

Brazil Initiates Process to Join the WTO Government Procurement Agreement

May 21, 2020

Key Points

- On May 18, 2020, the government of Brazil submitted its application for accession to the WTO GPA, which will further open the Brazilian government procurement market to foreign producers and foreign service providers Brazil and give Brazilian companies greater access to government procurement markets in the other GPA parties.
- The GPA aims to provide reciprocal market access to government procurement markets and to increase transparency and good governance. The GPA prohibits discriminatory treatment of goods, services and suppliers of GPA parties in covered procurement activities, which are worth an estimated USD 2-4 trillion annually.
- Brazil's government procurement market is estimated to be worth approximately USD 250 billion annually.

Background

On May 18, 2020, the government of Brazil formally submitted its application for accession to the World Trade Organization (WTO) Government Procurement Agreement (GPA). Brazil's accession would increase government procurement market access for foreign companies in Brazil. It would also give Brazilian companies greater access to the government procurement markets of the 48 WTO Members who are GPA parties,¹ including the United States and the European Union.

The GPA is a plurilateral WTO agreement that aims to provide reciprocal market access to GPA parties' government procurement markets and to increase transparency and good governance. The GPA prohibits discriminatory treatment of the goods, services and suppliers of GPA parties in covered procurement activities, which are worth an estimated USD 2-4 trillion annually. The GPA promotes good governance and transparency by setting out detailed procedural obligations with respect to tendering procedures, and requiring the parties to publish all laws, regulations, judicial decisions and administrative rulings affecting government procurement.

Brazil's accession application follows significant amendments to its government procurement laws since 2017, when it became an observer to the GPA. At the time,

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Brazil's Delegation to the WTO stated that its interest in the GPA reflected Brazil's desire to continue modernizing its economy and improving the management of government resources. The Brazilian government introduced further reforms earlier this year, as part of President Jair Bolsonaro's efforts to increase foreign competition in the country. Joining the GPA would consolidate these reforms and could further open Brazil's public procurement market. Some expect that any future U.S.-Brazil trade agreement would also provide similar government procurement rules and market access, in case the United States decides to withdraw from the GPA.

Next Steps

To complete the accession process, Brazil must now present its initial market access offer to the GPA parties, at which point negotiations about the offer and Brazil's terms of participation can begin. The final terms will be set out in Brazil's GPA schedule, which will identify its commitments relating to:

- The entities whose procurement processes will be open to foreign competition.
- The goods, services and construction services open to foreign competition.
- The threshold values above which procurement will be open to foreign competition.
- Exceptions to coverage.

Brazil must also submit its replies to verification questions to demonstrate to the GPA parties that its domestic procurement legislation is consistent with GPA requirements.

Implications and Recommendations for the Trade Community

Upon completion of the accession procedures, Brazil would be the first Latin American country to join the GPA, as well as the first of the BRICS countries.² Brazil would join seven of the world's other top-10 economies in GPA membership, leaving only India and China out of that group.

Brazil's domestic reforms and intent to take upon the GPA commitments represent a significant opportunity for companies seeking to supply goods, services, or construction services to the Brazilian government. Estimates of the size of the Brazilian government procurement market vary widely due to decentralized processes among the federal, state and local governments, as well as significant spending by state-owned Petrobras. Organisation for Economic Co-operation and Development (OECD) data indicates that Brazil's procurement spending totals approximately 17 percent of its USD 2 trillion GDP.³ Analysts have estimated that its 2019 procurement spending totaled at least USD 259 billion.⁴ While it is unlikely that Brazil would commit to GPA coverage of its entire procurement market, the scope of covered procurement activities will nevertheless be significant.

Companies with an interest in the Brazilian public procurement market should closely monitor the negotiations and engage with other GPA party governments to ensure that they can maximize their benefit from the negotiations, including ensuring coverage of procurement opportunities that may be beneficial to them.

¹ This figure counts the EU, its 27 member states, and the United Kingdom as one party. The United Kingdom will become a party to the GPA in its own right after its transition period with the EU concludes.

² These countries include Brazil, Russia, India, China and South Africa.

³ OECD, *Government at a Glance 2019*, 135 (2019), <https://www.oecd-ilibrary.org/docserver/8ccf5c38-en.pdf?expires=1589981938&id=id&accname=guest&checksum=D89D4C5E84AD0B8AF0908365A830208D>.

⁴ E.g., BNamericas, *How much did Brazil spend on public procurement in 2019?* (Jan. 16, 2020), <https://www.bnamericas.com/en/news/how-much-did-brazil-spend-on-public-procurement-in-2019>.

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