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**Committee on Government Procurement**

**MINUTES OF THE FORMAL MEETING OF 8 NOVEMBER 2023**

**CHAIR: MR. MARTIN ZBINDEN (SWITZERLAND)**

The Chair opened the meeting by noting that in preparation for the meeting, delegations had received an Airgram ([WTO/AIR/GPA/29](#)) setting out the proposed agenda and an Annotated Agenda ([ICN/GPA/7/Add.1](#)). The proposed agenda for the meeting was as follows:

1. Coming into force of the Agreement on Government Procurement (GPA 2012) for North Macedonia on 30 October 2023 ([WT/Let/1631](#));
2. application for accession to the GPA 2012: Costa Rica ([GPA/159](#); [GPA/ACC/CRI/1](#));
3. adoption, if agreeable, of the (i) draft Committee decision concerning GPA documents to be circulated in the future; and (ii) the draft Committee decision concerning the derestriction of an initial list of historical GPA documents already circulated (document to be circulated); and
4. other business.

The Chair's understanding was that the Committee would be able to adopt, at the meeting, the backward-looking draft decision concerning the derestriction of an initial list of historical GPA documents already circulated, but not the forward-looking draft decision concerning documents to be circulated in the future. This was because some additional time was needed to consider possible further adjustments to the latter draft decision. The Chair therefore proposed to remove the forward-looking draft decision from the agenda of the formal meeting and take it up briefly in informal mode to discuss the next steps.

Regarding 'Other business', the European Union wished to add an agenda item concerning the "Latest developments in relation to the implementation of the U.S. Infrastructure Investment and Jobs Act, in the context of the recent Guidance issued by the U.S. Office for Management and Budget".

The Committee adopted the agenda as proposed to be revised by the Chair, with the additional item concerning 'Other business'.

**1 COMING INTO FORCE OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA 2012) FOR NORTH MACEDONIA ON 30 OCTOBER 2023**

1.1. The Chair recalled that North Macedonia had deposited its instrument of accession on 30 September 2023. The Agreement had therefore entered into force for it on 30 October 2023. On behalf of the Committee, the Chair congratulated North Macedonia on this remarkable achievement. He said that the Committee was delighted to welcome North Macedonia to its first meeting as a new Party.

1.2. The representative of North Macedonia expressed North Macedonia's gratitude to all Parties for supporting North Macedonia's accession. It had been a long journey, but North Macedonia was happy to have successfully reached the end of that important milestone. North Macedonia was glad to have been able to finalize the internal ratification process promptly and to have deposited the instrument of accession in less than three months from the last Committee meetings, which enabled North Macedonia to participate in the Committee's November 2023 meetings as a new Party. In its

capacity as a Party, North Macedonia provided a level playing field for foreign and domestic businesses at central and sub-central levels of government and major government agencies, given North Macedonia's transparent and non-discriminatory public procurement system. North Macedonia once again thanked the GPA Parties and the GPA Secretariat, as well the European Bank for Reconstruction and Development for their strong cooperation, assistance, constructive approach, and engagement in good faith throughout North Macedonia's accession, and for making it possible to bring North Macedonia to the GPA family.

1.3. North Macedonia also highlighted that considering the global context, and the overall international, economic, commercial and political relations among the Parties, the GPA 2012 should contribute to the integration and transparency of a bigger number of countries within the framework of the Agreement. In this regard, North Macedonia congratulated Albania for reopening the active negotiation process and submitting the replies to the Checklist of Issues in August, as well as Costa Rica for submitting their replies to the Checklist of Issues recently. North Macedonia looked forward to cooperating constructively in the Committee and actively participating in all issues on regular agendas, including supporting the accession of new parties to the GPA 2012.

1.4. The representative of the European Union congratulated North Macedonia for having completed the domestic procedures for the accession to the GPA 2012 so quickly. The European Union had supported North Macedonia's accession to the GPA 2012 since the beginning of the process and was thrilled with its accession. The European Union reminded the delegates of the importance of the accession for the Agreement and the further international opening of government procurement markets and hoped that the accession would motivate other Members to join the Agreement. The European Union expressed its appreciation to the delegation of North Macedonia for its efforts in the accession process and welcomed North Macedonia in the Committee as a fully-fledged Party, counting on the active participation of North Macedonia in the work of the Committee.

1.5. The representative of the United States welcomed North Macedonia's accession to the GPA 2012 and commended the hard work put in by North Macedonia over the last several years. The United States noted that North Macedonia had stayed fully engaged with GPA Parties to solve any market access concerns despite years of lack of in-person meetings due to COVID-19 and then a lack of any Committee meetings, and appreciated North Macedonia's dedication, constant engagement and willingness to find constructive solutions. On 4 October 2023, the United States Trade Representative issued a federal register notice, applicable as of 30 October 2023, waiving the discriminatory purchasing requirements with respect to goods and services of North Macedonia and providing market access to the United States' procurement market for North Macedonian goods, services and suppliers.

1.6. The United States was pleased to see North Macedonia participating as a Party in the Committee's meetings, including in the Committee's Work Programmes, and was confident that North Macedonia would be a constructive Party in all Committee discussions. North Macedonia started its accession with a strong market access offer that was reflective of the coverage offered by other Parties and had worked with Parties to address any concerns in its offer. The United States hoped that other acceding Members would endeavour to provide the level of ambition seen in North Macedonia's final market access offer moving forward. The United States stood ready to work with North Macedonia on GPA 2012 implementation, ensuring that they could fully realize the benefits related to transparency, anticorruption, predictability and enhanced procurement processes, and making sure that North Macedonia's companies were able to harness the important commercial benefits of the Agreement.

1.7. The representative of Switzerland congratulated North Macedonia for the achievement and welcomed it as a new Party to the GPA 2012. Switzerland recognized the continued ambitious engagement of North Macedonia during the accession process and stated that such a spirit would pave the way for an active and beneficial participation in the work of the Committee. Switzerland looked forward to fruitful future cooperation with North Macedonia within the GPA family and invited other potential candidates for accession to follow a similar approach.

1.8. The representative of the United Kingdom congratulated North Macedonia on its ratification of the GPA 2012 and welcomed the North Macedonian delegation at the Committee's meetings. The United Kingdom expressed gratitude for North Macedonia's approach to the accession process and constructive engagement with the Committee. The detailed documentation, high level of market access and timely response to questions provided by North Macedonia represented a fantastic

example for all future acceding Members. The United Kingdom encouraged North Macedonia to offer its expertise across the full range of GPA 2012 issues by engaging at Committee meetings and Work Programmes. The United Kingdom welcomed North Macedonia's fresh perspective and ideas on the 'reform by doing' agenda and looked forward to working with acceding Members, hoping that the GPA 2012 membership would continue to grow.

1.9. The representative of Canada congratulated North Macedonia on becoming a Party, considering it a very positive development. Canada firmly believed in the benefits of expanding the GPA 2012 membership and in the value that the GPA 2012 accession can bring to the Parties. Canada welcomed the North Macedonian delegation in attendance, marking the first occasion to participate in the Committee as a Party. Canada thanked North Macedonia for its continued efforts and looked forward to its engaging on the work of the Committee.

1.10. The representative of Japan recalled that North Macedonia applied to accede to the GPA 2012 in 2017 and presented its initial offer in 2018. The revised market access offer, presented by North Macedonia after more than five years of accession negotiations, was of a high standard. Japan was pleased that North Macedonia had become the 22<sup>nd</sup> Party to the GPA 2012. Japan warmly welcomed the accession of North Macedonia to the GPA 2012 and expressed hope that its accession would have a positive impact on other accession negotiations.

1.11. The representative of New Zealand joined the others in warmly welcoming North Macedonia to the Committee and looked forward to working with them on government procurement issues.

1.12. The representative of Australia welcomed North Macedonia to its first Committee meetings as a full Party and thanked it for the timely depositing of its instrument of accession. Australia had had a productive bilateral meeting with North Macedonia and looked forward to working together closely in the Committee and any of the related Work Programmes in which North Macedonia was interested in participating.

1.13. The representative of the Republic of Korea welcomed the delegation from North Macedonia. Korea was pleased with the coming into force of the GPA 2012 for North Macedonia on 30 October 2023 since North Macedonia's companies got the opportunity to harness the important commercial benefits of the GPA 2012. North Macedonia's accession would also have a positive impact on other accession negotiations. Korea greatly appreciated the hard work put in by North Macedonia's delegation over the last several years and stood ready to work with North Macedonia on GPA 2012 implementation.

1.14. The representative of Norway welcomed North Macedonia's accession to the GPA 2012. Norway looked forward to working with North Macedonia in the future and hoped that the GPA membership would continue to grow.

1.15. The representative of Singapore welcomed the entry into force of the GPA 2012 for North Macedonia and congratulated it on its accession to the GPA 2012. Accession was an important milestone and would be welcomed by businesses when accessing North Macedonia's GPA-covered market. Singapore looked forward to constructively engaging with North Macedonia and to working with it to contribute to the work of the Committee.

1.16. The representative of the European Bank for Reconstruction and Development (EBRD) was pleased to join the delegations in officially welcoming North Macedonia as a GPA 2012 Party. The EBRD GPA Technical Cooperation Facility (EBRD GPA TC Facility) was happy to support North Macedonia in its accession process from the beginning in 2017 until that day. The EBRD extended its heartfelt congratulations to North Macedonia, the EBRD technical experts assisting the government of North Macedonia and all the GPA Parties on that fantastic achievement. The EBRD also congratulated Costa Rica on submitting its application for accession, a commitment that reflected the role of the GPA 2012 as a trade instrument opening government procurement markets among its Parties as well as the increasing interest in being part of the plurilateral Agreement. The GPA 2012 was recognized as the "gold standard" for trade agreements covering public contracts. It also increasingly served larger purposes, including reinforcing good governance in public procurement markets, the implementation of domestic procurement reforms, and possibly, environmental and sustainability goals.

1.17. The EBRD GPA TC Facility provided technical support to governments seeking accession to the GPA 2012, both at the negotiation and implementation stages. The EBRD was pleased to be supporting Albania on its recently reopened accession process and praised Albania's submission, back in August, of its revised replies to the Checklist of Issues, kickstarting negotiations once more. The EBRD hoped that following the submission of Albania's revised market access offer, the accession process would run smoothly, and that Albania would be welcomed as the next Party before long. The support of the EBRD GPA TC Facility was available to all economies where the Bank operated, and it had already provided for several important results, including the accession of Montenegro in 2015, Moldova and Ukraine in 2016, and North Macedonia in 2023. The EBRD GPA TC Facility also looked forward to working with the governments of Georgia, Jordan, and Tajikistan once negotiations were reopened.

1.18. The EBRD emphasised the close collaboration with the WTO Secretariat, particularly in the technical assistance context. The partnership was a resounding success and was central to the endeavours. The Secretariat's expertise had significantly contributed to the work of the joint Facility. The EBRD was immensely thankful for that fruitful cooperation and looked forward to strengthening their work in the future.

1.19. The Chair congratulated North Macedonia and all Parties on the successful completion of the accession process and the success that it represented for the GPA 2012. The Chair warmly encouraged North Macedonia's delegation to participate actively in the Committee's work and the Work Programmes and informed North Macedonia that the WTO Secretariat would be happy to assist should they require any assistance concerning their notification obligations.

## **2 APPLICATION FOR ACCESSION TO THE GPA 2012: COSTA RICA**

2.1. The Chair stated that Costa Rica submitted its application for accession to the GPA 2012 on 28 September 2023. Shortly thereafter, Costa Rica submitted its replies to the Checklist of Issues ([GPA/ACC/CRI/2](#)), together with national laws and regulations relevant to government procurement. An unofficial translation in English of the replies to the Checklist of Issues was also shared with the Committee. Costa Rica's decision to apply for accession was certainly a most positive development and sent a very powerful and encouraging signal in exceptionally challenging times, not just for Latin America but also for international government procurement markets beyond.

2.2. The representative of Costa Rica, Ambassador Ronald Saborío Soto, congratulated North Macedonia on its successful accession to the Agreement and expressed the hope to get there soon. Costa Rica appreciated the opportunity to refer to its request to join the GPA 2012. The Political Constitution of Costa Rica established the obligation for the State to carry out contracts through bidding procedures. That was why, historically, government procurement had been viewed as a fundamental element of public finances for making the best possible use of taxpayer resources. A legal framework had been established based on principles such as free competition, equality, publicity and transparency. The challenge in recent years had been the question of approaching government procurement as a development tool, focusing on better planning and management. Due to its commitment to the modernization of the government procurement system, Costa Rica had requested in 2015 to participate as an observer in the Committee, considering that it would be an important space for feedback, both for its trade relations and for the development of internal policies. It was also considered at that time that that could be a first step towards accession in the future.

2.3. Additionally, since 2010, Costa Rica had begun the strategy of approaching the OECD with the objective of becoming a member of this organization, participating in several of its permanent bodies, signing a series of legal instruments and submitting its public policies to the strict reviews of the OECD. In 2015, Costa Rica was invited to begin the process of joining the OECD, which led to deep legislative reforms aimed at the adoption of the highest standards and best practices of the OECD in numerous areas of Costa Rica's public policy. Among them, Costa Rica's government procurement system was subject to deep examination, which had provided important inputs for the drafting of a bill that gave rise to a new General Public Procurement Law (Law 9986), effective as of 1 December 2022.

2.4. The discussions on government procurement in international fora also contributed to the strengthening of the legal and institutional framework that governed the field in Costa Rica. Costa Rica had had the open and collaborative participation of different national institutions, which

had analysed the issue from a global perspective. This also led Costa Rica to consider more closely the impact of government procurement on trade dynamics. Costa Rica had benefited for many years from an open trade policy that had allowed the integration of its economy into global trade and an investor-friendly FDI attraction policy as well, with very successful results. Costa Rica thus managed to diversify and sophisticate its exportable offer and integrate a considerable part of its exports into global value chains of advanced manufacturing and high value-added business support services.

2.5. Costa Rica's preferential trade agreements offer its exports secure and predictable preferential access to more than 50 markets that together represent 2/3 of global GDP. Costa Rica incorporated commitments on government procurement in several of its international trade instruments because it valued the access of its goods and services to government markets. In that sense, Costa Rica saw the GPA 2012 as a natural step in its trade opening strategy and as a valuable tool to guarantee predictable access to other markets, based on rules and legal certainty.

2.6. Costa Rica was committed to the accession process that would begin. In the preceding days, Costa Rica had submitted responses to the Checklist of issues and intended to submit its first market access offer well in advance of the Committee's March 2024 meetings. Costa Rica wished to conclude the accession process as soon as possible and was available to the Parties to work together towards that objective.

2.7. The representative of the European Union extended a warm welcome to Costa Rica as it initiated its accession process. This commendable step underscored Costa Rica's dedication to closer ties with the GPA Parties and served as a beacon of hope for other Central American nations to consider a similar journey in the future. The European Union particularly welcomed the swift submission of the replies to the Checklist of Issues. The European Union had had a fruitful bilateral discussion with the capital-based delegation from Costa Rica on the margins of the Committee's meetings. The European Union encouraged Costa Rica to continue its ambitious accession process and to submit the initial market access offer soon. The European Union was willing to further engage with and provide support to Costa Rica throughout that process.

2.8. The representative of the United States welcomed the capital-based delegation from Costa Rica and thanked it for a constructive bilateral meeting. Costa Rica was an important trading partner for the United States. It would be a welcome addition to the GPA 2012, should it provide an ambitious market access coverage, and would enhance the important regional diversity of the GPA 2012. Costa Rica had already taken on procurement obligations with the United States and other GPA Parties through its FTA commitments, many of which contained procedural obligations that were very similar to the GPA 2012. As such, Costa Rica's procurement system was well positioned to apply the high standards of the Agreement. The United States thanked Costa Rica for providing its replies to the Checklist of Issues and looked forward to seeing its initial market access offer. The United States undertook to provide comments on the replies to the Checklist of Issues before the Committee's March meetings and stood ready to work with Costa Rica on its GPA accession.

2.9. The representative of Japan welcomed Costa Rica's application to accede to the GPA 2012 and appreciated its replies to the Checklist of Issues submitted immediately after its application. Japan had had a bilateral meeting with Costa Rica and the two were able to have meaningful discussions. Japan welcomed the participation of the delegation from the capital and looked forward to Costa Rica's initial market access offer and to the expansion of the GPA Parties in the Latin American region.

2.10. The representative of Canada welcomed the Ambassador and the capital-based delegation from Costa Rica. Canada had had a bilateral meeting with Costa Rica, and it was a pleasure to see Costa Rica, the first Member from Central America, to apply for accession to the GPA 2012, which was a very positive development. Canada looked forward to engaging with Costa Rica on its replies to the Checklist of Issues and eventually on its initial market access offer.

2.11. The representative of the United Kingdom congratulated Costa Rica on its application for accession to the GPA 2012 and appreciated the attendance from Costa Rica. The United Kingdom noted the significance of Costa Rica's application and welcomed it as the first Member from Central America to join the GPA 2012. The United Kingdom looked forward to working closely with Costa Rica throughout its accession process and encouraged it to keep progressing its accession.

The United Kingdom found Costa Rica to be a proactive and helpful partner as they worked together across other WTO Committees, and was convinced that that would translate to the GPA accession.

2.12. The representative of Australia warmly welcomed Costa Rica's application to accede to the GPA 2012. Australia thanked Costa Rica for the incredibly timely submission of its replies to the Checklist of Issues, which Australia was reviewing and on which it looked forward to providing any comments or questions. Australia had had a positive bilateral meeting with Costa Rica and looked forward to working with it on its accession over the coming months, including on ambitious, comprehensive market access negotiations in due course.

2.13. The representative of the Republic of Korea welcomed Costa Rica's application for accession to the GPA 2012 and appreciated the responses to the Checklist of Issues in English. Korea had had a bilateral meeting with Costa Rica and was encouraged by the ambition of Costa Rica to circulate its initial market access offer by the Committee's March 2024 meetings. Korea affirmed its readiness to continue the constant engagement with Costa Rica in the process of accession.

2.14. The representative of Switzerland welcomed the delegation of Costa Rica and appreciated its willingness as the first Central American country to engage substantially in the GPA accession negotiation process. Referring to the EFTA-Costa Rica bilateral meeting held earlier that morning, Switzerland thanked the delegation of Costa Rica for having already shared with the GPA Parties the replies to the Checklist of Issues, which Switzerland undertook to examine carefully in the upcoming weeks, and encouraged Costa Rica to submit an initial market access offer as soon as possible. Switzerland had already had a privileged opportunity to exchange views about the benefits of adhering to GPA 2012 rules and principles in the context of the EFTA-Central America free trade agreement a few years prior. Switzerland was confident that the familiarity with international government procurement standards and the experiences gained within other international agreements provide Costa Rica with a solid and promising basis for its GPA accession negotiations. Switzerland looked forward to cooperating closely with Costa Rica on that important project.

2.15. The representative of Israel welcomed Costa Rica to the GPA 2012 and congratulated it on the first step in its ambitious accession process. Israel undertook to review the initial market access offer with great interest as soon as it would be submitted. Israel looked forward to working with Costa Rica throughout the accession process.

2.16. The representative of New Zealand welcomed Costa Rica's application for accession. New Zealand did not have an opportunity to engage with Costa Rica that week but took note of the timely circulation of replies to the Checklist of Issues and looked forward to having a substantive discussion with Costa Rica in March 2024.

2.17. The representative of Singapore welcomed Costa Rica's application and congratulated it on the major milestone that was a testament of the value of the GPA 2012 to the Members. Singapore looked forward to working with Costa Rica closely in the accession process.

2.18. The representative of Norway welcomed the delegation of Costa Rica and looked forward to receiving Costa Rica's initial market access offer and to working with it in future.

2.19. The Chair joined the Parties in warmly welcoming Costa Rica's application to join the Agreement. Costa Rica's accession process was of systemic importance, and the Chair was hopeful that it would be followed in Latin America with great interest. The Chair therefore encouraged Costa Rica to use the momentum it had gathered and to submit its initial market access offer as soon as possible. The Chair also encouraged the Parties to submit written comments and questions on Costa Rica's replies to the Checklist of Issues well in advance of the Committee's March 2024 meetings. Furthermore, the Chair encouraged Costa Rica and interested Parties to conduct bilateral consultations intersessionally with the aim of moving the accession forward.

### **3 ADOPTION, IF AGREEABLE, OF THE DRAFT COMMITTEE DECISION CONCERNING THE DERESTRICTION OF AN INITIAL LIST OF HISTORICAL GPA DOCUMENTS ALREADY CIRCULATED (DOCUMENT TO BE CIRCULATED)**

3.1. The Chair recalled that, in October 2018, the WTO Secretariat had circulated a note setting out information on procedures currently in use for the circulation, derestriction and translation of

GPA-related documents. The purpose of the Note had been to clarify the operation of the relevant procedures and to facilitate their review, if desired, by the Committee, with the overall objectives of facilitating the administration of the GPA 2012 and ensuring an appropriate level of transparency for Members and the general public. Discussions on the topic took place at the Committee's meetings held in 2019, 2020, 2021 and 2023, and a number of additional documents had been circulated, including draft decisions prepared by the Secretariat at the request of the Committee. The version of the draft Committee decision that was proposed for adoption concerned the derestriction of an initial list of historical GPA documents and had been circulated on 2 November 2023 ([RD/GPA/68/Add.5](#)).

3.2. The Committee adopted the draft decision as set out in document RD/GPA/68/Add.5.

3.3. The representative of the European Union was convinced of the importance of the discussion on providing further transparency to the activities of the Committee, maintaining at the same time the effectiveness of its work arrangements. The European Union was mindful of a similar exercise happening currently in the General Council. The European Union thanked the Secretariat for including an agenda item on the adoption of the draft decision concerning the derestriction of the initial list of historical GPA documents already circulated. The European Union was ready to endorse that decision.

3.4. Regarding the draft decision concerning derestriction of the GPA documents to be circulated in future, the European Union stated that it was working constructively together with other Parties with a view to reaching a consensus leading towards the adoption of the decision, at a time appropriate for all GPA Parties.

3.5. The representative of the United Kingdom stated that the proactive and collaborative effort to drive the decision forward was a great example to the Committee and was consistent with the 'reform by doing' agenda. The United Kingdom believed that transparency was vitally important for the effective functioning of the Committee and hoped that together with feedback from other Parties, both decisions would create a clear and open procedure for the circulation and derestriction of documents.

3.6. The representative of the United States welcomed the decision taken that day on the derestriction of historical documents and the transparency provided. The United States also thanked the Parties for the discussions on the draft Committee decision concerning GPA documents to be circulated in the future and expressed hope that the Parties could work to finalize the draft decision so as to approve it at the Committee's year-end meeting.

3.7. The Chair congratulated the Parties on reaching agreement on the decision and joined them in welcoming that positive step, which enhanced the transparency of the Committee and contributed to the Committee's current 'reforming by doing' efforts. The Chair instructed the Secretariat to circulate the adopted Committee Decision as a document in the GPA/CD series and to take the appropriate steps to derestrict the relevant documents as soon as possible after the Committee's meetings. In addition, the Chair instructed the Secretariat to prepare and circulate in due course a draft decision concerning additional historical GPA-documents already circulated for possible derestriction.

## **4 OTHER BUSINESS**

4.1. The Chair invited the European Union to make a statement under 'Other business' regarding the "Latest developments in relation to the implementation of the U.S. Infrastructure Investment and Jobs Act, in the context of the recent Guidance issued by the U.S. Office for Management and Budget".

4.2. The representative of the European Union said that, recently, the Office of Management and Budget (OMB) modified its Guidance for Grants and Agreements (the "Guidance") to implement the Build America, Buy America Act (BABA) part of the United States Infrastructure and Jobs Act (IIJA). The Guidance entered into effect on 23 October 2023. On 25 October 2023, the Office of Management and Budget issued a revised Memorandum that provided further guidance to federal agencies on the application of the Buy America preference, including on the waiver process. The European Union noted that the United States committed to provide non-discriminatory treatment to

European Union suppliers, goods, and services under the GPA 2012. In this respect, the European Union further noted that Section 70914 of the Infrastructure and Jobs Act required that the Made in America preference "... shall be applied in a manner consistent with United States obligations under international agreements". The United States' partners and allies had been repeatedly reassured that the Administration's Made in America policy would fully comply with the existing international agreements. However, the Guidance was silent as to the compliance of the Buy America requirements with United States international obligations. Moreover, the revised Memorandum stated that "[i]f a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest".

4.3. The European Union was concerned that the text would not make procuring entities aware of the extent of United States' commitments under the GPA 2012, as waiving the Made in America condition was considered as a possibility, whereas it should have been clearly identified as an obligation. Pursuant to the GPA 2012, the United States' procuring entities were obliged, not just entitled, to grant non-discriminatory treatment to foreign suppliers of covered procurement. It ought, therefore, to have been clearly stated that the procuring entities must request a waiver of the Made in America condition to comply with GPA 2012 obligations and that these waivers should be deemed consistent with the applicable law and policy by the Made in America Office. Further, to avoid undue delays and unnecessarily burdensome procedures, instructing States to issue general applicability waivers from the Build America, Buy America Act in the areas where they had undertaken international commitments might be considered.

4.4. The representative of Canada raised concerns over the expansion of Buy America requirements by the United States. The United States had created new procedural barriers for Canada and other GPA Parties to access its covered sub-federal procurement markets via the implementation of the BABA. Specifically, Canada's concerns were in response to the final guidance issued by the OMB on 23 August 2023, and the more recent supplemental implementation guidance issued on 25 October 2023, through OMB Memorandum M-24-02. Broadly, the guidance attempted to clarify provisions related to domestic preferences and provided further details on implementing the requirements set out in the BABA.

4.5. Despite several government and industry stakeholders urging the OMB during public consultations in February 2023 to include clear instructions to ensure that federal agencies and state-level procuring entities abided by the GPA 2012 obligations, the final guidance and OMB Memorandum M-24-02 did not include any general waiver or specific instructions on how to ensure compliance with trade agreement obligations. Instead, the final guidance from August 2023 simply stated that "the [Infrastructure Investment and Jobs Act] recognizes that public interest waivers are an appropriate mechanism to allow Federal financial assistance recipients to meet obligations under international agreements."

4.6. Furthermore, OMB Memorandum M-24-02 explained that "a Federal agency that applies a BABA preference to Federal awards may propose to waive BABA requirements in the public interest to allow a State to comply with its obligations" and that if "a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest". The use of the term "may" as opposed to 'shall' suggested that the OMB considered requesting and granting those waivers to be discretionary rather than mandatory. Canada's understanding of the waiver process was that a foreign supplier could not directly request a waiver and must instead rely on the United States' contractor to communicate with award recipient to request that the recipient initiate a waiver process. As such, it was unclear if covered state-level procuring entities would decide to request public interest waivers and if federal agencies would issue such waivers to ensure compliance with their GPA 2012 obligations.

4.7. Canada further stated that even if a public interest waiver was to be granted, given the lengthy timelines and administrative complexities involved in the waiver process, the United States' contractors may simply ignore the waiver process and look to source domestic goods at the expense of foreign suppliers. Further, it was expected that the increase in the volume of waiver requests would create further administrative burden and delays. For example, the United States Department of Housing and Urban Development, just one of the many federal departments requiring BABA certification, had estimated that new BABA information collection activities would result in an additional 5,000 hours of administrative burden per year.



4.8. Aside from the waiver process itself, Canada was also concerned with the practical day-to-day application of the expanded Buy America requirements for both the United States' contractors and state-level procuring entities. Canada was already seeing signs of a general chilling effect, whereby the United States' suppliers and distributors were reluctant to source Canadian construction materials and manufactured products, including those that contained United States raw materials and inputs. While OMB Memorandum M-24-02 referred to the United States' international trade obligations, it failed to address Canada's concerns with respect to the waiver process. This was despite the fact that Canada and others had repeatedly brought those concerns to the attention of the United States.

4.9. In Canada's view, foreign suppliers whose goods were covered by the GPA 2012 should not have to advocate for a state-level procuring entity to seek a public interest waiver in order to benefit from market access that they were guaranteed under the GPA 2012. Canada expected the United States to guarantee non-discrimination for its sub-federal infrastructure procurements that were covered under the GPA 2012. For that reason, Canada hoped that the United States would issue supplemental guidance on that topic. In Canada's view, doing so would help promote business certainty and avoid major disruptions to well-established supply chains. Canada looked forward to hearing from the United States about what steps it intended to take to ensure its GPA 2012 obligations were respected.

4.10. The representative of the United Kingdom thanked the European Union for raising that agenda item and summarizing their concerns with the latest development in relation to the implementation of the United States Infrastructure Investment and Jobs Act. The United Kingdom had also taken note of recent developments in United States policies and maintained similar concerns around the limited references in guidance in terms of compliance by the United States with its international obligations and with the burdensome waiver processes. The United Kingdom expressed concern that ambiguous and limited references to the United States' international obligations in guidance and failure to specifically mention the principle of non-discrimination would more likely result in the suppliers from the United Kingdom being erroneously refused or delayed from participating in the United States' procurement contracts. The United Kingdom stated that it had already heard from several suppliers from the United Kingdom who had had trouble engaging United States procurement officials and navigating the waiver process, with the misapplication of domestic preference restrictions cited as a common barrier.

4.11. The United Kingdom encouraged the United States to explore ways of sending clearer signals and information about their international obligations to relevant departments and agencies and simplifying the burdensome waiver process for GPA 2012 suppliers. The United Kingdom was grateful for the proactive engagement from the United States on that topic to date and welcomed continued engagement and further clarification on how unnecessary barriers to trade could be prevented moving forward.

4.12. The representative of Australia stated that it had had a constructive bilateral meeting with the United States during which Australia had noted its ongoing interest in the implementation of the procurement policies of the United States government. That included the final guidance issued by OMB on the Build America, Buy America Act and the noted complexity associated with its implementation. Australia welcomed the United States' confirmation that the Build America, Buy America Act requirements were being and would be implemented consistent with its international trade commitments, including under the GPA 2012. Australia similarly took note of the OMB's comments accompanying the August guidance, acknowledging stakeholder engagement on those issues, including from the GPA Parties. Australia looked forward to seeing any further iterations of OMB Memorandum M-24-02 or other relevant guidance documents, to provide important further clarity and certainty for procuring entities and Party suppliers alike, including Australian suppliers.

4.13. Similarly to other GPA Parties, the representative of Switzerland expected that any relevant Build America Buy America policy be implemented in a way that was unequivocally and explicitly consistent with international agreements relating to government procurement. Switzerland understood that quite a number of important local stakeholders, such as the United States Chamber of Commerce, had voiced a similar message in their position statements. Switzerland was convinced that it was both in the interest of the United States' federal and State entities concerned to make sure that they could benefit from the best possible offer, and of the suppliers from GPA Parties to fully make use of the opportunities provided by the international agreements without any possible

impediments to trade. Switzerland thanked the United States for any information and update about future steps in the implementation of the guidance.

4.14. The representative of the United States took note of the comments made by the European Union and other GPA Parties. On 25 October 2023, OMB published a supplementary memorandum on "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure". Section V of the memorandum provides guidance on consistency with international agreements. Specifically, the memorandum notes that "[p]ursuant to Section 70914(e) of BABA, this/the guidance must be applied in a manner consistent with the obligations of the United States under international agreements". The existing waiver system allowed the United States Government to assess whether an entity receiving a grant was engaged in a procurement covered by international obligations; whether the entity receiving the grant was in the GPA 2012 and/or FTA schedules; and whether the procurement met the monetary threshold. The waiver system allowed agencies to issue public interest waivers to ensure compliance with international trade obligations if a recipient was a State that had assumed procurement obligations pursuant to the GPA 2012 or any other trade agreement. The United States would continue to ensure that BABA was applied in a way that was consistent with the United States' international obligations.

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