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# BENEFITS OF PARTICIPATING IN THE WTO GOVERNMENT PROCUREMENT AGREEMENT (GPA) TO SRI LANKA

Sri Lanka Short-Term Assistance to Improve Public  
Financial Management Reform (STAIR)

Leadership in Public Financial Management II (LPFM II)

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## Acronyms

<b>ADB</b>	Asian Development Bank
<b>GDP</b>	Gross Domestic Product
<b>GPA</b>	Revised Agreement on Government Procurement (March 30, 2012)
<b>GPG</b>	Government Procurement Guidelines (2006)
<b>GPM</b>	Government Procurement Manual (2006)
<b>GOSL</b>	Government of Sri Lanka
<b>ICB</b>	International Competitive Bidding
<b>ICTA</b>	Information, Communication and Technology Agency
<b>JICA</b>	Japan International Cooperation Agency
<b>LDC</b>	Least Developed Country
<b>LIB</b>	Limited International Bidding
<b>LNB</b>	Limited National Bidding
<b>NCB</b>	National Competitive Bidding
<b>NPC</b>	National Procurement Commission
<b>NPA</b>	National Procurement Agency
<b>SCAPC</b>	Standing Cabinet Appointed Procurement Committee
<b>S&amp;D</b>	Special and Differential
<b>SVE</b>	Small and Vulnerable Economy
<b>RTA</b>	Regional Trade Agreement
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>WB</b>	World Bank
<b>WTO</b>	World Trade Organisation

# I. INTRODUCTION<sup>1</sup>

Government procurement refers to the process by which a government, public utilities, and state-owned enterprises (SOEs) procure a product or service for its own use.<sup>2</sup> Government procurement has domestic and international importance since it accounts for, on average, 10-15 percent of a country's GDP.<sup>3</sup> Domestically, government procurement allows a government to deliver public services and fulfil other public policy objectives such as promoting sustainable development, building capacity of SMEs, and supporting women owned businesses. Efficient, accountable, and transparent government procurement processes lead to better utilisation of public funds and better public outcomes. This results in improved public confidence in good governance. Internationally, government procurement has become increasingly important in international trade agreements because government procurement constitutes a significant market and an important aspect of international trade.<sup>4</sup> Before 2000, only 19 percent of all Regional Trade Agreements (RTAs) announced to the World Trade Organization (WTO) had procurement clauses; after 2000, this has increased to 54 percent.<sup>5</sup>

The WTO Government Procurement Agreement (GPA), which entered into force on 1 January 1996, is a voluntary plurilateral agreement applicable to WTO members who choose to join the agreement.<sup>6</sup> The fundamental aim of the GPA is to “mutually open government procurement markets among its parties”.<sup>7</sup> In addition, the GPA promotes good governance, transparency, and integrity of government procurement process. The GPA currently has 45 signatories with another 30 WTO members and four international organizations as observers.<sup>8</sup> Accession to the GPA is open to all WTO member countries. The agreement has special and differential (S&D) treatment provisions to accommodate special needs and concerns of developing countries. The revised version of the agreement, entered into force on 6 April 2014, has further elaborated on the S&D treatment for developing countries in order to facilitate future accessions by such countries.<sup>9</sup>

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<sup>1</sup> This publication was produced by Verité in association with Nathan Associates Inc.

<sup>2</sup> Khorana, S. & Subramanian S., *Potential Accession to the WTO Government Procurement Agreement: A Case-Study on India*, 1(23) *Journal of International Economic Law* (2012).

<sup>3</sup> World Trade Organization (WTO), *WTO and Government Procurement*, available at: [https://www.wto.org/english/tratop\\_elgproc\\_elgproc\\_e.htm](https://www.wto.org/english/tratop_elgproc_elgproc_e.htm) [accessed on: March 2016].

<sup>4</sup> WTO, *WTO and Government Procurement*, available at: [https://www.wto.org/english/tratop\\_elgproc\\_elgproc\\_e.htm](https://www.wto.org/english/tratop_elgproc_elgproc_e.htm) [accessed on: March 2016].

<sup>5</sup> Cernat, L. & Kutlina-Dimitrova, Z., *International Public Procurement: From Scant Facts to Hard Data*, *EC Chief Economist Note*, page 6 (April 2015) .

<sup>6</sup> Khorana, S. & Subramanian S., *Potential Accession to the WTO Government Procurement Agreement: A Case-Study on India*, 1(23) *Journal of International Economic Law*, (2012).

<sup>7</sup> WTO, *Agreement on Government Procurement*, available at: [https://www.wto.org/english/tratop\\_elgproc\\_elgp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_elgproc_elgp_gpa_e.htm) [accessed on: March 2016].

<sup>8</sup> Wang, P., *China's Accession to WTO's Government Procurement Agreement: Domestic challenges and prospects in negotiation*, University of Nottingham China Policy Institute Publication, page 6, (2009) .

<sup>9</sup> WTO, *Briefing note: the WTO's Government Procurement Agreement*, (2013), available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/brief\\_gproc\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_gproc_e.htm), [accessed on: March 2016].

Sri Lanka was a founding member of the General Agreement on Tariffs and Trade (GATT), and subsequently a founding member of the World Trade Organization. Sri Lanka has been an observer to the GPA since April 2003.<sup>10</sup>

The objective of this study is to provide a broad overview of the benefits of participating in the GPA for Sri Lanka. The paper mainly looks into two key benefits expected from the GPA: (1) potential market access opportunities GPA will provide for Sri Lankan firms; and (2) the role GPA can play in enhancing transparency and accountability of the country's existing procurement policies and practices. The analysis highlights opportunities and challenges Sri Lanka is likely to face in the identified areas from an economic and a legal perspective.

The report is divided into five main sections.

- **Section one** is the present introduction to the report.
- **Section two** provides an overview of the GPA.
- **Section three** assesses the opportunities and challenges that arise from accession to GPA for a developing country like Sri Lanka, from an *economic perspective*. This section focuses on three areas of interest to Sri Lanka: (1) market access; (2) utilisation of public resources (getting value for money); and (3) special provisions available to address specific development needs of a developing country. The analysis looks into the current status of the selected areas from a developing country perspective, both in general and from the perspective of Sri Lanka in particular. It evaluates the potential opportunities and challenges that arise for Sri Lanka when the country undertakes binding multilateral commitments in government procurement.
- **Section four** analyses opportunities and challenges for Sri Lanka from a *legal perspective*. The legal gap analysis is divided into two parts. First, it sets out the regulatory framework governing public procurement in Sri Lanka, and second, it focusses on selected GPA provisions applicable to: special and differential treatment for domestic suppliers; streamlining of public procurement processes; and transparency of public procurement information. Furthermore, this component will examine the gap between procurement standards required by the GPA in relation to the above thematic clusters, and Sri Lanka's prevailing public procurement processes under the Government Procurement Guidelines 2006 (GPG) and the Government Procurement Manual 2006 (GPM).
- **Section five** provides a summary of the key findings of the economic and legal analysis.

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<sup>10</sup> WTO, Agreement on Government Procurement: parties, observers and accessions, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), [accessed on: March 2016].

## 2. WTO GOVERNMENT PROCUREMENT AGREEMENT

This section provides an overview of the GPA. The section is divided into four subsections:

- 2.1 - Architecture and membership
- 2.2 - Expected benefits
- 2.3 - Special provisions for developing countries
- 2.4 - Accession

### 2.1. ARCHITECTURE AND MEMBERSHIP

#### **GPA's membership**

The GPA currently has 45 signatories (if the EU 28 is taken as one entity, it has 17 signatories) with another 30 WTO members and four international organizations as observers.<sup>11</sup> The current membership of the GPA has only one lower middle income economy (Armenia); 38 of the members are high income economies; and the remaining members are upper middle income economies, as per World Bank classification of countries by income level (see *Annex 2 to this report*). A recent renegotiation of the GPA involved the updating of the GPA's text and a significant expansion of market access commitments.<sup>12</sup> The revised GPA came into force on 6 April 2014.

#### **GPA's general principles**

The GPA's three general principles are: non-discrimination, transparency, and procedural fairness. Non-discrimination provisions commit GPA parties into opening procurement markets covered by the Agreement to the suppliers of goods and services from other GPA parties. Transparency is ensured by the GPA establishing minimum standards for publication of procurement legislation and new procurement opportunities covered by the Agreement, so that potential suppliers are kept fully informed. Procedural fairness is achieved through specific requirements such as independent national review of complaints to treat potential suppliers fairly.<sup>13</sup>

#### **GPA's architecture**

The Agreement consists of two parts, the text of the Agreement and annexes that indicate each GPA Party's access schedules of commitments. The Agreement text provides the general rules for non-discrimination, transparency, and procedural fairness in public procurement that apply to all GPA Parties. The Agreement annexes give particulars that apply to individual GPA members.

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<sup>11</sup> WTO, Agreement on Government Procurement: parties, observers and accessions, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), [accessed on: March 2016]

<sup>12</sup> *Ibid*, page 3

<sup>13</sup> WTO, Government Procurement Agreement: Opening markets and promoting good governance Page 4

## **GPA's scope and coverage**

The GPA does not automatically apply to all public procurement by a member country. The scope and coverage of the Agreement is defined by procuring entity, procurement category, and established threshold as indicated by the GPA Article II. The Agreement describes the areas of procurement covered through several annexes to its Appendix I:

- **Annexes 1-3** list the procuring entities concerned; i.e. identified central and sub-central government entities as well as other entities, such as public utilities, that each Party has committed to complying with the Agreement;
- **Annexes 4-6** list procurement types, i.e. specify each Party's covered services and constructions services; and
- **Annex 7** gives general conditions<sup>14</sup> that are applicable to the Agreement (see *Annex I to this report, Table 1*).<sup>15</sup>

Additionally, the Agreement only applies to procurements that are within the thresholds indicated by the Agreement (*for details on applicable thresholds refer to Table 2, Annex I to this report*).

The GPA is a binding international treaty administered by the WTO Committee on Government Procurement, which consists of representatives of GPA Signatories. The enforcement is realized through two mechanisms. At the national level, there is the domestic review procedure and at the international level, there is the WTO dispute settlement procedure.<sup>16</sup>

## **2.2. EXPECTED BENEFITS**

The GPA is expected to generate the following key benefits to its membership:<sup>17</sup>

- a) Market access. The GPA provides access to procurement markets currently estimated at US\$1.7 trillion annually. The rules of the Agreement ensure that these markets remain open to competition from suppliers from all GPA parties.
- b) Improving governance and efficient use of public resources. The standards and processes established by the GPA can be instrumental in enhancing competition, transparency, and accountability in domestic procurement markets. This helps governments to achieve the best value for money and make better use of public resources. The revised GPA is the first WTO agreement to explicitly address corruption by requiring parties to conduct their procurement activities in a way that prevents conflicts of interest and corrupt practices.

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<sup>14</sup> For example, Annex 7 General Notes of Armenia states that the agreement "shall not apply to procurements of agriculture products made in furtherance of agriculture support programme and human feeding programmes"

<sup>15</sup> Article V, Revised Agreement on Government Procurement, (March 30, 2012).

<sup>16</sup> WTO, Agreement on Government Procurement, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm) [accessed on: March 2016]

<sup>17</sup> WTO, Government Procurement Agreement: Opening markets and promoting good governance, page 5 (2015).

- c) *Encouraging foreign direct investment and transfer of new technology from abroad.* Accession to the GPA is expected to have a positive “signalling effect” to foreign investors of GPA parties.

The GPA Agreement also *promotes convergence in international procurement systems*, which will benefit private sector firms overall by reducing the transactional cost of participating in procurement markets – something which may have value in its own right.<sup>18</sup>

Furthermore, the GPA may *foster more comprehensive bilateral and regional trade agreements*. Research shows a recent trend to include government procurement as an integral part of bilateral and regional trade agreements. At present, Sri Lanka has in place two bilateral agreements with India and Pakistan. The country is also a member of the South Asian Free Trade Area (SAFTA)<sup>19</sup> and Asia Pacific Trade Agreement (APTA)<sup>20</sup>. All these agreements cover only trade in goods; hence they do not make any reference to government procurement. Sri Lanka is also a signatory of the SAARC Agreement on Trade in Services (SATIS), the first agreement for Sri Lanka that covers services trade. SATIS has carved out “government procurement” from its scope<sup>21</sup>.

The country has proposed to expand existing agreements to cover services and investment and also enter into more comprehensive agreements with other countries (e.g. China, Singapore, Malaysia, Japan and USA). Hence, if Sri Lanka wishes to negotiate trade agreements, especially with developed countries like the United States, accession to an agreement like the GPA and/or streamlining domestic processes to be in line with GPA standards may become an important pre-requisite.

### 2.3. SPECIAL PROVISIONS FOR DEVELOPING COUNTRIES

The WTO Agreements contain special provisions which give developing countries special rights and provide the possibility to treat developing countries more favourably than other WTO Members. These are called “special and differential (S&D) treatment” provisions.

The GPA provides S&D treatment for developing countries, allowing for transitional measures (such as the phasing-in of market access commitments) to support the development priorities of these countries. The revised text of the GPA has further clarified and improved the S&D provisions that are available to developing members acceding to the GPA. The main objectives of these provisions are to provide flexibilities for developing

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<sup>18</sup> Anderson, R., Pelletier, P., Osei-Lah, K. & Müller, A., Assessing the value of future accessions to the WTO Agreement on Government Procurement (GPA): Some new data sources, provisional estimates, and an evaluative framework for individual WTO members considering accession, page 10 (October 6, 2011).

<sup>19</sup> Member countries are Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka

<sup>20</sup> Member countries are Bangladesh, China, India, Laos, South Korea and Sri Lanka

<sup>21</sup> SAARC Agreement on Trade in Services (SATIS) (2010), Article 3, Paragraph 2 states that “This Agreement shall not apply to (a) government procurement...”

countries, taking into account the developmental, financial, and trade needs of these countries, and to facilitate their participation in the Agreement.<sup>22</sup> S&D provisions in the GPA are discussed in detail in Sections 3.3 and 4.2.1 of this report.

## 2.4. ACCESSION PROCESS

For most WTO Members, participation in the Agreement is entirely optional as they have no pre-existing obligation to join the Agreement. In such cases, the decision to seek accession to the Agreement is one that can be taken on its own merits, based on an assessment of potential benefits and costs in light of each Member's individual circumstances.<sup>23</sup>

The accession process is initiated through the submission of an application for accession. The process has two main aspects: (1) negotiations between the acceding member and parties of the GPA on the former's coverage offer; and (2) verification that the acceding member's procurement legislation is consistent with the GPA's requirements. For example, the acceding member's legislation will be evaluated in terms of transparency, procedural fairness for suppliers, and the scope of domestic review. Pursuant to Article V of the revised GPA, S&D treatment for developing countries can be negotiated by an acceding country in the accession process, subject to the agreement of the other parties and the acceding member's development needs.<sup>24</sup> This specific treatment can take the form of transitional measures such as offsets, price preference programmes, initially higher thresholds, and phasing-in of procurement entities.

According to the WTO, there are ten new countries currently in the process of acceding to the GPA (see *Annex 2 to this report*). Six other WTO members have undertaken commitments, in their WTO accession protocols, to initiate accession to the GPA (see Section 3.1.2 for details).<sup>25</sup>

## 3. SRI LANKA'S ACCESSION TO GPA: AN ECONOMIC PERSPECTIVE

This section analyses the opportunities and challenges that would arise for a lower middle-income economy like Sri Lanka in acceding to the GPA, from an economic perspective. The analysis looks into three specific areas of interest to Sri Lanka:

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<sup>22</sup> Chen, J., The new transitional measures available to developing countries under the revised GPA (S.6.1), National Seminar on the WTO Agreement on Government Procurement (December 9, 2015), available at: [http://www.ebrd-gpa-facility.com/documents/12\\_2015/9.pdf](http://www.ebrd-gpa-facility.com/documents/12_2015/9.pdf) [accessed on: March 2016].

<sup>23</sup> Anderson, R., Pelletier, P., Osei-Lah, K. & Müller, A., Assessing the value of future accessions to the WTO Agreement on Government Procurement (GPA): Some new data sources, provisional estimates, and an evaluative framework for individual WTO members considering accession, page 4 (October 6, 2011).

<sup>24</sup> WTO, Agreement on Government Procurement: parties, observers and accessions, available at:

[https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), [accessed on: April 12, 2016].

<sup>25</sup> *Ibid.*

- 3.1 - Market access
- 3.2 - Utilisation of public resources (or value for money)
- 3.3 - Special provisions to address specific development needs

## 3.1. MARKET ACCESS

The opportunities and challenges of market access for domestic firms arising from Sri Lanka acceding to the GPA can be analysed from three perspectives: first, access to procurement markets of current GPA partners; second, potential access to new procurement markets that arise from countries acceding to GPA; and third, increased competition in the domestic procurement market when it is opened up to GPA partners.

### 3.1.1. Current procurement markets access

The GPA provides access to procurement markets currently estimated at US\$1.7 trillion annually.<sup>26</sup> For developing countries like Sri Lanka, realising benefits from access to procurement markets of GPA parties may be even more challenging than for other GPA members, due to several factors:

- (i) *First*, the current trends in the awarding of procurement contracts by key member countries of the GPA indicate that although each member's market remains open, opportunities for firms outside the country, even if they are from other GPA member countries and particularly for firms in developing countries, remain limited;
- (ii) *Second*, limited available information indicates that the current procurement markets with potential for Sri Lankan firms remain outside the current membership of the GPA;
- (iii) *Third*, the limited available information on Sri Lankan firms and experience of other developing countries indicates that a low level of capacity (financial and technical) as well as limited exposure/experience of developing country firms both constrain their ability to succeed in foreign procurement markets.

#### **Limited market openings for foreign firms**

Although government procurement is said to account for about 10-15 per cent of the GDP of an economy on average<sup>27</sup>, in practice much less than that is likely to be open to international competition; some estimates state that this is likely to be 3-5 per cent of the GDP.<sup>28</sup> Further available data and research indicate that, despite markets expanding through

<sup>26</sup> WTO, Government Procurement Agreement: Opening markets and promoting good governance, page 5 (2015).

<sup>27</sup> WTO, WTO and Government Procurement, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gproc\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm) [accessed on: April 9, 2016].

<sup>28</sup> Woolcock, S. & Grier, J., Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, "TTIP in the balance", page 2 (February 2015), available at: <https://www.ceps.eu/system/files/SR100PublicProcurementandTTIP.pdf> [accessed on: April 15, 2016].

the GPA, the value of procurement contracts that are awarded to foreign suppliers by GPA countries is limited, as shown below.

- (a) A study revealed that **Norway**, a GPA party, only awarded 7 per cent of their contracts to foreign suppliers in 2009.<sup>29</sup>
- (b) Although the **USA, EU and Japan** remain strong proponents of the agreement and open procurement markets, the government procurement opportunities available for foreign firms are also limited in these countries. For example, according to research in all three members, the penetration ratio of foreign firms is less than 5 per cent and is lower than in **China and India** who are yet to become members of the GPA (see Table 1 below). Furthermore, according to some estimates, access of foreign firms to the EU public procurement market through foreign investments accounts for only 1.6 per cent of public contracts and 3.5 per cent of the value of public procurement.<sup>30</sup>

**Table 1: Penetration ratios<sup>31</sup> of public procurement markets (selected countries and years)**

Market	1995	2000	2005	2007
European Union	2.6	3.6	4.2	4.5
Brazil	2.1	3.1	3.1	3
China	3.8	3.4	5.6	5.2
India	4.2	4.4	5.8	6.3
Japan	1.9	2.3	3.2	4.2
Turkey	5.4	5.8	9.5	10.9
US	2.7	3.6	4.4	4.4

Source: Summary of data provided in Messerlin & Miroudot (2012)<sup>32</sup>

### **High GPA thresholds, a barrier for smaller foreign firms**

Having procurement below a given threshold outside GPA commitments is often valued because of the policy flexibility it provides a country (i) to support domestic firms (e.g. SMEs), and (ii) to use procurement to achieve other policy priorities (e.g. support women owned businesses).

<sup>29</sup> Richard S. & Kono, D., Think globally, buy locally: International agreements and government procurement, 9(3), *The Review of International Organizations* (September 2014).

<sup>30</sup> Woolcock, S. & Grier, J., Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, "TTIP in the balance", page 5 (February 2015), available at: <https://www.ceps.eu/system/files/SR100PublicProcurementandTTIP.pdf> [accessed on: April 15, 2016].

<sup>31</sup> The penetration ratio here is based on direct imports as a share of the total public demand for goods and services, defined as the final consumption expenditure (government final consumption expenditure consists of expenditure, including imputed expenditure, incurred by general government on both individual consumption goods and services and collective consumption services).

<sup>32</sup> Reproduced in Woolcock, S. & Grier, J., Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, "TTIP in the balance", page 5 (February 2015), available at: <https://www.ceps.eu/system/files/SR100PublicProcurementandTTIP.pdf> [accessed on: April 15, 2016].

However, higher thresholds would place smaller contracts - for which some of the firms in developing countries, such as Sri Lanka, would be able to compete - outside the scope of the GPA. Hence, firms from developing countries would have fewer market opportunities. For example, a study on the **Ukraine's** possible accession revealed that the GPA thresholds are considered quite high for Ukrainian suppliers and this would prevent them from engaging in the bidding process.<sup>33</sup> Furthermore, according to available statistics, government procurement contracts below the thresholds signed by central and sub-central **EU** government entities, in 1997–2007, accounted for as high as 84%; and 67% of contracts signed by the central government of **Japan** were below the thresholds in 1997–2010.<sup>34</sup> Also, in 2010, only 3.5% of all GPA applicable procurement was given to foreign suppliers by Japan, of which about 92% were given to the USA and the EU.<sup>35</sup>

### **Other practices limiting GPA market access**

In addition, there are discriminatory practices followed by countries that are difficult to detect and punish. For example, governments can adapt technical requirements favouring local suppliers, providing them with an advantage in procurement bidding.<sup>36</sup> Canada, USA, and South Korea support domestic small and medium sized enterprises by excluding those sectors from GPA coverage. Such a provision was included as a general exclusion from the Agreement during the accession negotiations of these countries. This limits the size of the procurement market firms from a small economy can compete in.<sup>37</sup>

### **3.1.2. Potential new procurement markets access**

#### **Market access opportunities arising from future accessions**

In addition, to the access given to markets of current members, an area of interest to Sri Lanka is the potential market access opportunities that arise from countries that will accede to the GPA in future. As referred to in Section 2.4, there are ten countries currently in the process of acceding to the GPA. These are *Albania, Australia, China, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, Tajikistan, and Ukraine*. Five of these countries are lower middle-income countries. The government procurement market of these ten countries is estimated to be around US\$728 - 971 billion, and the government procurement market likely to be covered initially by the GPA is expected to be around US\$121 – 311 billion.<sup>38</sup>

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<sup>33</sup> Malolitneva, V., Ukraine's potential accession to the WTO Government Procurement Agreement: What are the Pros and Cons? 4(1), *GSTF Journal of Law and Social Sciences (JLSS)*, page 56 (December 2014).

<sup>34</sup> *Ibid*, page 56

<sup>35</sup> *Ibid*.

<sup>36</sup> Richard S. & Kono, D., Think globally, buy locally: International agreements and government procurement, 9(3), *The Review of International Organizations* (September 2014).

<sup>37</sup> Malolitneva, V., Ukraine's potential accession to the WTO Government Procurement Agreement: What are the Pros and Cons? 4(1), *GSTF Journal of Law and Social Sciences (JLSS)*, page 58 (December 2014).

<sup>38</sup> Anderson, R., Pelletier, P., Osei-Lah, K. & Müller, A., Assessing the value of future accessions to the WTO Agreement on Government Procurement (GPA): Some new data sources, provisional estimates, and an evaluative framework for individual WTO members considering accession, page 14 (October 6, 2011).

Six other WTO members have undertaken commitments, in their WTO accession protocols, to initiate accession to the GPA. They are *Kazakhstan, Mongolia, Russian Federation, Saudi Arabia, Seychelles, and the Former Yugoslav Republic of Macedonia*.<sup>39</sup> Furthermore, some other WTO Members without any prior obligation to join the GPA, including *India and Viet Nam*, are also understood to be evaluating their possible interests in acceding to the Agreement.<sup>40</sup>

### **Potential opportunities for Sri Lankan firms**

Consideration of the current penetration levels of Sri Lankan firms in foreign procurement markets is important to assess the gains from current as well as potential market access. However, lack of information and data on current levels of access makes it difficult to evaluate potential gains the country is likely to reap by acceding to the GPA.

Limited information available indicate that the *key foreign procurement markets of interest to Sri Lanka for the time being remain outside the scope of the current GPA*. For example, Colombo Dockyard of Sri Lanka, a company that builds and repairs ships, has been successful in participating and securing orders to provide ship building and repair services to government authorities of India.<sup>41</sup> Meanwhile, a Sri Lankan company has been able to secure orders to supply electronic circuit boards to Delhi Metro Railway Cooperation.<sup>42</sup> Millennium Information Technologies, a software developing firm that has become a global player, first started by successfully entering procurement markets in Mauritius, Croatia and Malaysia.<sup>43</sup> A number of Sri Lankan construction companies have ventured into the Middle East markets indicating their capacity to supply and their interest in procurement markets in that region.<sup>44</sup> Another region of interest to local firms, especially in the mini hydro power sector, has been East Africa.<sup>45</sup> These countries and regions at the moment fall outside the scope of the GPA.

### **3.1.3. Increased competition in domestic procurement market**

Public procurement plays an important role in the Sri Lankan economy. The total government expenditure on public procurement in 2014 was 24 per cent of total

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<sup>39</sup> WTO, Agreement on Government Procurement: parties, observers and accessions, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), [accessed on: April 12, 2016].

<sup>40</sup> Anderson, R., Pelletier, P., Osei-Lah, K. & Müller, A., Assessing the value of future accessions to the WTO Agreement on Government Procurement (GPA): Some new data sources, provisional estimates, and an evaluative framework for individual WTO members considering accession, page 5 (October 6, 2011).

<sup>41</sup> Colombo Dockyard PLC, 'Colombo Dockyard delivers the largest passenger ship – MV Lagoons', available at <http://www.cdl.lk/latest/colombo-dockyard-delivers-the-largest-passenger-ship-mv-lagoons/> [accessed April 11, 2016].

<sup>42</sup> Sunday Times, 'KIK Lanka electrical panel boards gaining global market share', (August 15, 2010) available at: <http://www.sundaytimes.lk/100815/Fh/fh04.html> [accessed on: April 11 2016].

<sup>43</sup> Millennium information technologies, how we got here, available at: <http://www.millenniumit.com/who-we-are/how-we-got-here> [accessed on: April 12, 2016].

<sup>44</sup> Sierra, Gulf LLC, available at <http://www.sierra.lk/sierra-gulf.html> [accessed on: May 2016]

<sup>45</sup> Sunday Times, Hemas Power Eying African Hydro Power projects, (October 16, 2011) available at <http://www.sundaytimes.lk/111016/BusinessTimes/bt03.html> [accessed on: May 2016]

government expenditure and 6.3 per cent of GDP. The total government procurement expenditure in 2014 was LKR 616 billion (USD 4.7 billion).<sup>46</sup>

The GPA will open up the domestic procurement market for contacts that fall within the covered threshold limits for increased participation of firms from GPA member countries. Increased competition in the domestic procurement market can lead to better procurement outcomes and better value for money. The benefits of increased competition and good procurement practices are discussed in detail in section 3.2.

### ***Dual impact on Sri Lankan firms***

With respect to increased competition and the impact from the perspective of domestic firms specifically, accession to GPA can have both a positive and a negative outcome for domestic firms.

- (a) The positive outcome is that it can lead to improved participation by domestic firms in the local procurement market due to increased transparency, reduced corruption, and increased efficiency of the procurement process.
- (b) However, at the same time, increased competition from foreign firms can take away market opportunities from domestic firms. A lack of information on the current distribution of the procurement market between Sri Lankan and foreign firms makes it difficult to understand the current level of competition between domestic and foreign firms in the Sri Lankan market. The ability to succeed in the market amidst increased competition, however, depends a great deal on the financial and technical capacity of domestic firms.

### ***Transparency and accountability will enhance opportunities for local participation***

At present, domestic private sector firms face difficulties in participating in the government procurement market due to the *lack of an accountable, efficient, and transparent procurement framework in the country*. Moreover, government authorities often fail to adhere to the current procurement guidelines. Therefore, streamlining a government procurement framework and improving transparency and efficiency can lead to improved market access to domestic firms. For example, according to the National Construction Association of Sri Lanka (NCASL), the awarding of projects without competitive bidding to government-owned entities is an impediment that prevents their participation in the government procurement market in Sri Lanka.<sup>47</sup> The Chamber of Construction Industry (CCISL) of Sri Lanka observed that the failure of government entities to follow the procurement guidelines

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<sup>46</sup> Ministry of Finance of Sri Lanka, Annual Report 2014, page 198.

<sup>47</sup> Asian Development Bank (ADB), Mahaweli Water Security Investment Program Procurement Capacity Assessment, para 32 (June 2015) available at: <http://www.adb.org/sites/default/files/linked-documents/47381-001-sd-07.pdf> [accessed on: April 13, 2016].

due to vested interests remains a major constraint faced by the construction sector of the country.<sup>48</sup>

Another impediment faced by domestic firms is increased bilateral financing of government projects on a direct award basis, usually to entities from the funding country. During the recent past, the bulk of Sri Lanka's foreign assistance was not mobilized through donors such as the Asian Development Bank (ADB), World Bank (WB), and Japan International Cooperation Agency (JICA), whose procurement is considered competitive.<sup>49</sup> For example, according to an assessment by the ADB in the irrigation sector, many large projects (ranging from US\$ 92-804 million) are financed bilaterally. This has partly contributed to the irrigation sector having inadequate competition and limited capable domestic contractors.<sup>50</sup>

### ***Increased competition will reduce opportunities for local participation***

While improvements made to the government procurement system are likely to enhance access to the domestic procurement market, increased competition is likely to reduce it, particularly due to the *low level of technical and financial capacity and competency of domestic firms*. For example, an ADB study indicates that both general and specialized procurement knowledge is low in both the public and private sectors, and training opportunities available to these sectors are limited.<sup>51</sup> The NCASL observes that the shortage of qualified and capable domestic consultants is a barrier it faces when participating in government procurement.<sup>52</sup> It also pointed out the difficulty in obtaining bank guarantees for bids and performance guarantees, especially for smaller contractors, as being an additional constraint. Lack of experience and exposure is also another barrier commonly faced by firms in developing countries—particularly SMEs.

### ***Key determinants of domestic competition level***

The government can adopt strategies to encourage the participation of local firms and to help them gain experience and develop capacity. Examples of such strategies include (i) providing targeted preferential treatment of local suppliers without jeopardizing the quality of the goods or services procured; (ii) increasing options for SMEs to submit bids; and (iii) promoting awareness and building capacity among domestic firms and relevant public authorities.<sup>53</sup>

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<sup>48</sup> Wickramasinghe, S., 'Construction Industry: Current issues and strategies for the future', The Island (August 23, 2015), available at: [http://www.island.lk/index.php?page\\_cat=article-details&page\\_title=130458&page=article-details](http://www.island.lk/index.php?page_cat=article-details&page_title=130458&page=article-details) [accessed on: August 13, 2016].

<sup>49</sup> ADB, Mahaweli Water Security Investment Program Procurement Capacity Assessment, para 29 (June 2015) available at: <http://www.adb.org/sites/default/files/linked-documents/47381-001-sd-07.pdf> [accessed on: April 13, 2016].

<sup>50</sup> *Ibid*, para 29-30.

<sup>51</sup> *Ibid*, para 44.

<sup>52</sup> *Ibid*, para 32.

<sup>53</sup> United Nations Conference on Trade and Development (UNCTAD), *Promoting local sector development through public procurement* (2013), page ix.

(a) The *flexibilities built into the GPA* to allow developing countries to make strategic use of public procurement to meet their development needs, such as building the capacity and competency of domestic firms, therefore become an important factor in evaluating the benefits of accession to the GPA. This is discussed in detail in Sections 3.3 and 4.2.1.

(b) The *threshold values of the GPA and the exceptions* negotiated under the GPA (discussed in detail in section 3.2.2) are important determinants of the level of competition the domestic firms will face from foreign firms in the domestic market. The Government Procurement Guidelines 2006 (GPG), which govern the procurement process in Sri Lanka, state that the “thresholds to make recommendation/ determination of contract award shall be decided by the Government from time to time, and shall be announced by circulars issued under these Guidelines”.<sup>54</sup> The applicable thresholds are outlined in the Government Procurement Manual 2006 (GPM). The GPM states that **International Competitive Bidding (ICB)** “*may be the most suited method of Procurement, for large contracts for goods, works and services valued at LKR 300 million (USD 2 million<sup>55</sup>) or more*”<sup>56</sup> under circumstances specified in the Manual. These circumstances referred to are: (i) When the capacity of the domestic contractors, suppliers and service providers are limited; and (ii) For Foreign Funded Projects, when the Foreign Funding Agency agreement requires the PE to resort to ICB procedures. The threshold values of ICB are brought down when procuring for “emergency rehabilitation and reconstruction operations due to disasters” to LKR 250 million (USD 1.8 million<sup>57</sup>) in the case of works, and LKR 100 million (USD 0.7 million) for goods. *Thus, at present it is not mandatory for the authorities to use ICB for all contracts exceeding the threshold value. The decision largely depends on the circumstances.*

The current threshold values under the GPA, with the exception of construction services, are **below the threshold values stipulated in the GPG and GPM of Sri Lanka** (see *Annex 1 to this report, Table 2*). A detailed analysis of the category and value of contracts awarded to domestic firms in Sri Lanka over a relevant period of time would be an essential step in determining the relevance of the country’s current thresholds and their implications for domestic firms when agreeing to lower thresholds under the GPA. However, access to and availability of information/data is anticipated to be a significant challenge when undertaking such a study.

## 3.2. UTILISATION OF PUBLIC RESOURCES (GETTING VALUE FOR MONEY)

A key benefit expected from the GPA is increasing competition and transparency in domestic procurement markets, which in turn shall help governments to achieve the best value for public money and make better use of public resources. The agreement can help a

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<sup>54</sup> National Procurement Agency, *Procurement Guidelines* Chapter 2, Section 2.14.1 (2006),

<sup>55</sup> 2015 annual average ER at LKR 135.94 per USD

<sup>56</sup> National Procurement Agency, *Government Procurement Manual*, page 44. (2006),

<sup>57</sup> 2015 annual average ER at LKR 135.94 per USD

government achieve “value for money” in two ways: (i) by the way the Agreement defines “value for money”; and (ii) by streamlining and improving the transparency of the domestic procurement legal framework.

Furthermore, it is important to note that the **World Bank** has recognized procedures and methods adopted by the GPA as one of the **alternative procurement arrangements** (APA) that GPA member countries may use in full or in part when implementing World Bank funded projects related to agencies and expenditures covered by the GPA<sup>58</sup>. This however will be subject to successful review of implementing agency capacity and subject to conditions outlined by the World Bank<sup>59</sup>.

### **3.2.1. Value for money**

#### ***Defining value for money: evolving trends***

Value for money is often understood as obtaining a commodity for the lowest available price. However, increasingly, countries are realizing that lowest price is not necessarily the best way to define “value”. The value for money needs to be evaluated taking into account not only the price but also the:

- quality of the product;
- length of service that can be expected;
- after-sales service and other aspects of the conditions of sale;
- impact of the buying decision on social or economic policies such as developing the local economy, stimulating employment, favouring women or disadvantaged groups; and
- impact on environment.<sup>60</sup>

The revised GPA text reflects, to some extent, growing consensus in favor of social and environmental policy linkages in procurement.<sup>61</sup> For example, the revised GPA specifically allows governments to use technical specification in their procurement contracts “to promote the conservation of natural resources or protect the environment”.<sup>62</sup>

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<sup>58</sup> World Bank, Procurement in World Bank Investment Project Finance, Borrowers Procurement Procedures, para 1.6 (July 8, 2014)

<sup>59</sup> World Bank, Alternative Procurement Arrangements, Capacity building and assessment methodology to determine the acceptance of Agency’s alternative procurement arrangement for procurements financed by the World Bank under investment project finance, Working draft, page 7, (January 2015)

<sup>60</sup> United Nations Capital Development Fund, *Procurement for local development, A guide to best practice in local government procurement in least developed countries*, page 6. (2013),

<sup>61</sup> Thrasher, R., ‘Government Procurement Agreement should permit environmental and social linkages’, policy innovations (June 5, 2015), available at: [http://www.policyinnovations.org/ideas/policy\\_library/data/01684](http://www.policyinnovations.org/ideas/policy_library/data/01684) [accessed April 11, 2016].

<sup>62</sup> WTO, Revised Agreement on Government Procurement, Article X: 6 (2014), available at [https://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf) [accessed May 16, 2016]

### **Definition of value for money in Sri Lanka**

The Procurement Guidelines of Sri Lanka (2006) states that giving the purchaser the best value for money is a key objective of procurement. It acknowledges that for complex purchases, value may imply more than just the price, since *quality issues* also need to be addressed. Furthermore, reference is also made to the need to take into account the *lifecycle cost* of a project; for example, the guidelines state that lowest initial price may not equate to lowest cost over the operating life of the item procured.

The current public procurement guidelines have *not incorporated environmental considerations* into the utilization of goods, works and services. The Cabinet of Ministers approved a proposal submitted by the Ministry of Finance and Ministry of Mahaweli Development and Environment in 2012, to *formulate a Green Procurement Policy and Guidelines*. The green procurement process is identified as the process for the selection of bidders who adhere to environmental conservation standards when contracts are awarded for purchasing of goods and services in general. The policy was to specifically have provisions to encourage local producers to produce eco-friendly goods and services and to give high priority to locally made goods.<sup>63</sup> The Ministry of Environment has taken steps to develop a green procurement policy for Sri Lanka and the work is ongoing<sup>64</sup>.

### **3.2.2. Streamlining and improving transparency**

While market access remains the core objective of most international agreements, some countries also enter legally binding agreements with the objective of locking in politically difficult domestic economic reforms. This is based on the view that an international trade agreement can galvanize political constituencies behind domestic reform in return for some other benefits—such as improved market access benefits abroad.

#### **Benefits of transparent and efficient procurement**

The establishment and operation of a streamlined and transparent procurement system enables a government to obtain better value for money in contracting and purchases, reduce corruption, improve governance, and develop sustainable public finance management.<sup>65</sup> Unified and understandable government procurement procedures also increase the effectiveness of process and thereby release resources for other needs.<sup>66</sup> Opaque procurement practices can be a major source of loss for the government budget, as

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<sup>63</sup> Office of the Cabinet of Ministers – Sri Lanka, ‘*Formulating the National Green Procurement Policy and Guidelines*’, Press briefing (August 15, 2012), available at: [http://www.cabinetoffice.gov.lk/cab/index.php?option=com\\_content&view=article&id=16&Itemid=49&lang=en&dID=4665](http://www.cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=16&Itemid=49&lang=en&dID=4665) [accessed on: April 14, 2016].

<sup>64</sup> According to Ministry sources, the draft policy prepared by the Ministry has been submitted to the National Procurement Commission (NPC) in June, 2016 for their views.

<sup>65</sup> Malolitneva, V., Ukraine’s potential accession to the WTO Government Procurement Agreement: What are the Pros and Cons? 4(1), *GSTF Journal of Law and Social Sciences (JLSS)*, page 55 (December 2014).

<sup>66</sup> *Ibid.*

contracts will not go to the most efficient supplier. Case studies suggest that excess costs resulting from such procurement practices per project can be in the 25-50 percent range.<sup>67</sup>

Thus a benefit expected from the GPA, in addition to market access, is helping governments shape the domestic procurement framework into a policy that obtains the best value for money possible for governments.<sup>68</sup> It gives minimum standards based on international best practices for open and transparent procurement processes. There are also enforcement tools such as provisions to establish independent domestic review procedures and dispute settlement mechanisms.<sup>69</sup> In this manner, by changing domestic procurement practices and regulations to suit the Agreement requirements, the efficient and effective allocation of public resources is encouraged to obtain the most value for money.<sup>70</sup> The resulting increased public savings can then be better utilized for social welfare.<sup>71</sup> Furthermore, increased competition for state contracts, resulting from the procurement market being open and transparent, will also lead to product and service innovations, and process improvements by bidders. This will also provide government agencies with more cost effective choices.<sup>72</sup>

### **Cost of non-competitive procurement**

A lack of necessary legislation, transparency and oversight in procurement, and the resulting corruption and wastage of public funds, has been a serious problem in Sri Lanka.<sup>73</sup> For example, during the last decade the government moved away from competitive bidding towards entertaining unsolicited proposals. In addition, as mentioned in section 3.1.3, procurement linked to bilaterally financed projects where contracts are awarded to parties from funding countries without going through an international competitive bidding process has increased in the recent past. Thus, research on “aid effectiveness” in Sri Lanka reveals that 40 percent of the country’s donors have not been using National Procurement Guidelines, and that there were bilateral donors<sup>74</sup>.

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<sup>67</sup> Rose-Ackerman (1995); Ades & Di Tella (1997); Bardhan (1997) as cited in Evenett, S. & Hoekman, B. *Government Procurement: Market Access, Transparency, and Multilateral Trade Rules*, pages 14-15 (October 2002).

<sup>68</sup> WTO, *Government Procurement Agreement: Opening markets and promoting good governance*, page 5 (2015).

<sup>69</sup> Robert D. Anderson & Anna Caroline Müller, *The revised WTO Agreement on Government Procurement as an emerging pillar of the world trading system: recent developments*, 7(1), *Trade, Law and Development*, pages 47-48 (2015).

<sup>70</sup> Wang, P., *China's Accession to WTO's Government Procurement Agreement: Domestic challenges and prospects in negotiation*, University of Nottingham China Policy Institute Publication, page 4. (2009),

<sup>71</sup> *Ibid.*

<sup>72</sup> ADB, *Trade and Procurement: Effective Public Purchasing and Market Access*, page 4 (2013),

<sup>73</sup> Ekanayake, P., ‘Need for good governance in proposed Presidential Procurement Committee’, *The Sunday Times, Business Times* (May 31, 2015), available at: <http://www.sundaytimes.lk/150531/business-times/need-for-good-governance-in-proposed-presidential-procurement-committee-150970.html> [accessed on: April 12, 2016].

<sup>74</sup> De Mel, Deshal & De Silva, Anneka, *Aid Effectiveness in Sri Lanka*, Institute of Policy Studies, p 10 (July, 2010), available at: [http://www.ips.lk/events/workshops/29\\_7\\_10\\_policy\\_priorities/deshal\\_anneka.pdf](http://www.ips.lk/events/workshops/29_7_10_policy_priorities/deshal_anneka.pdf) [accessed on: June 2016]

The government has moved away from competitive bidding on the view that large-scale investments cannot be handled through normal tender procedures. While there are disadvantages to long, time-consuming processes on both sides before a project is finalized, there are also concerns that awarding these large size procurements on non-competitive basis are not transparent and fail to deliver value for money.<sup>75</sup> For example, roads constructed through contracts awarded outside competitive bidding have led to escalation of the cost of constructing a kilometre of expressway in Sri Lanka by two to three fold over a period of five to six years<sup>76</sup>. According to Prof. Amal Kumarage, a transport expert, the award of contracts to build roads outside competitive bidding reached a peak in 2014 with such awarded projects reportedly worth LKR 333 billion (USD 2.5 billion) during that year alone. In these projects, costs were higher by around 135% than the previous year, and the losses arising from them are estimated at LKR 200.5 billion (USD 1.5 billion).<sup>77</sup>

According to an assessment carried out by the ADB, Sri Lankan government agencies are not exposed to properly defined procurement audits. Although there are financial audit procedures in place for government sector organizations, they are not customized to address procurement. In addition, procurement procedures do not address means of preventing corruption, fraud, conflicts of interest and unethical behaviour. A Commission to Investigate Allegations of Bribery and Corruption (CIABOC) has been established. However, although some cases have been investigated, few have resulted in court action.<sup>78</sup>

### ***GPA accession: potential benefits of reforming the procurement system***

*In order to accede to the GPA, a country has to ensure that the procurement legislation is consistent with the GPA's requirements.* The time period required to reform domestic legal systems and processes as well as the resources required vary from country to country. For example, some of the countries that are currently engaged in the accession process initiated it back in 2009 or even earlier (e.g. **Georgia, Jordan, China**). China, whose accession involves significant stakes and the most complex issues for negotiators, began in 2007 and is yet to be completed.<sup>79</sup> In contrast, **Armenia**, the only lower middle income economy in the GPA, with a population of around 3 million and GDP of US\$11 billion (2015), completed its accession within two years (November 2009 to September 2011) after eight rounds of technical level negotiations.<sup>80</sup>

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<sup>75</sup> ADB, Mahaweli Water Security Investment Program Procurement Capacity Assessment, para 29 (June 2015) available at: <http://www.adb.org/sites/default/files/linked-documents/47381-001-sd-07.pdf> [accessed on: April 13, 2016].

<sup>76</sup> Kumarage, A., 'Road building or rip-off?', The Sunday Times (December 21, 2014), available at: <http://www.sundaytimes.lk/141221/news/road-building-or-rip-off-128259.html> [accessed on: April 12, 2016].

<sup>77</sup> Ibid

<sup>78</sup> ADB, Mahaweli Water Security Investment Program Procurement Capacity Assessment, para 47 (June 2015) available at: <http://www.adb.org/sites/default/files/linked-documents/47381-001-sd-07.pdf> [accessed on: April 13, 2016].

<sup>79</sup> Arrowsmith, S. And Anderson, R. D. (ed), *The WTO Regime on Government Procurement: Challenge and Reform*, page 34. (2011),

<sup>80</sup> Brutyan, K., *Accession to the GPA: The case of Armenia*, GPA Symposium, Geneva (September 17-18, 2015), available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/symp092015\\_e/S7-6Brutyan.pdf](https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/S7-6Brutyan.pdf) [accessed on: April 10, 2016].

Reforming the government procurement processes and practices in line with the GPA provisions as a pre-requisite to accession to the GPA could be beneficial to a country like Sri Lanka, in the following ways:

- (a) GPA accession can be beneficial to Sri Lanka if becoming a GPA's member results in the country's procurement process being streamlined and transparent;
- (b) Furthermore, the experience of Armenia and other countries that are in the process of accession, indicates that expressing interest to join the agreement has created interest among multilateral and bilateral donors to provide technical assistance to these countries to reform their procurement systems; and
- (c) In addition to the positive "signalling effect" this will have in terms of attracting foreign investors, it will also improve utilization of scarce public resources to achieve greater value for money.

### ***The challenge of implementing reforms***

It is important to note that although the benefits of having a transparent and accountable government procurement framework are clear, according to research, many developing countries face problems in implementing procurement reform.<sup>81</sup> This is due to "deeply vested interests and lack of political will," "paucity of technical knowledge and capacity," the "complexity of substantive issues involved" including the types of legal instruments involved, as well as different means for organizing procurement functions and enforcement challenges.<sup>82</sup> Furthermore, "evidence from countries where reform efforts have stalled for a long time indicates that it is very difficult to achieve wholesale, systemic changes to the legal framework in the absence of consistent political commitment and support from within the highest levels of government. Only support at such levels can overcome the progress and substantive obstacles to reform".<sup>83</sup> Agreeing on the text of an agreement is only the first step in ensuring increased competition in public contracts.<sup>84</sup>

Available information and research indicate that Sri Lanka is likely to face similar impediments:

- (i) Government agencies not adhering to procurement guidelines and resulting cost escalations discussed above are a clear indication of *vested interests* in the context of Sri Lanka.
- (ii) In terms of *capacity and technical knowledge*, the country does not have a specific procurement cadre or procurement core group. Most of the staff carrying out

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<sup>81</sup> Evenett, S. & Hoekman, B., *Government Procurement: Market Access, Transparency, and Multilateral Trade Rules* (October 2002), page 18.

<sup>82</sup> Hunja, R., 'Obstacles to Public Procurement Reform in Developing Countries', *Public Procurement: The Continuing Revolution*, edited by Sue Arrowsmith & Martin Trybus, Kluwer Law International, page 17-18 (2003).

<sup>83</sup> *Ibid*, page 21.

<sup>84</sup> Evenett, S., Can Developing Countries Benefit from Negotiations on Transparency in Government Procurement in the Doha Round? Background Paper prepared for United Nations Procurement Capacity Development Centre, page 3 (2003).

procurement functions are from general engineering and accounting cadres, often inexperienced and not trained specifically in procurement. Additionally, contract administration is weak.<sup>85</sup>

- (iii) Assistance from multilateral and bilateral development agencies can help overcome shortfalls in technical knowledge and training in reforming the government procurement systems in Sri Lanka. However, in addition to institutional and human resource aspects, adopting competitive and transparent procurement practices requires, above all, a commitment to open competition on the part of the purchasing entity, the government.<sup>86</sup>

### 3.3. SPECIAL PROVISIONS TO ADDRESS SPECIFIC DEVELOPMENT NEEDS

Special and differential treatment (S&D) for developing countries continues to be a defining feature of the multilateral trading system. The main objectives of these provisions are to provide flexibilities for developing countries, taking into account the developmental, financial and trade contexts, and to facilitate their participation.<sup>87</sup>

#### ***The GPA's S&D provisions***

The GPA provides two types of S&D provisions: transitional measures and deferred implementation of specific obligations. *Transitional measures* allow four possibilities: (i) use of price preferences, (ii) use of offsets, (iii) initial higher thresholds, and (iv) phased-in addition of specific entities or sectors. *The current transitional period* for developing countries is a maximum of three years, and for least developed countries (LDCs), five years. Since the current membership of the GPA comprises only one lower middle income country - Armenia, who joined the GPA in 2011 - there is insufficient information to assess the impact of the GPA's current S&D provisions on a lower middle-income country such as Sri Lanka.

Within the context of government procurement, special provisions for developing countries such as Sri Lanka need to be analysed by examining: (a) the impact that accession can have on the policy flexibility available to a government to use procurement to achieve policy objectives, such as supporting domestic firms in order to build capacity and to assist SMEs and women owned businesses; and (b) the financial and technical capacity of the country to secure sufficient flexibility within the agreement through negotiations, and to implement the provisions of the agreement.

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<sup>85</sup> ADB, Mahaweli Water Security Investment Program Procurement Capacity Assessment, para 36 (June 2015) available at: <http://www.adb.org/sites/default/files/linked-documents/47381-001-sd-07.pdf> [accessed on: April 13, 2016].

<sup>86</sup> Woolcock, S. & Grier, J., Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, "TTIP in the balance", page 2 (February 2015), available at: <https://www.ceps.eu/system/files/SR100PublicProcurementandTTIP.pdf> [accessed on: April 15, 2016].

<sup>87</sup> Chen, J., The new transitional measures available to developing countries under the revised GPA (S.6.1), National Seminar on the WTO Agreement on Government Procurement (December 9, 2015), available at: [http://www.ebrd-gpa-facility.com/documents/12\\_2015/9.pdf](http://www.ebrd-gpa-facility.com/documents/12_2015/9.pdf) [accessed on: March 2016].

### ***Impact on Sri Lanka's policy flexibility to support local firms***

Domestic firms in developing countries face special constraints in participating in procurement markets at home and abroad. A lack of experience and exposure is a key impediment faced by domestic firms in successfully competing with foreign firms in both internal and external procurement markets.

Designing and implementing public procurement policies and practices that help increase the participation of local firms can help them gain necessary experience, which will better equip them to participate in procurement markets abroad. Therefore, the ability of a country to retain these flexibilities is an important factor to be considered when analyzing the costs and benefits of acceding to the GPA. For example, a report by UNCTAD<sup>88</sup> states that in most developing countries with a nascent IT industry, providing services for the government is often the most natural entry point for newly established enterprises. This is because the government is often the largest buyer of IT services in these countries, and hence it is a key market for local IT firms. According to the report, various measures can be used to promote the participation of local IT firms in public tenders while maintaining a competitive bidding process. For example, this can include measures such as providing targeted preferential treatment of local suppliers without jeopardizing the quality of the goods or services procured and increasing the options for SMEs to submit bids.

The current procurement guidelines of Sri Lanka provide a significant level of flexibility in **providing preferences to domestic firms**. For example, when deciding to use ICB for contracts that exceed LKR 300 million (USD 2 million), the GPG state that “in the case of Works contracts in view of the development of domestic construction industry, the possibility of slicing the contract and following “slice and package approach” to suit domestic contractors”.<sup>89</sup> In addition to this, the guidelines allow provide for *special margins of preference to domestic bidders* with a view of promoting national and local enterprises (see Table 2 below).<sup>90</sup>

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<sup>88</sup>UNCTAD, *Promoting local ICT sector development through public sector procurement*, page 1 (2013).

<sup>89</sup> National Procurement Agency. *Government Procurement Guidelines*, Chapter 3, Section 3.1.1 (2006),

<sup>90</sup> National Procurement Agency. *Government Procurement Guidelines* Chapter 7, page 51(2006),

**Table 2: Domestic preference criteria – Sri Lanka**

Type of contract		Margin of preference*
Works Contracts	Domestic bidders in Works in contracts funded by World Bank and Asian Development Bank	7.5%
	Domestic bidders in Works contracts funded by GoSL	10%
Domestically manufactured goods	Domestically manufactured Goods for contracts funded by World Bank and Asian Development Bank	15%
	Domestically manufactured Goods for contracts funded by GoSL	20%

\* Conditional on meeting qualifying criteria listed by ADB, WB and GOSL

Source: Chapter 7, Government Procurement Guidelines (2006), pages 51-52

According to a report by the UNCTAD<sup>91</sup> Sri Lanka is identified as a country that has successfully deployed a range of **strategies to increase the participation of local firms in public IT-related tenders**, including the allocation of preferential marks, the use of measures to mitigate information asymmetries, and the use of a software design that facilitates local firm participation. The UNCTAD report specifically cites the Information Communication and Technology Agency (ICTA) of Sri Lanka responsible for large e-government programs, as having successfully stimulated local IT SME development by using a wide range of public procurement strategies and tools. ICTA has used the opportunities available to provide domestic preference within international competitive bidding. In tender evaluations, ICTA has regularly allocated marks (up to 15 percent of the total marks as allowed by World Bank rules) to domestic firms. This practice has promoted joint ventures between international and local firms which overtime have encouraged knowledge transfer and technological learning by local firms. Technology related strategies adopted by ICTA have also contributed to the participation of local SMEs in public sector tenders. For example, the small size of each e-government module has resulted in tenders that are more attractive to SMEs and local firms with specific expertise.<sup>92</sup> Retaining this policy flexibility to strategically use government procurement towards development remains an important factor to consider when undertaking international commitments in government procurement.

### ***Securing S&D treatment favourable to Sri Lanka***

The GPA provides S&D treatment in the form of transitional measures such as offsets, price preference programmes, initially higher thresholds and phasing-in of procuring entities. These measures need to be negotiated by a developing acceding country during the accession process. The extent to which a country can secure such S&D treatment is subject to the agreement of the other GPA parties and the acceding member's development

<sup>91</sup> UNCTAD, Promoting local ICT sector development through public sector procurement, (2013).

<sup>92</sup> *Ibid*, page 32.

needs.<sup>93</sup> Further, S&D provisions are temporary and have to be phased out over a period of three to five years extent.

Sri Lanka has positioned itself in the WTO as a **small and vulnerable economy (SVE)**. SVEs strive to negotiate more favourable S&D treatment than what is given to developing countries. SVEs have not been given the same status as, for example, least developed countries (LDCs) in the WTO. However, for the first time, SVEs have been officially recognised as a group that needs special consideration in the Ministerial Declaration of the tenth WTO Ministerial Conference held in Nairobi in 2015. The Ministerial Declaration states that the needs of SVEs will be taken into account in all areas of negotiations.<sup>94</sup> Thus, the extent to which the country is able to negotiate terms and conditions in its annexures, will depend on access to data and information and the quality of the negotiations with existing member countries during the accession.

## 4. SRI LANKA'S ACCESSION TO GPA: A LEGAL PERSPECTIVE

This section is divided into two components. First, it will set out the regulatory framework governing public procurement in Sri Lanka. Second, the section will analyse GPA provisions applicable to: (a) special and differential treatment for domestic suppliers; (b) streamlining of public procurement processes; and (c) transparency of public procurement information. Furthermore, this section will examine the gap between procurement standards required by the GPA in relation to the above thematic clusters, and Sri Lanka's prevailing public procurement processes under the Government Procurement Guidelines 2006 (GPG) and the Government Procurement Manual 2006 (GPM).

### 4.1. SRI LANKA'S PUBLIC PROCUREMENT FRAMEWORK

#### **The National Procurement Commission (NPC)**

The recently enacted 19<sup>th</sup> Amendment to Sri Lanka's Constitution provides for the institution of an independently appointed National Procurement Commission (NPC).<sup>95</sup> The NPC comprises five members appointed by the President on the nomination of the Constitutional Council.<sup>96</sup> The NPC is mandated to:

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<sup>93</sup>WTO, Agreement on Government Procurement: parties, observers and accessions, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), [accessed on: April 13, 2016].

<sup>94</sup>WTO Ministerial Declaration and Decisions, Ministerial Conference Tenth Session, Nairobi (December 15-19 2016), para 26. Available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc10\\_e/nairobipackage\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.pdf) [accessed on: April 2016].

<sup>95</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka*, art 156B - Chapter XIX B.

<sup>96</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka*, art 156B(1),

Formulate fair, equitable, transparent, competitive and cost effective procedures and guidelines for the procurement of goods, services, works, consultancy services and information systems by government institutions and cause such guidelines to be published in the *Gazette*.<sup>97</sup>

Under Article 156C (2) of the Constitution, the NPC is authorized to monitor and evaluate the compliance of government procurement entities with procurement processes and rules. Moreover, the NPC is also mandated to review government procurement plans, and assess the functionality of Technical Evaluation Committees.<sup>98</sup> Article 156D gives the NPC the power to summon individuals before the Commission in order to aid the performance of its duties. At present, the NPC is in the process of developing its organizational structure and capacity needed to be fully operational.

### **Current procurement regulatory framework**

Presently, the principal regulatory documents governing public procurement in Sri Lanka are the 2006 GPG and GPM. The GPG and the GPM are applicable to all government institutions including ministries, government departments, public corporations, provincial councils and local authorities.<sup>99</sup> They both were formulated and issued by the former National Procurement Agency (NPA), which functioned as an entity under the General Treasury at the Department of Public Finance.<sup>100</sup> The GPG and the GPM are applicable exclusively to the procurement of goods, non-consulting services and works, and do not address specifically the selection and engagement of consultants or the purchase of information systems by the government.<sup>101</sup>

Procuring entities are required to set up Procurement Committees and Technical Evaluation Committees for the purpose of designing, evaluating and processing supplier bids.<sup>102</sup> To this end, Procurement Committees are tasked with: (i) ensuring that funds are available for the procurement contract; (ii) consulting with the Technical Evaluation Committee on the nature and form of bidding documents; and (iii) reviewing the evaluation report by the Technical Evaluation Committee in order to award the final contract.<sup>103</sup> The Technical Evaluation Committee is tasked with: (i) reviewing and approving the technical specifications for the bid; (ii) reviewing and approving the pre-qualification documents; and (iii) participating in negotiations with suppliers.<sup>104</sup>

The GPG stipulate eight procurement modalities that can be utilised by a public procuring entity, which are:

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<sup>97</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka*, art 156C(1).

<sup>98</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka*, art 156C(2).

<sup>99</sup> ADB, *Mahaweli Water Security Investment Program, Procurement Capacity Assessment* (June 2015).

<sup>100</sup> The Department of Finance is a Department of the Ministry of Finance.

<sup>101</sup> *Ibid.*

<sup>102</sup> Section 2.4 *Government Procurement Guidelines* (2006).

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

1. International Competitive Bidding (ICB)
2. National Competitive Bidding (NCB)
3. Limited International Bidding (LIB)/Limited National Bidding (LNB)
4. Shopping
5. Direct Contracting
6. Repeat Orders
7. Force Account; and
8. Emergency Procurement<sup>105</sup>

For the purposes of this component, ICB, NCB, LIB/LNB, Shopping, Direct Contracting and Emergency Procurement will be further scrutinized:

- ICB is utilised either when the capacity of domestic contractors, suppliers and service providers are limited, or for foreign funded projects.<sup>106</sup>
- NCB is the competitive open bidding procedure that is generally applicable to most government-funded projects.<sup>107</sup>
- LIB and LNB are utilised in the event that there are few suppliers in the market.<sup>108</sup> These procurement methods involve a closed bidding procedure involving a pre-selected list of national or international suppliers.<sup>109</sup>
- Shopping is applied for procuring goods, commodities and services of small value.<sup>110</sup> Selection under this method is based on a comparison of price quotations obtained from several invited bidders.
- Direct Contracting is only deployed under exceptional circumstances.<sup>111</sup> This form of procurement involves the purchase of goods, services, or works from a single supplier source, and entails no competition.
- Emergency Procurement is permitted in (a) exceptional circumstances such as man-made or natural disasters; or (b) to meet unforeseen social obligations (and other such similar situations) that are declared by the Government of Sri Lanka to be emergency situations.<sup>112</sup>

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<sup>105</sup> *Government Procurement Guidelines (2006)*, Chapter 3.

<sup>106</sup> Section 3.1 *Government Procurement Guidelines (2006)*.

<sup>107</sup> Section 3.2 *Government Procurement Guidelines (2006)*.

<sup>108</sup> Section 3.3 *Government Procurement Guidelines (2006)*.

<sup>109</sup> Section 3.4 *Government Procurement Guidelines (2006)*.

<sup>110</sup> Section 3.5 *Government Procurement Guidelines (2006)*.

<sup>111</sup> Section 3.5(c) *Government Procurement Guidelines (2006)*.

<sup>112</sup> *Ibid.*

## 4.3. LEGAL GAP ANALYSIS

### 4.3.1. *Special and differential treatment for domestic suppliers*

#### **GPA standards**

##### Non-discrimination principle

*Article IV of the GPA* stipulates that “Parties shall offer international suppliers the same benefits and opportunities available to domestic suppliers in the procurement of goods, supplies and services”. The Article also states that Parties shall not discriminate against domestic suppliers on the grounds of their foreign ownership or affiliation.<sup>113</sup> Moreover, *Article X of the GPA* prohibits a procuring entity from instituting technical specifications that would create unnecessary obstacles to international trade. Therefore, the GPA attempts to increase competition in the country’s public procurement marketplace by removing special and differential treatment afforded to domestic suppliers.

##### Special and differential treatment provisions

However, notwithstanding the above, *Article V of the GPA* recognises the “development, financial and trade needs” of developing countries that may warrant special consideration. This Article permits parties to afford special and differential treatment to: (a) least developing countries; and (b) any other developing country to the extent that the special and differential treatment meets its development needs.<sup>114</sup> As such, special and differential treatment provisions are designed to safeguard the interests of developing countries and enable greater flexibility through the use of commercial and economic instruments to promote development. Accordingly, the GPA requires a developing country to negotiate and justify special and differential treatment mechanisms and a stipulated time period for their implementation prior to its accession to the Agreement.<sup>115</sup>

The operation of special and differential treatment mechanisms are contemplated during the ‘transitional period’ after the country’s accession to the GPA.<sup>116</sup> In the case of a least developed country (LDC), this period is five years after the country’s accession to the GPA.<sup>117</sup> For developing countries, the transitional period is “the period necessary to implement the specific obligation”, provided that it does not extend beyond three years.<sup>118</sup>

Under *Article V(3)*, the special and differential treatment mechanisms permitted under the GPA include: (i) price preference programs, (ii) phased-in addition of specific entities or

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<sup>113</sup> Article IV, Revised Agreement on Government Procurement (March 30, 2012).

<sup>114</sup> Article V, Revised Agreement on Government Procurement (March 30, 2012).

<sup>115</sup> Article V(1), Revised Agreement on Government Procurement (March 30, 2012).

<sup>116</sup> Article V(3), Revised Agreement on Government Procurement (March 30, 2012).

<sup>117</sup> Article V(4), Revised Agreement on Government Procurement (March 30, 2012).

<sup>118</sup> *Ibid.*; under Article V(6), developing countries are given the opportunity to extend their transitional period on the grounds of special circumstances that were unforeseen during the accession process.

sectors; and (iii) a procurement monetary threshold that is higher than the country's permanent procurement monetary threshold. In the case of price preference programs, the GPA stipulates that preferences are permissible only in the event that: they are allocated for a part of the tender; and the scheme is transparent and proactively disclosed.<sup>119</sup> As such, price preferences can include domestic suppliers in certain sectors being awarded the tender, if the price of their bid falls within a specific margin of preference (e.g. 15%).

*Article V(8) of the GPA* permits parties to give due consideration to a request by a developing country for technical cooperation and capacity building in relation to the country's compliance with GPA provisions. The ability to request technical support creates opportunities for developing countries to improve the effectiveness and functionality of their public procurement markets and processes. However, despite the availability of special and differential treatment mechanisms under Article V, these mechanisms are designed to 'phase out' after the country's transitional period.<sup>120</sup> Therefore, the GPA does not contemplate the lasting protection of domestic industries and the permanent availability of preferential economic and commercial instruments to increase participation in public procurement markets. Furthermore, under Article V(8), parties are only required to consider requests for capacity building. Thus, this requirement fails to create positive obligations on parties to provide capacity building support to domestic suppliers in developing countries.

### ***Alignment of Sri Lanka's public procurement framework***

Under the GPG, international suppliers are not explicitly prevented from participating in Sri Lanka's public procurement marketplace. In this context, section 1.2.1(c) of the GPG states that the procurement process will provide "fair, equal and maximum opportunity for eligible interested parties to participate in procurement". Moreover, *under the NCB modality of procurement*, foreign contractors or suppliers are entitled to bid on the same terms as domestic contractors or suppliers.<sup>121</sup>

### Works contracts preferential treatment provisions

However, procuring through the ICB modality gives the procuring entity the right to incur special and differential treatment mechanisms in favour of domestic suppliers in certain circumstances. As such, *under the ICB modality, works contracts are afforded special and differential treatment*.<sup>122</sup> Works contracts include contracts that comprise activities such as construction, demolition, reconstruction, repair or renovation of a building.<sup>123</sup> In terms of section 3.1.1 of the GPG, even in the event that the capacity of domestic contractors is limited, works contracts are entitled to be modified to suit the requirements of domestic

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<sup>119</sup> Article V(3)(a), Revised Agreement on Government Procurement (March 30, 2012).

<sup>120</sup> Article V(4), Revised Agreement on Government Procurement (March 30, 2012).

<sup>121</sup> Section 3.2.3, Government Procurement Guidelines (2006).

<sup>122</sup> Section 3.1(c), Government Procurement Guidelines (2006).

<sup>123</sup> *Ibid.*

contractors. This special treatment is justified on the grounds of promoting the domestic construction industry.<sup>124</sup>

Sri Lankan procurement processes also allow *special and differential treatment to domestic industries engaged in works contracts* during the evaluation stage of bids. To this end, section 7.9.4 of the GPG affords certain preferences to domestic industries. As such, domestic bidders for works contracts are given a price preferential margin of seven and a half per cent in projects funded by the World Bank and the Asian Development Bank.<sup>125</sup>

Furthermore, works contracts funded by the Government of Sri Lanka are given a price preference of ten per cent.<sup>126</sup> In order to be eligible for the price preferences available for domestic suppliers, firms are required to demonstrate that over fifty per cent of their ownership is Sri Lankan.<sup>127</sup>

#### Goods contracts preferential treatment provisions

Sri Lankan procurement processes also allow *special and differential treatment to suppliers who utilise domestically manufactured goods*. In terms of section 7.9.6 of the GPG, domestically manufactured goods for contracts funded by the World Bank and the Asian Development Bank are given a price preference margin of fifteen per cent during the bid evaluation. Moreover, domestically manufactured goods for contracts funded by the Government of Sri Lanka are afforded a price preference margin of twenty per cent.<sup>128</sup> In order for suppliers to be eligible for this price preference, they are mandated to establish that: (a) local labour and raw materials amount to thirty per cent of the price of the product offered; and (b) the production facility where the goods are manufactured has been in operation at least since the time the bid was submitted.<sup>129</sup>

Therefore, although Sri Lanka has mechanism allowing special and differential treatment to domestic suppliers in public procurement, ***these mechanisms are not necessarily inconsistent with the flexibility afforded under Article V of the GPA***. However, the legitimacy of the existing special and differential treatment mechanisms will be dependent on the extent to which they can be successfully negotiated into the Annexes governing Sri Lanka's specific obligations under the GPA. Moreover, these special and differential treatment provisions will have to be phased out of Sri Lanka's public procurement processes after the country's transitional period expires, if it is to be fully compliant with GPA requirements.

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<sup>124</sup> Section 3.1.1, Government Procurement Guidelines (2006).

<sup>125</sup> Section 7.9.5, Government Procurement Guidelines (2006).

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> Section 7.9.6, Government Procurement Guidelines (2006).

<sup>129</sup> *Ibid.*

### 4.3.3. Streamlining public procurement processes

#### **GPA Standards**

The preamble of the GPA states that the “integrity and predictability of government procurement systems are integral to the efficient and effective management of public resources”. To this end, this section will examine the GPA requirements targeted at streamlining and creating predictability within a party’s procurement process.

#### Registration of suppliers

*Article IX of the GPA* permits procuring entities to maintain a supplier registration system, where government suppliers are required to register and provide key information (e.g. company registration documents). Moreover, in the event procuring entities set up multi-use lists of suppliers, they are mandated to update and publish such lists annually.<sup>130</sup> In the event a supplier requests to be added or is removed from the multi-use list, the GPA requires the procuring entity to publish its decision with respect to such addition, rejection or removal.<sup>131</sup>

Furthermore, *Article IX(2)* mandates procuring entities to ensure that there are minimal differences in tender qualification procedures and registration systems in the public procurement market.

#### Technical specifications and tender documentation

*Article X* mandates procuring entities to prescribe technical specifications for the goods and services that are being procured. Furthermore, it stipulates that such technical specifications be set out in a manner that: (a) focuses on the performance and functional requirements of the good or service (rather than its design or descriptive characteristics); and (b) is based on national technical regulations, recognized national standards, or building codes.<sup>132</sup>

*Article X(7)* stipulates certain compliance standards with respect to tender documentation. These standards include the requirement on procuring entities to publish a complete description on:

- (a) The nature and quantity of goods and services to be procured;
- (b) The conditions governing the participation of suppliers (e.g. a list of requisite information and accompanying documents);
- (c) The evaluation criteria that will apply in assessing and awarding the bid; and
- (d) The terms of payment.<sup>133</sup>

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<sup>130</sup> Article IX(7), Revised Agreement on Government Procurement (March 30, 2012).

<sup>131</sup> *Ibid.*

<sup>132</sup> Article X(2), Revised Agreement on Government Procurement (March 30, 2012).

<sup>133</sup> Article X(7), Revised Agreement on Government Procurement (March 30, 2012).

In the event the criteria of the tender is modified prior to the award of the contract, the procuring entity is required to re-issue a tender notice containing the relevant modifications, and allow suppliers adequate time to modify their bids.<sup>134</sup>

### Timelines requirements

In terms of *Article XI*, procuring entities are required to provide sufficient time for suppliers to submit requests and respond to tenders. In setting appropriate timelines, procuring entities are required to give due regard to:

- (a) The nature and complexity of the procurement;
- (b) The extent of the subcontracting anticipated; and
- (c) The time necessary for transmitting tenders by non-electronic means.<sup>135</sup>

Additionally, *Article IX(4)* stipulates that the final date for the submission of tenders shall not be less than forty days from the date on which the notice of intended procurement is published. This time period can be reduced to not less than ten days in the event a 'state of urgency' is duly substantiated by the procuring entity.

### ***Alignment of Sri Lanka's public procurement framework***

*Chapter 2 of the GPM* states that one of the key functions of the (former) NPA is to increase the efficiency of public procurement through the simplification of procurement processes [function to be performed by the new NPC since 2015].

### Registration of suppliers

In terms of *section 3.4.3 of the GPG*, procuring entities utilising the shopping modality are entitled to procure from a list of registered suppliers.<sup>136</sup> This registration process requires that the procuring entity publishes a notice for the registration of suppliers and prepare a list of suppliers that corresponds to categories of goods and services (e.g. electrical items, motor vehicle repairs, and publications).<sup>137</sup> Furthermore, the procuring entity is obligated to update its registered list of suppliers at least once a year.<sup>138</sup>

Notwithstanding this requirement, in the absence of regular monitoring, it is unlikely that procuring entities regularly update and publish their supplier lists. Moreover, in the event a supplier's application to register on the supplier list is rejected, the procurement entity is under no obligation to publish reasons for such rejection. **As such, these factors diminish the alignment of Sri Lanka's supplier registration mechanisms with GPA requirements.**

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<sup>134</sup> Article X(11), Revised Agreement on Government Procurement (March 30, 2012).

<sup>135</sup> Article XI(1), Revised Agreement on Government Procurement (March 30, 2012).

<sup>136</sup> Section 3.4.3, Government Procurement Guidelines (2006).

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

## Technical specifications and tender documentation

Section 5.2 of the GPG states that the “bidding documents shall contain all relevant information necessary for a prospective bidder to prepare a bid for goods, services or works”. Section 3.3 of the GPG mandates procuring entities to use appropriate Standard Bidding Documents (SBDs) as far as possible to address contract specific issues.<sup>139</sup> These SBDs are designed to introduce uniformity and standardisation in the tendering process. For example, the SBD on the Procurement of General Goods stipulates key sections that should be incorporated into bidding documents (e.g. instructions to bidders, bidding data sheets and bidding forms).<sup>140</sup>

However, in the event a SBD has not been issued for particular goods, services or works, *alternate bidding documents* may be used, providing agreement of the relevant authority. These alternate bidding documents have the potential to create significant discrepancies with respect to requirements surrounding bid documentary compliance in the public procurement marketplace. Section 5.2.1(a) of the GPG permits the detail and complexity of bid documents to vary with the size and nature of the proposed procurement. **This variation has the potential to extend technical specification requirements beyond those that relate to the functionality and performance of the goods or services being procured, thus minimizing compliance with GPA streamlining standards outlined above.**

The Guidelines require procuring agencies to publish instructions to suppliers that detail (a) the nature and quantity of goods and services to be procured; and (b) the eligibility criteria applicable to suppliers.<sup>141</sup> The GPM states that the bidding documents should (a) clearly define the scope of goods, services or works to be supplied (e.g. activity schedule, price schedule, drawings and technical specifications); and (b) the rights and obligations of the procuring entity and suppliers in the procurement process.<sup>142</sup> The GPM also mandates that the bid document set out a fair and non-discriminatory criteria for selecting and evaluating the winning bid.<sup>143</sup> Such criteria include: a listing of factors (other than price) which the procuring entity proposes to consider; and the basic sequence for the evaluation of bids (e.g. preliminary examination of bids, detailed evaluation and comparison, and post-qualification verification).<sup>144</sup> Section 5.3.1.5 of the GPG mandates that information relating to the modification of bidding documents should be circulated to all recipients of the bidding document. Additionally, the section provides that sufficient time be given prior to bid closure for suppliers to amend their bids.<sup>145</sup> **Therefore, the Sri Lankan regulatory**

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<sup>139</sup> At present, SBDs exist with reference to works in medium, major and minor contracts and design and build contracts - *Government Procurement Manual (2006)*.

<sup>140</sup> Page 81, *Government Procurement Manual (2006)*.

<sup>141</sup> Section, 5.2, *Government Procurement Guidelines (2006)*.

<sup>142</sup> Page 83, *Government Procurement Manual (2006)*.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> Section, 5.3.1.5, *Government Procurement Guidelines (2006)*.

**framework pertaining to tender documentation in public procurement is largely compliant with GPA requirements.**

#### Timelines requirements

The GPG stipulates minimum timeframes between the publication of the tender and the closure of the bid.<sup>146</sup> To this end, in the case of ICBs, the GPG mandates that the tender is kept open for a minimum of *forty days*.<sup>147</sup> Further, in the case of NCBs, the stipulated minimum timeframe for bid submission is *twenty-one days*.<sup>148</sup> Moreover, in the case of shopping contracts, the minimum timeframe for bid submission is *seven days*.<sup>149</sup> The procuring entity is entitled to reduce these timeframes even further in the case of emergency procurement contracts (i.e. *three days* in the case of limited invitation and *seven days* if open bidding is utilised).<sup>150</sup> **As such, these minimum timeframes fail to correspond with GPA standards that require a minimum of forty days for bid submission in the case of regular contracts, and a minimum of ten days for emergency contracts.**

### **4.3.4. Transparency of procurement information and systems**

#### **GPA standards**

The GPA preamble recognises 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”

#### Free and accessible procurement-related information

*Article IV* mandates that parties to the GPA promptly publish and disseminate laws, regulations, judicial decisions, and administrative rulings relating to covered procurements. The GPA also sets out certain requirements that are designed to increase the transparency of public procurement information.<sup>151</sup> These requirements include the provision of adequate and accessible information to suppliers. In this context, in terms of *Article VII*, procuring entities are bound to publish a detailed notice of intended procurement and disseminate this information widely in a manner that is accessible to the public. Furthermore, it requires procurement entities covered by Annex I (i.e. central government entities) to enable

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<sup>146</sup> *Government Procurement Guidelines (2006)*, s 6.2.2.

<sup>147</sup> Section, 6.2.2, *Government Procurement Guidelines (2006)*.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> GPA, art XVI.

electronic access of tender notices.<sup>152</sup> These notices must be available free of charge to potential suppliers through a single point of access.<sup>153</sup>

#### Publication of contract award notices

In terms of *Article XVI (1)* of the GPA, a procuring entity is obligated to promptly inform participating suppliers of its contract award decisions. This Article also requires the procuring entity to give an unsuccessful supplier adequate reasons for why his or her tender was not selected. Moreover, in terms of *Article XVI(2)* of the GPA, the award of procurement contracts for goods and services covered under the Agreement is required to be published by way of a public notice. Such notices must include:

- (a) A description of the goods and services procured
- (b) The name and address of the procuring entity
- (c) The name and address of the successful supplier
- (d) The value of the successful tender or the highest and lowest offers taken into account in the award of the contract; and
- (e) The type of procurement method used.<sup>154</sup>

#### Limited tendering modalities

In addition to the above, the GPA regulates the use of procurement modalities in order to increase transparency and fairness in the procurement marketplace. For example, the Agreement stipulates the circumstances in which Limited Tendering (i.e. where the procuring entity contracts directly a pre-identified supplier or suppliers) can be utilised by procurement entities.<sup>155</sup> To this end, Article XIII states that a procuring entity may not use Limited Tendering unless:

- (a) No tenders were submitted or no suppliers requested participation;
- (b) No tenders conform to essential requirements of the tender documentation;
- (c) No suppliers satisfy the conditions for participation;
- (d) The tenders submitted have been collusive;
- (e) Goods and services can only be supplied by a particular supplier and no reasonable alternative or substitute goods or services exist (e.g. due to protection of patents or other exclusive rights); or
- (f) There is an extreme urgency (unforeseen by the procuring entity) that prevents goods or services being obtained in time using open tendering.

In the event Limited Tendering is deployed under one of the above grounds, the procuring entity is bound to prepare a report on each contract awarded.<sup>156</sup> The report is required to stipulate the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the conditions prompting Limited Tendering.<sup>157</sup>

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<sup>152</sup> Article XVI(2), Revised Agreement on Government Procurement (March 30, 2012).

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*; in the event that Limited Tendering is used, the procuring entity is obligated to justify such use.

<sup>155</sup> Article XIII, Revised Agreement on Government Procurement (March 30, 2012).

<sup>156</sup> Article XIII (2), Revised Agreement on Government Procurement (March 30, 2012).

<sup>157</sup> *Ibid.*

## ***Alignment of Sri Lanka’s public procurement framework***

### Free and accessible procurement-related information

The GPM requires that public procurement rules should be accessible, transparent, and unambiguous.<sup>158</sup> *Section 1.4 of the GPG* states that procurement processes should be managed ethically so as to prevent abuse through nepotism, corruption, bribery, and conflicts of interest. Furthermore, under *Article 156 (c) of the Constitution*, the NPC is mandated to “formulate fair, equitable, transparent, competitive, and cost effective procedures and guidelines for the procurement of goods and services, works, consultancy services and information systems by government institutions”.

### Publication of contract award notices

Procuring entities are bound to publish details of awarded procurement contracts, under *section 8.1.0 of the GPG*. These details include the total number of bids received, the name of the successful bidder and the amount at which the contract was awarded. In the event the contract value exceeds twenty five million Sri Lankan Rupees (USD 172,413), the procuring entities are required to publish the award in a national newspaper and the government *Gazette*.<sup>159</sup> Under the GPG, provisions governing procurement modalities stipulate additional publication requirements with respect to procurement notices. For example, in the case of NCB, procurement notices are required to be advertised in at least one national newspaper and other relevant websites (where possible).<sup>160</sup> The GPG permits suppliers to purchase bidding documents in exchange for a specified fee.<sup>161</sup>

### “Extraordinary” high value procurements

In view of the fact that new procurement guidelines are yet to be formulated, challenges with respect to ensuring transparency in public procurement information and systems are still currently prevalent. In this regard, the powers and functions of the Standing Cabinet Appointed Procurement Committee (SCAPC) deserve further scrutiny. *Section 2.7 of the GPG* provides for the institution of a SCAPC. The SCAPC is appointed to undertake high value procurements in extraordinary situations upon the submission of a Cabinet Memorandum by the procuring Ministry. Once constituted, the SCAPC is permitted to deviate from the general procurement procedures under ‘special circumstances’.<sup>162</sup>

These circumstances include instances where: (a) the expeditious processing of procurement is necessary; (b) the prices of goods to be procured fluctuate frequently; and

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<sup>158</sup> Page 2, Government Procurement Manual (2006).

<sup>159</sup> Section 3.2.2, Government Procurement Guidelines (2006).

<sup>160</sup> *Ibid.*

<sup>161</sup> Section 2.7.2, Government Procurement Guidelines (2006).

<sup>162</sup> *Ibid.*

(c) security concerns require special considerations in procurement.<sup>163</sup> As such, the appointment of a SCAPC can result in the suspension of procurement processes on considerably vague grounds. These powers of suspension exist notwithstanding the fact that the GPM and the GPG already contain provisions that are targeted at addressing the above “special circumstances” through existing procurement modalities (e.g. Direct Contracting and Emergency Procurement). **As such, the SCAPC has the potential to erode the necessary safeguards that prevent corruption and obscurity in the public procurement market – falling short of the standards required under the GPA.**

#### Limited tendering modalities

Current procurement modalities may not align with GPA provisions governing Limited Tendering. The use of Direct Contracting raises particular concerns. Direct Contracting permits procurement from a single supplier source. It is a modality that is required to be utilised in exceptional circumstances. Such circumstances include “where the prices or rates are fixed pursuant to legislation” and “where the standardisation of equipment may justify additional purchases”.<sup>164</sup> As such, these circumstances extend beyond the scope of permissible grounds contemplated under the GPA provisions dealing with Limited Tendering. Additionally, under the GPG, **the procuring entity is not obligated to justify its reasons as to why Direct Contracting was utilised, thus weakening the accountability and transparency of procurement systems.**

Additionally, in the case of emergency procurement, procuring entities are entitled to reduce regular timeframes stipulated for bidding. One ground on which emergency procurement can be triggered is to “meet unforeseen social obligations and other such similar situations which are determined and declared by the Government of Sri Lanka as being an emergency situation.”<sup>165</sup> The ambiguous framing of this provision has the potential to create room for significant abuse by the state. Further, since this provision can be triggered in the event the procuring agency wishes to meet its ‘social obligations’, **it is unlikely that it creates the conditions necessary to establish a “state of urgency” under the GPA.**<sup>166</sup>

#### E-procurement modalities

The GPG permits procurement entities to set up “e-procurement platforms”. Under the GPG, procuring entities are permitted to publish notices and pre-qualification requirements through electronic means.<sup>167</sup> Furthermore, procurement entities are entitled to respond to supplier clarifications through electronic media. However, the use of such mechanisms by

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<sup>163</sup> Section 2.7.3, Government Procurement Guidelines (2006).

<sup>164</sup> Section 3.5(c), Government Procurement Guidelines (2006).

<sup>165</sup> Section 3.8(a), Government Procurement Guidelines (2006).

<sup>166</sup> Under Article XI 4(c), Revised Agreement on Government Procurement (March 30, 2012) one ground on which procurement time frames can be reduced is if a state of urgency is established by the procuring entity that makes complying with ordinary time frames for procurement impracticable.

<sup>167</sup> Section 9.8, Government Procurement Guidelines (2006).

procuring entities is limited. Additionally, the GPG does not permit bid documents to be made available electronically and explicitly prohibits the electronic submission of bids.<sup>168</sup> Such restrictions diminish the utility of e-procurement platforms to suppliers. In the absence of functional e-procurement systems in Sri Lanka, engaging in public procurement is often a costly exercise for suppliers, both with respect to identifying opportunities for procurement through tender notices and in the payment of fees in order to obtain bid documents.

**Therefore, the use and design of e-procurement platforms under the GPG seemingly fails to meet the standards required by the GPA.**

#### Key role of the newly-formed NPC

The recently constituted NPC is mandated to monitor and report on whether (i) qualified bidders are given an equal opportunity to participate in public procurement; (b) the selection of successful bidders is fair and transparent; and (c) Procurement Committees and Technical Evaluation Committees are comprised of suitably qualified individuals. The NPC is also mandated to investigate reports of government procurement made outside established guidelines. **Thus, it is likely that the NPC will play an increasingly robust role in ensuring oversight and transparency in the public procurement marketplace.**

## 5. CONCLUSION

### 5.1. SUMMARY OF FINDINGS

The economic and legal analyses both yield important findings for Sri Lanka's potential path towards accession to the GPA.

#### **5.1.1. Economic analysis key findings**

The foregoing economic analysis demonstrates the benefits and possible challenges that would arise from Sri Lanka's GPA accession, and highlights areas that need further investigation in order to better understand the related benefits. The following provides a summary of the key findings of the study context.

- **Limited GPA market opportunities**

Providing improved access to the procurement markets of GPA member countries remains the key objective of the GPA. However, the analysis finds that from the perspective of Sri Lanka, benefits from market access remain limited due to several factors:

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<sup>168</sup> Section 9.8(d), Government Procurement Guidelines (2006).

- Current contract award trends within GPA members indicate that only a few firms outside their own countries have been able to successfully compete and secure contracts.
- Smaller contracts for which firms in developing countries such as Sri Lanka are able to compete, fall out of GPA's scope.
- Countries often adopt discriminatory practices (e.g. technical requirements favouring domestic suppliers) that are difficult to detect.
- Low level of technical and financial capacity as well as experience/exposure of domestic firms.

▪ **Challenges of reforming the procurement system**

It is largely recognized that legally binding international agreements can help galvanize political constituencies behind politically difficult domestic economic reforms, in return for other benefits such as extended markets access abroad. The analysis finds that the adoption of GPA standards can benefit Sri Lanka because of the resulting improvements in procurement, but also rises challenges, as show the following key points:

- The lack of necessary legislation, transparency and oversight in procurement, as well as failure to follow due process and the resulting corruption and wastage of public funds are critical issues in the country.
- It is likely to be more challenging to gain support to procurement reform due to the limited market access opportunities the GPA is expected to provide for domestic firms.
- Effective and successful implementation of competitive procurement practices in the country requires institutional, financial and human resources, as well as political commitment to open competition.

▪ **Lack of procurement data limits the ability to assess potential market access opportunities**

The ability to assess costs and gains specific to Sri Lanka is constrained by lack of information particularly on:

- The current level of participation by domestic firms in foreign procurement markets;
- The distribution of the current domestic procurement market between domestic and foreign firms; and
- The sectors in which Sri Lankan firms have a competitive advantage.

The limited available data indicate that the markets of interest to Sri Lankan firms at present fall outside the scope of the current GPA's markets.

▪ **Lack of data limits the ability to assess the impact of reduced policy flexibility to support domestic firms**

- The lack of information and statistics on the current level of utilization of preferential margins and favourable treatment extended to domestic firms is a challenge in assessing the costs and benefits of accession to GPA and the resulting erosion of policy flexibility to support domestic firms.
- The current thresholds stipulated in the procurement guidelines of Sri Lanka are higher than the thresholds of the GPA, except in construction works.
- The lack of data is a challenge to analysing the capacity of domestic firms and their current levels of participation in the internal procurement market, and thus assessing the relevance and value of current national thresholds and the implications of agreeing to lower thresholds under the GPA.

### **5.1.2. Legal analysis key findings**

The foregoing legal analysis suggests that the current state of alignment of Sri Lanka's public procurement framework with the standards required by the GPA is weak. The status of alignment in relation to the three thematic clusters examined in the legal gap analysis is summarized follows.

#### **▪ Special and differential treatment**

- In certain instances, Sri Lanka's procurement framework authorises special and differential (S&D) treatment measures favouring domestic suppliers.
- The GPA permits such special and differential treatment provided that: (a) it is negotiated into the country's Annexes at accession, and (b) it is phased-out after the country's applicable transitional period.

At present, Sri Lankan regulations with respect to special and differential treatment provisions are not contrary to GPA standards.

#### **▪ Streamlining of public procurement processes**

- Sri Lanka's procurement framework provides for streamlining of procurement processes through Standard Bidding Documents and standardised bid evaluation and invitation procedures.
- These procedures however are not uniformly applied across all procuring entities.
- The requirements of supplier registration systems are not applicable across all procurement modalities.
- The minimum timelines for bid submission are significantly shorter than those recommended under the GPA.

These shortcomings reduce the predictability and uniformity of Sri Lanka's public procurement framework, thus creating challenges for GPA compliance.

## ▪ **Transparency of procurement information and systems**

- The Sri Lankan public procurement framework fails to place meaningful obligations on procuring entities to be transparent and accountable, thus creating increased room for abuse and mismanagement of procurement processes.
- Procurement mechanisms such as the SCAPC, and procurement modalities such as Direct Contracting, also inhibit certainty and transparency within Sri Lanka's public procurement marketplace.
- Weak e-procurement platforms further erode and obscure the accessibility of procurement information.

*These factors are preventing conformity with GPA standards relating to transparency in public procurement.*

## 5.2. RECOMMENDATIONS

Against the above backdrop, the NPC is presented with a unique opportunity to remedy the discrepancy between GPA standards and current procurement practices in the country with a view to increase procurement efficiency and public market access.

- For instance, the NPC can issue revised procurement guidelines that are targeted at introducing increased transparency and uniformity in the public procurement marketplace.
- Additionally, during the course of formulating such revised guidelines, further study should take place in relation to how global practices on procurement process streamlining and transparency have developed. These practices can be used as a tool to benchmark Sri Lanka's procurement guidelines against international standards, as well as making Sri Lanka increasingly compliant with the requirements under the GPA.
- Moreover, the NPC can also conduct data analytics in order to:
  - (a) identify the capacity of Sri Lankan firms to engage in the public procurement marketplace, and
  - (b) assess their current level of participation in the international procurement marketplace. Such analytics will enable the NPC to strengthen access channels between Sri Lankan firms and procurement marketplaces, both locally and abroad.
- Investing in the technical competence of the NPC will be essential for the Commission being able to ensure regular monitoring of and compliance with procurement guidelines. For instance, investing in robust e-procurement platforms is likely to enhance opportunities for public procurement to be more accountable, transparent and effective in the future. Furthermore, instituting a data-monitoring hub in the NPC will enable the continuous assessment of the competitive advantage of Sri Lankan firms in the public procurement marketplace.

## REFERENCES

- Anderson, R., Pelletier, P., Osei-Lah, K. & Müller, A., *Assessing the value of future accessions to the WTO Agreement on Government Procurement (GPA): Some new data sources, provisional estimates, and an evaluative framework for individual WTO members considering accession*, 6 October 6 2011.
- Anderson, R. & Müller, A., *The revised WTO Agreement on Government Procurement as an emerging pillar of the world trading system: recent developments*, *Trade, Law and Development* 7(1), 2015.
- Arrowsmith, S. And Anderson, R. D. (ed), *The WTO Regime on Government Procurement: Challenge and Reform*, 2011.
- Asian Development Bank (ADB), *Trade and Procurement: Effective Public Purchasing and Market Access*, 2013.
- Asian Development Bank (ADB), *Mahaweli Water Security Investment Program Procurement Capacity Assessment*, June 2015.
- Brutyán, K., *Accession to the GPA: The case of Armenia*, GPA Symposium, Geneva (September 17-18, 2015), available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/symp092015\\_e/S7-6Brutyán.pdf](https://www.wto.org/english/tratop_e/gproc_e/symp092015_e/S7-6Brutyán.pdf) [accessed on: April 10, 2016].
- Cernat, L. & Kutlina-Dimitrova, Z., *International Public Procurement: From Scant Facts to Hard Data*, EC Chief Economist Note, April 2015.
- Chen, J., *The new transitional measures available to developing countries under the revised GPA (S.6.1)*, National Seminar on the WTO Agreement on Government Procurement, 9 December 2015.
- Colombo Dockyard PLC, *Colombo Dockyard delivers the largest passenger ship – MV Lagoons*, available at <http://www.cdl.lk/latest/colombo-dockyard-delivers-the-largest-passenger-ship-mv-lagoons/> [accessed on: April 11 2016].
- The Constitution of the Democratic Socialist Republic of Sri Lanka.*
- Ekanayake, P., *Need for good governance in proposed Presidential Procurement Committee*, The Sunday Times, Business Times, 31 May 2015, available at: <http://www.sundaytimes.lk/150531/business-times/need-for-good-governance-in-proposed-presidential-procurement-committee-150970.html>, [accessed on: April 12, 2016].
- European Environment Bureau, *Guidance to Foster Green Public Procurement*, April 2012.
- Evenett, S., *Can Developing Countries Benefit from Negotiations on Transparency in Government Procurement in the Doha Round?* Background Paper prepared for United Nations

- Procurement Capacity Development Centre, 2003.
- Evenett, S. & Hoekman, B., *Government Procurement: Market Access, Transparency, and Multilateral Trade Rules*, October 2012.
- Hunja, R., Obstacles to Public Procurement Reform in Developing Countries', *Public Procurement: The Continuing Revolution*, edited by Sue Arrowsmith & Martin Trybus, *Kluwer Law International*, 2003.
- Khorana, S. & Subramanian S., Potential Accession to the WTO Government Procurement Agreement: A Case-Study on India, *Journal of International Economic Law* 1(23), 2012.
- Kumarage, A., *Road building or rip-off?*, The Sunday Times, 21 December 2014, available at: <http://www.sundaytimes.lk/141221/news/road-building-or-rip-off-128259.html>. [accessed on: April 12, 2016].
- Malolitneva, V., Ukraine's potential accession to the WTO Government Procurement Agreement: What are the Pros and Cons? , *GSTF Journal of Law and Social Sciences (JLSS)* 4(1), December 2014.
- Millennium information technologies, *How we got here*, available at: <http://www.millenniumit.com/who-we-are/how-we-got-here> [accessed on: April 12, 2016].
- Ministry of Finance of Sri Lanka, *Public Finance Circular No. PF/429 dated 17.03.2008*.
- Ministry of Finance of Sri Lanka, *Annual Report 2014*.
- National Procurement Agency, *Government Procurement Guidelines*, 2006.
- National Procurement Agency, *Government Procurement Manual*, 2006.
- Obama, Barack (President of U.S.A.), *Executive Order – Planning for Federal Sustainability in the Next Decade*, The White House, 19 March 2015.
- Office of the Cabinet of Ministers of Sri Lanka, Press briefing: *Formulating the National Green Procurement Policy and Guidelines*, 15 August 2012.
- Organisation for Economic Co-operation and Development (OECD), 'Green Growth and Developing Countries; A summary for policy makers', page 18. (June, 2012), available at: <https://www.oecd.org/dac/50526354.pdf>. [accessed on: May 2016]
- Richard S. & Kono, D., Think globally, buy locally: International agreements and government procurement, *The Review of International Organizations* 9(3), September 2014.
- Rose-Ackerman (1995); Ades & Di Tella (1997); Bardhan (1997) as cited in Evenett, S. & Hoekman, B. *Government Procurement: Market Access, Transparency, and Multilateral Trade Rules*, October 2002.
- Sierra, Gulf LLC, available at: <http://www.sierra.lk/sierra-gulf.html> [accessed on: May 2016].

- Sunday Times, *KIK Lanka electrical panel boards gaining global market share*, 15 August 2010, available at: <http://www.sundaytimes.lk/100815/Fh/fh04.html> [accessed on: April 11 2016].
- Sunday Times, *Hemas Power Eying African Hydro Power projects*, 16 October 2011, available at: <http://www.sundaytimes.lk/111016/BusinessTimes/bt03.html>, [accessed on: May 2016].
- Thrasher, R., *Government Procurement Agreement should permit environmental and social linkages*, 5 June 2015.
- United Nations Conference on Trade and Development (UNCTAD), *Promoting local ICT sector development through public procurement*, 2013.
- United Nations Capital Development Fund, *Procurement for local development: A guide to best practice in local government procurement in least developed countries*, 2013.
- Wang, P., *China's Accession to WTO's Government Procurement Agreement: Domestic challenges and prospects in negotiation*, University of Nottingham China Policy Institute Publication, 2009.
- Wickramasinghe, S., *Construction Industry: Current issues and strategies for the future*, The Island, 23 August 2015, available at: [http://www.island.lk/index.php?page\\_cat=article-details&page\\_title=130458&page=article-details](http://www.island.lk/index.php?page_cat=article-details&page_title=130458&page=article-details), [accessed on: August 13, 2016].
- Woolcock, S. & Grier, J., *Public Procurement in the Transatlantic Trade and Investment Partnership Negotiations, TTIP in the balance*, February 2015.
- World Bank, *Review of the World Bank's Procurement Policy and Procedures*, Global Multi-Stakeholder Consultations, August – December 2014.
- World Trade Organization (WTO), *Revised Agreement on Government Procurement (GPA/113)*, 30 March 2012.
- World Trade Organization (WTO), *Briefing note: The WTO's Government Procurement Agreement*, 2013.
- World Trade Organization (WTO), *Government Procurement Agreement: Opening markets and promoting good governance*, 2015.
- World Trade Organization (WTO), *Agreement on Government Procurement*, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm), [accessed on: March 2016].
- World Trade Organization (WTO), *Agreement on Government Procurement: parties, observers and accessions*, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm), [accessed on: March 2016].
- World Trade Organization (WTO), *WTO and Government Procurement*, available at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gproc\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm), [accessed on: March 2016].

World Trade Organization (WTO), Ministerial Declaration and Decisions, Ministerial Conference Tenth Session, Nairobi, 15-19 December 2016, available at: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc10\\_e/nairobipackage\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.pdf) [accessed on: April 2016].

## ANNEX I: GPA ANNEXES AND THRESHOLDS

**Table 1: Annexes to the Agreement**

Annex	Content
Annex 1	Central Government procuring entities
Annex 2	Sub-Central Government procuring entities
Annex 3	Other procuring entities
Annex 4	All goods covered by the Agreement
Annex 5	All services, other than construction, covered by the Agreement
Annex 6	All construction services covered by the Agreement
Annex 7	General Notes, general conditions applicable to the procurement process

(Source: Revised Agreement on Government Procurement)

**Table 2: Threshold Values for Procurement in SDR Values<sup>169</sup>**

Annex		Thresholds (SDR)	Thresholds (USD)*	Thresholds (LKR)*	Current threshold in Sri Lanka (LKR)*
Annex 1	Central government entities	130,000	184,000	27,000,000	300,000,000**
Annex 2	Sub-central government entities	200,000	283,000	42,000,000	
Annex 3	All other entities which procure in accordance with the Agreement, in general public enterprises or public authorities such as utilities.	400,000	565,000	82,000,000	
Annex 6	Annex 6: the construction services covered by this Agreement	5,000,000	7,055,000	1,034,000,000	

\*USD & LKR Values from 16/05/2016 exchange rates \*\*subject to specified circumstances, refer Section 3.1.3 for details (Source: GPA Website)

<sup>169</sup> SDR stands for Special Drawing Rights, a form of international money created by the International Monetary Fund and defined as a weighted average of various convertible currencies

## ANNEX 2 – PER CAPITA INCOME OF GPA MEMBERS AND OBSERVERS

Country	GDP per capita (Current USD) - 2014	GNI per capita (Current USD) – 2014	Income level (FY 2016)
<b>Member countries</b>			
Armenia	3,873.50	4,020	Lower Middle Income
<i>EU 28</i>			
Austria	51,190.80	49,670	High Income
Belgium	47,352.90	47,260	High Income
Bulgaria	7,851.30	7,620	Upper Middle Income
Croatia	13,475.30	12,980	High Income
Cyprus	27,194.40	26,370	High Income
Czech Republic	19,529.80	18,370	High Income
Denmark	60,707.20	61,310	High Income
Estonia	20,161.60	19,030	High Income
Finland	49,823.70	48,420	High Income
France	42,732.60	42,960	High Income
Germany	47,821.90	47,640	High Income
Greece	21,498.40	22,680	High Income
Hungary	14,028.70	13,340	High Income
Ireland	54,374.40	46,550	High Income
Italy	34,908.50	34,270	High Income
Latvia	15,719.20	15,280	High Income
Lithuania	16,506.90	15,430	High Income
Luxemburg	116,664.30	75,990	High Income
Malta	22,776.20	21,000	High Income
Netherlands	52,172.20	51,890	High Income
Poland	14,342.90	13,690	High Income
Portugal	22,132.20	21,360	High Income
Romania	9,996.70	9,520	Upper Middle Income
Slovak Republic	18,501.20	17,750	High Income
Slovenia	23,999.10	23,580	High Income
Spain	29,767.40	29,440	High Income
Sweden	58,938.80	61,610	High Income
United Kingdom	46,332.00	43,430	High Income
Hong Kong, China	40,169.50	40,320	High Income
Iceland	52,004.50	46,350	High Income
Israel	37,208.00	35,320	High Income

Japan	36,194.40	42,000	High Income
Korea, Republic of	27,970.50	27,090	High Income
Liechtenstein	149,160.80	n/a	High Income
Montenegro	7,378.50	7,320	Upper Middle Income
Netherlands ( Aruba)	25,353.80	n/a	High Income
New Zealand	44,342.20	41,070	High Income
Norway	97,307.40	103,630	High Income
Singapore	56,284.60	55,150	High Income
Switzerland	85,594.30	88,120	High Income
Chinese Taipei			
United States	54,629.50	55,200	High Income
<b>Observer countries</b>			
Albania*	4,564.40	4,450	Upper Middle Income
Argentina	12,509.50	13,480	High Income
Australia*	61,925.50	64,540	High Income
Bahrain	24,855.20	21,060	High Income
Cameroon	1,407.40	1,350	Lower Middle Income
Chile	14,528.30	14,910	High Income
China*	7,590.00	7,400	Upper Middle Income
Colombia	7,903.90	7,970	Upper Middle Income
Costa Rica	10,415.40	10,120	Upper Middle Income
Georgia*	3,670.00	3,720	Lower Middle Income
India	1,581.50	1,570	Lower Middle Income
Indonesia	3,491.90	3,630	Lower Middle Income
Jordan*	5,422.60	5,160	Upper Middle Income
Kyrgyz Republic*	1,269.10	1,250	Lower Middle Income
Malaysia	11,307.10	11,120	Upper Middle Income
Moldova*	2,238.90	2,560	Lower Middle Income
Mongolia	4,129.40	4,280	Upper Middle Income
Oman*	19,309.60	16,870	High Income
Panama	11,948.90	11,130	Upper Middle Income
Pakistan	1,316.60	1,400	Lower Middle Income
Russian Federation	12,735.90	13,220	High Income
Saudi Arabia	24,161.00	25,140	High Income
Seychelles	15,543.20	14,100	High Income

Sri Lanka	3,819.20	3,460	Lower Middle Income
Tajikistan*	1,114.00	1,080	Lower Middle Income
Thailand	5,977.40	5,780	Upper Middle Income
The former Yugoslav Republic of Macedonia	5,455.60	5,150	Upper Middle Income
Turkey	10,515.00	10,830	Upper Middle Income
Ukraine*	3,082.50	3,560	Lower Middle Income
Viet Nam	2,052.30	1,890	Lower Middle Income

Source: World trade organisation and World Bank (\* countries in the process of accession)