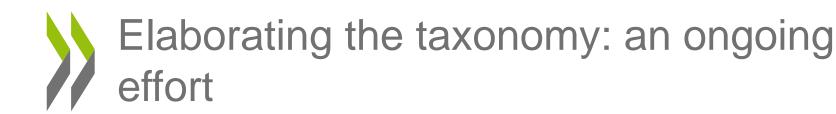


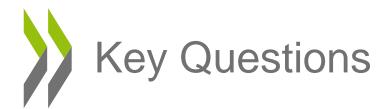
TRADE AFFECTING GOVERNMENT PROCUREMENT MEASURES

MAST Workshop 5-6 October 2016





- 1rst draft based on existing data collections in GP & Trade: OECD STRI, GTA and WB PPP MAST meeting September 2015
- 2nd draft based on 20 countries analyzed by a team of Masters students in International Procurement Law / 1rst Experts group meeting April 2016
- 3rd draft: Pilot exercise testing the taxonomy across a small sample of 6 countries
 - Experts group meeting September 2016



- **The procurement process**: the holistic approach vs focus on trade effect
- Type of bias: Nationality-based discrimination and other types
- Purpose and terminology of measures: Not all measures are protectionist in intent
- **Coverage**: Choose to omit concession and PPPs, FDI is important
- Entities: Sub-central/national entities and State Owned Enterprises (SOEs)
- **Sources:** Regulations and Procedures to cover explicit measures vs implicit. And SBDs



Taxonomy: List of Explicit measures

M1: Market access restrictions		M3: Local Content requirement			
M11	To National supplier	M31	Inputs and data storage (M311: national/ M312: local)		
M12	To Regional supplier	M32	Services (M321: national/ M322: local)		
M13	To Joint ventures with national supplier	M33	Staff requirement (M331: national/ M332: local)		
M14	Access based on reciprocity	M34	Subcontract requirements		
M15	Commercial Presence required	M35	Other measures		
M16	Exclusion for National Security				
M17	Thresholds	M4: Collateral discriminations			
M18	Other measures	M41 Tax on procurement from foreign entity			
		M42	Barriers to FDI		
M2:	Domestic price preferences		M421: constraint to joint venture,		
M21	For National suppliers		M422 constraint to merger M423: absence of national treatment M424 Closed sector to FDI		
M22	For Regional suppliers	M43	Restricted eligibility to subsidies and tax preferences		
M23	For Joint ventures with national company	M44	Transparency regulations in Investment and Trade		
M24	Other measures				



Taxonomy: List of Implicit measures

M 5 C	onduct of procurement	M8 R	eview/Complaint System
M51	Design of contracts	M81	Challenge of bidding process or award
M52	Registration	M82	Choice of complaint forum
M53	Shortlist/preselected list of bidders	M83	Time period
M54	Direct/Limited tendering	M84	Cost
M55	Selective tendering	M85	Suspension of bidding process
M56	Securities (M561 Tender & M562: Performance)	M86	Sanction and remedies
M57	Time period		
		M9 T	ransparency and Information
M6 Q	ualification criteria	M91	Publication in official gazette
M61	Certification or license criteria	M92	Accessible E-procurement
M62	Set asides for specific groups (SMEs)		M921 online publication of tender
M63	Past performance requirements		M922 online tender process
M64	Prior experience requirements		M923 online award process
			M924 e-communication
M7 Ex	valuation criteria		M925 e-signature
M71	Technical contractual conditions for domestic firms	M93	Notification
M72	Financial requirements	M94	Effectiveness of ethic & anti-corruption system
M73	Offsets		M941 Conflict of interest
M74	Offer-backs for specific groups (SMEs)		M 942 Anti-bribery
M ₇₅	Other discriminatory criteria		M943 Guidelines on detecting bid rigging
			M944 Debarment regulation



- Objective: guide users in collecting relevant measures
 - > What kind of measures?
- Can this measure have a restrictive effect on crossborder government procurement?
- Can this measure have a discriminatory effect on foreign firms or discourage foreign participation in GP?
 - > Where to find them (which sources)?
 - laws and regulations concerned directly or indirectly with GP
 - standard bidding documents (SBDs).



Which sources to use (Where to look)?

Primary sources	Secondary sources
Legislation / regulation on government procurement	External Databases on Trade Measures and Trade Restrictions
Regulation on related topics	Official reports on GP system
Other administrative documents (guidelines, etc.)	Official reports on related topics
Trade Agreements	Other reports
Standard bidding documents (SBDs) and practices	



Ongoing Pilot Exercise

- Selection of 6 countries: Colombia, New Zealand, South Africa, Tunisia, Chile and India
 - External Assessment by the OCDE team: Colombia, India, Tunisia
 - Cross checking with country authorities: New Zealand
 - Self-assessment by Governments: Chile
- Templates follow MAST: Chapter code, sub-chapter codes, sector/products concerned, the measure, text quotation, date of implementation, name of source (law etc...), type of sources, internet links
- Includes GPA provisions sent by the WTO-GPA team



What kind of measures?

SubChapter	Sub- Group	Sector / product	Description	Text quotation	Implementa tion	Data	Type of source	Reference
M7: Evaluation criteria								
M71: Technical contractual conditions favor domestic firms		Goods	Specifications of the goods - preference should be given to goods which follow specific Indian standards.	« Wherever Indian Standards exists for the required goods, the same should be adopted. Preference should be given to procure the goods, which carry BIS (Bureau of Indian Standards) mark. » () « In cases where Indian Standards do not exist or, alternatively, decision has been taken to source the foreign markets also, International Standards (like ISO etc.) may be		Manual on Policies and Procedures for Purchase of Goods 2006, article 4.1	National practice	http://www.finmin.nic.in/the_m inistry/dept_expenditure/gfrs/ mpproc4progod.pdf
M72: Financial requirements		Services	Contracts should normally be based on Indian currency. Foreign currency may be permitted with a prior approval of competent authority. This shall be clearly specified in the Request For Proposal (RFP).	adopted. » « Under normal circumstances, all the contracts should be based on Indian Rupees only. However, for exceptional case, contracts in foreign currency may be permitted with prior approval of competent authority. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RFP. If RFP allows proposals in any other currency, the date and the exchange date for converting all the bid prices to Indian Rupees shall be indicated in RFP.		Manual of Policies and Procedure of Employment of Consultants 2006, article 6.1		http://www.du.ac.in/du/upload s/rti/MPProc4ProCons.pdf
M73: Offsets (transfer of technology,)		Electricity	Model of Power purchase agreement (PPA) - There may be a requirement of transfert of assets by the selected bidder to the procurer at the end of the term of the PPA.	Standard documentation to be provided by the procurer in the RFQ shall include: () (iv) Requirement of transfer of assets by the selected bidder (if any) to the procurer at the end of the term of the PPA »		Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees, sect°5, sub-sect° « Two-stage process », n°4. (iv)	National practices	http://mahadiscom.in/consum er/tariff_bidding%20guidelines %20for%20power%20procure ment.pdf



Ongoing Pilot Exercise

	Colombia	India	New- Zealand	Tunisia	Chile	South Africa
Collected	Y	Y	Y	Y	Y	Y
Sent for comments	Y	Y	Y	Y		
Comments Received	Y	Y	Y			
In revision	Y	Y	Y			
Final stage	Y	Y	Y			
Cleared						

		Colombia	India	NZ	Tunisia
M1	Market access restrictions	7	5	2	3
M2	Domestic price preferences	0	4	1	1
M3	Local content requirement	8	13	0	5
M4	Collateral restriction/restrictive effects	0	14	3	7
M5	Conduct of procurement	4	22	8	1
M6	Qualification criteria	5	14	3	5
M7	Evaluation criteria	1	6	4	3
M8	Review/complaint system	0	3	6	5
M9	Transparency & Information	0	19	7	8
	TOTAL	25	100	34	38



Next steps following the September expert meeting

- Pay attention to the difference between economic and legal use of words (maybe reformulate some entries)
- Address how to deal with multiples (=several measures under same entry) and duplicates (=same measure in several entry)
- Decide how we add trade agreements in taxonomy and pilot
- Decide how we deal with thresholds in taxonomy and pilot
- Work on SOEs



We look forward to hearing from you!



Access all of the information from the Trade & Agriculture Directorate at:

www.oecd.org/tad

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We invite you to connect with us on Twitter by following:

@ OECDtrade