and flexible approach with respect to several of its provisions. A more streamlined perspective evolved along with the revised agreement, whether it was in terms of procedural provisions or provisions related to the transparency of the system. The renegotiated Agreement focuses upon procedural as well as transparency related changes in its provisions. Amongst these broad changes, the revised Agreement

⁶ WTO Ministerial Conference, Singapore, Ministerial Declaration, ¶ 126, WT/MIN(96)/DEC (Dec. 18, 1996).

⁷ WTO Ministerial Conference, Fourth Session, Doha, Ministerial Declaration, ¶ 126, WT/MIN(01)/DEC/1, (Nov. 20, 2001).

⁸ *WTO: government procurement working group on transparency*
https://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm (last updated Apr 20, 2016).

seeks to mainly address the issues of a) Coverage or reciprocity and b) flexibility.⁹ The former involves regulations related to the procuring entities covered by the Agreement and the latter involves accession related measures for developing as well as least-developed countries. Some of these measures, along with the other changes introduced in the revised Agreement are discussed in the paper henceforth.

a) PROCEDURAL CHANGES

Electronic Procurement- The scope of the Agreement has been discussed` in Article II, which has been drafted in a more comprehensive and specific manner in the new Agreement.¹⁰ The Article lays down the four parameters upon which the scope of the application Agreement would be determined. Out of them, the first sub clause specifically is indicative of the “modernity” that the revised agreement seeks to achieve. It aims to do so by strongly implementing the already existing measures related to electronic public procurement.

According to the revised text of the Agreement, the usage of such modern electronic techniques is comparable to the old traditional methods of communication. This is made clearer by revising certain technical aspects of the Agreement, such as drawing a distinction between the terms “written” and “in writing”.¹¹ Further, the Agreement provides for a control mechanism that can be applied to the methods of controlling electronic communications. The mechanism ensures that such electronic processes and techniques don’t act as a hindrance to trade. This way the system of electronic procurement is not applied in a discriminatory manner. The procuring entities are required to use information

⁹ Jianning Chen, *Accession to the GPA: current state of play, process and procedures, and benefits and challenges* (Sept. 18 2015), https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/S7-5Chen.pdf

¹⁰ GPA, *supra* note 3 at Art. II.

¹¹ GPA, *supra* note 3 at Art. 1(f).

technology systems available to them that “ensure their interoperability with other generally available smith and software.”¹²

Furthermore, another significant change brought in the revised agreement is the revision of system of electronic auction in conducting the procurement process. It fixes a deadline for bid submissions which makes time management easy.¹³ Therefore, it can clearly be seen that these revised provisions act as an encouraging factor to use electronic technology to deal with public procurement, which would not only help in reduction of time, but also increase the general overall efficiency of the system.

b) PRINCIPLES OF TRANSPARENCY AND NON-DISCRIMINATION

The fundamental principle of the GPA is to prevent the parties from taking protective measures which favour domestic suppliers and products, and discriminate against the foreign market. The level of importance given to transparency to ensure such fair and reasonable treatment has been increased manifold in the revised text of the agreement. The new and improved provisions of the Agreement, largely adopted from the EU’s procurement rules and regulations, help in achieving a non-discriminatory and clearer framework under the umbrella of global trade. Where Paragraph 7 of the Preamble of the old GPA termed transparency as simply “desirable”, the revised text of the agreement emphasises upon the “importance” of such transparency and how it acts as an essential factor in liberalising international trade.¹⁴

Anti-corruption- The Draft on United Nations Manual on Anti-Corruption policy defines corruption as “an abuse of (public) power for private gain that

¹² GPA, *supra* note 3 at Art. V. 3(a).

¹³Sue Arrowsmith, *The Revised Agreement on Government Procurement: Changes to the Procedural Rules and other Transparency Provisions*, in THE WTO REGIME ON GOVERNMENT PROCUREMENT: CHALLENGE AND REFORM 285–336 (2011).

¹⁴ Preamble to the Revised Agreement on Government Procurement(GPA); *See also* Robert D. Anderson, William E. Kovacic & Anna C. Müller, *Ensuring Integrity and Competition in Public Procurement Markets: a Dual Challenge for Good Governance*, in THE WTO REGIME ON GOVERNMENT PROCUREMENT: CHALLENGE AND REFORM, 681-718 (2011).

hampers the public interest”.¹⁵ It is highly likely for government procurements, which already involve huge amounts of investment, to attract corruptive practices. In the past, the WTO has tried to curb such practices to increase and improve “the predictability and reviewability of their national procurement procedures, and subject them to the WTO dispute settlement mechanism.”¹⁶

With the respect to the Agreement in question, one of the unique features introduced in the revised agreement is that of anti-corruption. According to the newly revised Preamble, the transparent measures are also extremely necessary in order to avoid corruption in the public procurement sector. With respect to corruptive practices, the Preamble of the newly revised Agreement states that the parties recognise “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.”¹⁷

The widening of the scope of government procurement services in the new Agreement can therefore be determined by the text of the revised Preamble itself. Apart from the preamble of the revised Agreement, which seeks to curb corruptive practices, the emphasis on the removal of the corruption has been stressed upon in Article IV: 4 of the revised Agreement as well. It can be seen from the text of the Preamble that it recognises the importance of transparency in government procurements and requires the same to be implemented through Article IV: 4 in the revised Agreement. The Article reads as:

“A procuring entity shall conduct covered procurement in a transparent and impartial manner that: a. is consistent with this Agreement, using methods such as

¹⁵ United Nations, *Draft United Nations Manual on Anti-Corruption Policy*, UNITED NATIONS 7 (Jun. 2001), <http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>.

¹⁶ Krista Nadakavukaren Schefer, *Will the WTO Finally Tackle Corruption in Public Purchasing? The Revised Agreement on Government Procurement*, ASIL http://www.asil.org/insights/volume/17/issue/11/will-wto-finally-tackle-corruptionpublic-purchasing-revised-agreement#_ednref6 (last updated Apr. 15, 2013).

¹⁷ GPA, *supra* note 3 at Preamble.

open tendering, selective tendering and limited tendering; b. avoids conflicts of interest; and c. prevents corrupt practices.”

Therefore, from the text of the Preamble and the aforementioned Article, it can be seen that the GPA stresses on four basic principles. They are a) Transparency b) Impartiality c) avoiding conflict of interests, and d) prevention of corrupt practices.¹⁸ These factors were not very well focused on in the previous Agreement.

Market Access—The WTO Director General welcomed the achievement of the much needed revision of the GPA and stated that it will “open markets and promote good governance in the participating member economies.”¹⁹ It has already been discussed in the introductory section that the revised Agreement aims to extend its market access commitments. The revised agreement has been expected to increase the value of market access commitments of the parties by \$80- \$100 million annually.²⁰ As of September, 2015, the parties to the agreement covered \$1.7 trillion in procurements annually.²¹

It does so by increasing the number of procurement entities covered by the GPA to more than 500. Further, there is also an increase in the types of contracts covered by the increase. The contracts now cover “full range of construction services”. Also, the various additional types of contracts that have been added include additional types of goods and services, such as for telecommunication

¹⁸ Jean Heilman Grier, *Anti-corruption Provisions for Procurement in TTIP –The TTIP Procurement Chapter should incorporate strong anti-corruption provisions*, PERSPECTIVES ON TRADE, <http://trade.djaghe.com/?p=416#sthash.L528hDqK.dpuf> (last updated Feb. 5, 2014).

¹⁹ Revised WTO Agreement on Government Procurement enters into force, WTO NEWS ITEM, https://www.wto.org/english/news_e/news14_e/gpro_07apr14_e.htm (last updated Apr. 7, 2014).

²⁰ DAVID A. GANTZ, LIBERALIZING INTERNATIONAL TRADE AFTER DOHA: MULTILATERAL, PLURILATERAL, REGIONAL AND UNILATERAL INITIATIVES 92-93 (2013).

²¹ Azevêdo encourages WTO members to consider benefits of procurement pact, WTO NEWS ITEM, https://www.wto.org/english/news_e/news15_e/gpro_17sep15_e.htm (last updated Sept. 17, 2015).

services, etc. Another type of contract, which was specifically covered by the EU, Japan and Korea, was the Build Operate Transfer (BOT) contract.²²

Accession to the Agreement- As already discussed earlier, the GPA is a plurilateral Agreement, which means that it is only binding on its signatories. Accession to the Agreement by its parties has become an easier and lucrative process since the emergence of the revised text of the Agreement. Apart from the perks such as the electronic procurement system and other procedural requirements, the revised GPA has adopted a more flexible and transparent approach towards the process of accession, particularly of developing countries.

Some of the newly enhanced transitional measures found in the new Agreement include provisions related to price preferences and offsets, establishing thresholds for public procurement at a higher level and increasing the Agreement's coverage by adding an additional number of specific procuring entities that come under the GPA.²³ The time period since the inception of the revised GPA, has witnessed multiple accessions to the Agreement by various countries. New Zealand and Montenegro were the first countries to have joined as member parties in early 2015.²⁴ Moldova was the next party to become a signatory to the Agreement, having completed the accession negotiations in 2015. Pakistan also became an observer party to the Agreement.

Special focus on the Developing Countries- The fundamental objectives of the WTO also include within their domain, the advancement of developing countries in the field of International Trade. The Preamble of the WTO lays down the foundation of this basic principle by recognising the need of the advancement of such economies. Therefore for the GPA, which falls under the umbrella of the WTO, one of the most significant features is that it takes into account the procurement needs of developing and least-developed nations, quite seriously. The new Agreement consists of provisions related to transitional measures, which are

²² WTO, The Re-negotiation of the Agreement on Government Procurement (GPA),1994.

²³ GPA, *supra* note 3 at Art.V.3

²⁴ Johannes S. Schnitzer, *Expanding the Membership of the WTO Government Procurement Agreement: Montenegro and New Zealand Ratifying the Revised GPA*, PUB. PROCUREMENT L. REV 24 (2015).

beneficial for these nations.²⁵ The two cornerstone principles of the GPA are non-discrimination and transparency.²⁶ The revised Agreement tries to incorporate these very principles into its provisions which are aimed at enhancing the economy of developing as well as least-developed nations.

The flexibilities introduced for the developing countries are applicable to them based on two conditions. First, the provisions must be need based. This means that they are applicable according to the developmental needs of the economies. The second condition is that such provisions must be in agreement with the other parties.²⁷ Some of the transitional measures incorporated for these economies in the new Agreement include “price preference; offset; phase-in of covered entities or sectors; and gradual reduction of thresholds; deferred implementation of specific obligations.”²⁸

In a statement issued by the Director General of the WTO, Pascal Lamy, it was stated by him that one of the focuses of the revised Agreement was to enhance the number of accessions to the Agreement.²⁹ Article V of the Agreement provides for facilitation of the accession of developing countries to the GPA.³⁰ The provision recognises “special and differential” transitional measures that would be applicable to developing countries in particular. This kind of special and

²⁵ GPA, *supra* note 3 at Art. V; Revised WTO Agreement on Government Procurement enters into force, WTO NEWS ITEM, https://www.wto.org/english/news_e/news14_e/gpro_07apr14_e.htm; (last updated Apr. 7, 2014)

²⁶ Caroline Nicholas, *The revised WTO GPA: an emerging pillar of twenty first century trade and development*, (Sept. 18, 2015), https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/S2-4Nicholas.pdf.

²⁷ Jianning Chen, Accession to the GPA: current state of play, process and procedures, and benefits and challenges, (Sept. 18, 2015), https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/S7-5Chen.pdf.

²⁸ Jianning Chen, Accession to the GPA: current state of play, process and procedures, and benefits and challenges, (Sept. 18, 2015), https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/S7-5Chen.pdf

²⁹ Lamy hails new book on procurement as major step in analysis of governance, WTO NEWS ITEM, https://www.wto.org/english/news_e/sppl_e/sppl193_e.htm (last updated May 23, 2011)

³⁰ GPA, *supra* note 3 at Art. V.

differential treatment is especially beneficial for developing countries since they lack the ability or the resources to implement WTO Agreements, due to their lack of competitiveness in the market. Another reason how they prove to be useful for the developing countries in particular, is because they provide temporary market protection.³¹

The transitional measures, as mentioned above, are temporary measures. The flexible nature of these measures allows the countries to accede to the Agreement and work according to the needs of foreign competition but only for a certain amount of time. This enables a gradual adaptation process and helps the developing economies to ease into the foreign competition rules and regulations, at their own pace. The transitional measures therefore help in protecting the vulnerability of such economies in the global market.

As already discussed above, the transitional provisions include the following four measures:

- (1) Price preferences
- (2) Offsets
- (3) Phased in additions of specific entities and sectors
- (4) Thresholds which are set at a higher standard than those at permanent levels

The revised GPA sets out the implementation period of these transitional measures for developing countries as “only the period necessary to implement the specific obligation and not to exceed three years.” However, for least developed countries, time period remains five years.³² Since these measures are also flexible in nature, the developing countries exercise the liberty of negotiating their

³¹ John Whalley, *Non-Discriminatory Discrimination: Special and Differential Treatment Under the GATT for Developing Countries*, ECO.J. 1318-1322 (1990).

³² GPA, *supra* note 3 at Art. IV.

accession terms and conditions, with the fellow GPA parties.³³ The transitional measures have been briefly discussed as follows-

(1) *Price preferences*

Under this Agreement, the developing countries exercise the liberty to use price preferences.³⁴ This simply means that the domestic bidders are allowed to give preference between foreign and domestic bids. That is, a procuring entity may exercise this discriminatory power of choosing a domestic firm's bid over a foreign bid but on the condition that the "difference in the price does not exceed a specific margin of preference." The concept of using such price preference also requires for the procuring entities to exercise some limitations. Firstly, the procedural aspect of it, that is, applying for the price preference via applications etc., must be transparent. It must be described in the tender notice in clear details. Secondly, such price preferences are with regard to goods and services which have their sources of origin in that developing country that has applied for such preference.³⁵

(2) *Offsets*

Offsets can be defined as "any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement".³⁶ Even though the parties to the agreement are not allowed to enforce or impose any offsets, the revised GPA provides for the developing countries to adopt such offsets on the condition that any requirement

³³ Robert D. Anderson, *Reflections on Bagwell and Staiger in Light of the Revised WTO Agreement on Government Procurement*, in GLOBALIZATION IN AN AGE OF CRISIS: MULTILATERAL ECONOMIC COOPERATION IN THE TWENTY-FIRST CENTURY 23 (Robert C. Feenstra & Alan M. Taylor eds., 2014);

³⁴ GPA, *supra* note 3 at Art. V.3.a.

³⁵ GPA, *supra* note 3 at Art. V.3.

³⁶ GPA, *supra* note 3 at Art 1.1.

for, or consideration of, the imposition of the offset is clearly stated in the tender notice.³⁷

(3) Phased in additions

The procuring entities and sectors that come under the ambit of the GPA are listed out in the coverage schedule of Appendix I.³⁸ The provisions and requirements that are laid down in the Agreement are only applicable to the procurement activities of the parties that are mentioned in their coverage schedule. Therefore, only such activities can be carried out as per the rules and regulations of the GPA. A significant part of the revised Agreement, the coverage schedule consists of four prominent aspects according to which the parties are required to follow up on their commitments by the Agreement. It is only when they follow the prescribed commitments is when they would be subjected to the rules and regulations of the revised GPA.³⁹ These commitments involve the procuring activities to be carried out only by those entities which purchase “covered” goods and services. As already discussed previously, these services also include construction services. Further, these goods and services are required to have a contract value above the permanent relevant threshold. They must not simply be listed as “exceptions to the coverage.” To summarise, the four commitments as laid down in the revised Agreement, are as follows-

- the procuring entities covered by the Agreement
- the goods, services and construction services covered by the Agreement
- the threshold values above which procurement activities are covered by the Agreement
- exceptions to the coverage.

³⁷ *Id.*

³⁸ *Appendix 1, Coverage Schedules, Agreement on Government Procurement (GPA)*, available at <http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>; (last updated Apr. 20, 2016).

³⁹ *Coverage Schedules, Agreement on Government Procurement (GPA)*, Apr. 20, 2016).<http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>;

Where in the previous Agreement, the coverage schedule of each party consisted of five annexes, it was made into a more comprehensive format in the revised Agreement, with 7 classified annexes.⁴⁰ They are as follows-

Annex 1: central government entities

Annex 2: sub-central government entities

Annex 3: other entities

Annex 4: goods

Annex 5: services

Annex 6: construction services

Annex 7: general notes.

With the advancement of the “Integrated Government Procurement Market Access Information Resource”, which is an electronic portal regulating matters of trade under the WTO, there is more clarity and understanding on the coverage aspect of the Agreement.⁴¹ It maintains records of applications and notices, making the system a more comprehensive and transparent one. All these measures have been strongly implemented and catered to, with the enforcement of the revised GPA.

The developing countries that gain accession to the Agreement are allowed to exclude some procuring entities from the coverage schedule after that, for a certain amount of time. This should only be restricted however, to a certain period of time after which such procuring entities or sectors must be “phased in” or added back to the schedule after being given the consensus of other GPA Parties. This measure provides the developing countries some time to themselves, during which they can negotiate with other entities to procure only after a certain amount of time.

(4) Thresholds set higher than the permanent levels

⁴⁰ *Id.*

⁴¹ W.T. (2016b) *Integrated government procurement market access information (e-GPA) portal* <https://e-gpa.wto.org/> (last updated Apr. 20, 2016).

The procurements of entities come within the ambit of the Agreement when the estimated contract value of the government procurements becomes more than the threshold that has been laid down in the Parties' annexes in Appendix I. In this regard, the developing countries can again exercise their negotiable powers and request the thresholds to be set higher than the permanent levels. This can happen initially, after they gain accession to the Agreement. Along with this, as per the text of the revised Agreement, the developing nations are also allowed more flexible measures such as extending an already agreed upon transition period.⁴² They can also alter or extend any of the transitional measures, but that is only applicable in case of "special circumstances that were unforeseen during the accession process."⁴³ This is carried out by the Committee on Government Procurement once the developing country files for an application.

Provisions for Small and Medium Sized Enterprises-The revised GPA provides for new more efficient work programmes conducted by the WTO Committee on Government Procurement.⁴⁴ One of the prominent work programmes by the Committee have been that of focussing on the development of small and medium sized enterprises in the field of government procurement. Such industries form an integral part of a nation's economy and make a large contribution towards their countries' GDP. This can be seen from the example of the EU in which 99.8% of all registered companies consist of small or medium sized enterprises. In fact, out of every 10 such industries, nine of them are micro-enterprises with a very limited amount of workforce.⁴⁵

Therefore, in some ways, these industries can be labelled as the backbone of their nations' economic development. Therefore on recognising the procuring needs of

⁴² GPA, *supra* note 3 at Art. V.6.

⁴³ *Id*

⁴⁴ Robert Anderson & William Kovacic, *Competition Policy and International Trade Liberalisation: Essential Complements to Ensure Good Performance in Public Procurement Markets*, PUB. PROCUREMENT L. REV. 67-101 (2009).

⁴⁵ SMEs' Access to Public Procurement Markets and Aggregation of Demand in the EU, EUROPEAN COMM., (Feb. 5, 2014), http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/smesaccess-and-aggregation-of-demand_en.pdf.

these industries, the revised Agreement has focussed on encouraging their development by introducing measures that would enhance their procuring activities. Article VIII.1 of the GPA requires that a “procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.”⁴⁶

Conclusion

From the year 1994 until now, the GPA’s continual growth has revolutionised the way International trade is perceived today. The Revised Agreement has introduced a lot of necessary changes and has attempted to fill the vacuum that existed in the public procurement sector, which the old Agreement failed to address on various levels. The revised Agreement imbibes within itself the two essential principles of International Trade, as sworn by the preamble of the WTO itself: transparency and non-discrimination. The changes made in relation to these principles have further enhanced the credibility of this Agreement, which was seen to be lacking earlier. Whether it’s the special and differential provisions for the inclusion of developing and least developing countries or the stringent anti-corruptive regulations, the public procurement sector has seemed to have improved manifolds.

The purpose of the revision of the agreement was mainly to “open markets and promote good governance in the participating member economies.”⁴⁷ Other objectives that were sought to be achieved through this revision were to increase the coverage of the Agreement and make the Agreement more favourable towards the developing countries. The success of the revised agreement is undoubtedly visible through the increasing number of signatories since its inception, with a

⁴⁶ GPA, *supra* note 3 at Art. VIII.

⁴⁷ Revised WTO Agreement on Government Procurement enters into force, WTO NEWS ITEM, https://www.wto.org/english/news_e/news14_e/gpro_07apr14_e.htm (last updated Apr. 7, 2014).

significant number of accessions to the agreement still pending.⁴⁸ Montenegro and New Zealand were the first countries to have joined the revised GPA since its enforcement in 2014, later on followed by the pending accessions of Australia, Kyrgyz Republic, Tajikistan, China, Seychelles and Albania.⁴⁹

A study of such expansion in the membership is pertinent in understanding the inevitable success that the Agreement has achieved over a course of time. The revised agreement has been expected to increase the value of market access commitments of the parties by \$80- \$100 million annually.⁵⁰ As of September, 2015, the parties to the agreement covered \$1.7 trillion in procurements annually.⁵¹ The revised text contributes towards the development of national policy with a special emphasis on the inclusion of developing economies.⁵² It has been given a more liberal interpretation, especially with regards to the electronic procurement tools, provisions related to prevention of corruption in procurement, protection of environment, etc. In a way, the amendment to the agreement has brought along a change in the perspective of the relationship between international trade and competition.

Further, accession to the GPA by the Commonwealth of Independent States and some particular parts of Central and Eastern Europe, can be said to be particularly essential. This would not only help them secure a significant position in global trade but also ensure the concept of rule of law in their countries. In fact, the WTO Accession Protocols of countries like Mongolia, Russia, etc., make it mandatory for them to seek accession to the GPA. Eradication of corruption is the central

⁴⁸ Roberto Azevêdo, *Use Trade as the Next Stimulus*, WALL ST. J, <http://www.wsj.com/articles/roberto-azevedo-use-trade-as-the-next-stimulus-1427830482> (last updated Mar. 31, 2015).

⁴⁹ Parties welcome progress in GPA accession talks for Australia, Tajikistan, Kyrgyz Republic, WTO NEWS ITEM, https://www.wto.org/english/news_e/news16_e/gpro_17feb16_e.htm (last updated Feb.17, 2016).

⁵⁰DAVID A. GANTZ, LIBERALIZING INTERNATIONAL TRADE AFTER DOHA: MULTILATERAL, PLURILATERAL, REGIONAL AND UNILATERAL INITIATIVES 92-93 (2013)

⁵¹ Azevêdo encourages WTO members to consider benefits of procurement pact, WTO NEWS ITEM, https://www.wto.org/english/news_e/news15_e/gpro_17sep15_e.htm (last updated Sept.17, 2015)

⁵² *Id.*

goal of the national policy of these countries, and it is achieved through the new agreement, which puts great emphasis on it. Another reason for developing countries to join the GPA is that it re-affirms the faith of foreign investors, in their domestic policy. To be at par with international practice can only be seen as a boon for countries whose political and domestic regime is not as advanced yet. If they follow internationally accepted rules and obligations, their public procurement regime is better enhanced.

To encourage participation by these developing nations, an informal arrangement was agreed upon between the WTO Secretariat and the European Bank for Reconstruction and Development (EBRD). This involved conducting workshops to encourage participation by such countries. In fact, the revised Agreement has drawn in so much attention by various countries and due to the multiple accessions that have taken place in the past couple of years, the technical assistance activities have been improved and intensified further.⁵³ A huge part of the technical assistance was provided by the EBRD to Ukraine, Moldova and Montenegro.

Therefore, as seen from the various changes made, the revised GPA has introduced changes that have contributed towards the advancement of International Trade, specifically in the light of Public Procurement.

⁵³ Technical Cooperation Activities, WTO,
https://www.wto.org/english/tratop_e/gproc_e/gptech_coop_e.htm