



TRADE AFFECTING GOVERNMENT PROCUREMENT MEASURES

MAST Workshop 5-6 October 2016



Elaborating the taxonomy: an ongoing effort

- 1st 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 / 1st Experts group meeting April 2016
- 3rd draft: Pilot exercise testing the taxonomy across a small sample of 6 countries
Experts group meeting September 2016



Key Questions

- **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

- M11 To National supplier
- M12 To Regional supplier
- M13 To Joint ventures with national supplier
- M14 Access based on reciprocity
- M15 Commercial Presence required
- M16 Exclusion for National Security
- M17 Thresholds
- M18 Other measures

M2: Domestic price preferences

- M21 For National suppliers
- M22 For Regional suppliers
- M23 For Joint ventures with national company
- M24 Other measures

M3: Local Content requirement

- M31 Inputs and data storage (M311: national/ M312: local)
- M32 Services (M321: national/ M322: local)
- M33 Staff requirement (M331: national/ M332: local)
- M34 Subcontract requirements
- M35 Other measures

M4: Collateral discriminations

- M41 Tax on procurement from foreign entity
- M42 Barriers to FDI
 - M421: constraint to joint venture,
 - M422 constraint to merger
 - M423: absence of national treatment
 - M424 Closed sector to FDI
- M43 Restricted eligibility to subsidies and tax preferences
- M44 Transparency regulations in Investment and Trade





Taxonomy: List of Implicit measures

M5 Conduct of procurement

- M51 Design of contracts
- M52 Registration
- M53 Shortlist/preselected list of bidders
- M54 Direct/Limited tendering
- M55 Selective tendering
- M56 Securities (M561 Tender & M562: Performance)
- M57 Time period

M6 Qualification criteria

- M61 Certification or license criteria
- M62 Set asides for specific groups (SMEs..)
- M63 Past performance requirements
- M64 Prior experience requirements

M7 Evaluation criteria

- M71 Technical contractual conditions for domestic firms
- M72 Financial requirements
- M73 Offsets
- M74 Offer-backs for specific groups (SMEs...)
- M75 Other discriminatory criteria

M8 Review/Complaint System

- M81 Challenge of bidding process or award
- M82 Choice of complaint forum
- M83 Time period
- M84 Cost
- M85 Suspension of bidding process
- M86 Sanction and remedies

M9 Transparency and Information

- M91 Publication in official gazette
- M92 Accessible E-procurement
 - M921 online publication of tender
 - M922 online tender process
 - M923 online award process
 - M924 e-communication
 - M925 e-signature
- M93 Notification
- M94 Effectiveness of ethic & anti-corruption system
 - M941 Conflict of interest
 - M942 Anti-bribery
 - M943 Guidelines on detecting bid rigging
 - M944 Debarment regulation



Methodology

- Objective: guide users in collecting relevant measures
 - What kind of measures?
- Can this measure have a restrictive effect on cross-border 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 adopted. »	2006	Manual on Policies and Procedures for Purchase of Goods 2006, article 4.1	National practice	http://www.finmin.nic.in/the_ministry/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).	« 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.	2006	Manual of Policies and Procedure of Employment of Consultants 2006, article 6.1	National practice	http://www.du.ac.in/du/uploads/rfi/MPPProc4ProCons.pdf
M73: Offsets (transfer of technology, ...)		Electricity	Model of Power purchase agreement (PPA) - There may be a requirement of transfer 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 »	2005	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/consumer/tariff_bidding%20guidelines%20for%20power%20procurement.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

Thank you!

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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