

WTO Government Procurement Agreement

A gender lens for action



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About the paper

This report applies a gender lens framework to government procurement through the public provision, consumption and employment channels. It identifies opportunities to develop a gender lens for government procurement in the World Trade Organization to inform and advance the debate among negotiators, trade policymakers and government procurement stakeholders.

The report urges policymakers and negotiators to ensure consistency between WTO rules and gender-equality policies, make sure that Government Procurement Agreement negotiating processes represent women's interests, implement and monitor agreements in gender-sensitive ways, strengthen the gender-responsiveness of Aid for Trade initiatives and improve the production and use of gender data and evidence.

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Foreword

Gender equality isn't a 'nice to have'. It is a fundamental human right and the foundation on which all our freedoms stand. Without equality, economies cannot grow to their full potential and societies cannot fully rebuild.

But reaching gender equality isn't a straightforward path. It requires everyone to take an active stance to create a more just society – to dig into and improve underlying structures, rules and institutions.

We know that policies can increase both the participation of businesses in global value chains and the benefits they accrue. We also know that these opportunities and benefits differ for women and men.

It has taken years of effort by a dedicated group of women and men around the world to put the women and trade agenda firmly on the table. Trade policies are finally beginning to respond to gender equality.

The fact that 127 countries have joined the 2017 Buenos Aires Joint Declaration on Trade and Women's Economic Empowerment is a testament to the growing recognition that trade is central to gender equality and achieving our collective commitments under the United Nations Sustainable Development Goal 5.

The establishment of the World Trade Organization (WTO) Informal Working Group on Trade and Gender in 2020 was an additional step to bring gender equality within the work of the WTO. The challenge for many governments is how to translate political will into practical guidelines and recommendations across WTO agreements and processes.

This publication answers that challenge. It responds to the call from policymakers for a practical guide to create WTO rules and processes that are more inclusive. Gender mainstreaming ensures that trade and trade-related policies promote more equitable opportunities rather than perpetuate inequalities.

Globally, governments spend an average of 12% of their gross domestic product to procure goods, services and works from the private sector. However, only 1% of government contracts go to women-owned businesses – which are the bloodline of economies, especially those of developing countries.

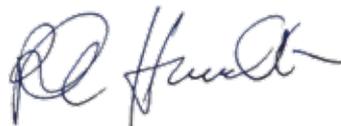
Public procurement is not only an important instrument for good governance. It is also a powerful engine to catalyse the economic empowerment of women in their roles as business leaders, consumers or workers.

This guide offers a tool to mainstream gender into the WTO Government Procurement Agreement and presents several options, including on negotiations, implementation and monitoring issues.

I would like to thank the European Commission for its longstanding support of our work on women and trade over the past decade and the SheTrades Initiative, which made this publication possible.

Advancing gender-responsive public procurement is a key corporate strategy outlined in our 2022–2025 Gender Moonshot. We will continue to do our part by helping policymakers make their trade strategies more inclusive, through specialized toolkits, publications and online policy tools. We call on governments to work with us to move the needle on gender-responsive public procurement.

Our hope is that this knowledge sparks thought, commitment and action within the trade and development community.



Pamela Coke-Hamilton
Executive Director
International Trade Centre

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Acronyms

Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

DEPA	Committee on Government Procurement
EU	European Union
GATT	General Agreement on Tariffs and Trade 1947
GDP	Gross domestic product
GPA	Government Procurement Agreement
ILO	International Labour Organization
ITC	International Trade Centre
LDC	Least developed country
OECD	Organisation for Economic Co-operation and Development
RTA	Regional trade agreement
SDRs	Special drawing rights
SDT	Special and differential treatment
SMEs	Small and medium-sized enterprises
UNECE	United Nations Economic Commission for Europe
WTO	World Trade Organization

Executive summary

The government of every country is a significant actor in the market and government procurement is an important economic activity. Public institutions across the world routinely buy a vast array of public goods, services and construction works. In 2021, governments spent some \$13 trillion of public funds procuring the goods, services and construction works necessary for society to function.¹ However, only 1% of this is awarded to women-owned businesses,² although they make up a major part of the economy.

Government activities in the marketplace, such as the purchasing of goods and services or sometimes the marketing of the same, will affect and in some cases shape the market itself. Government procurement is therefore not just a potentially lucrative business – it is also a critical tool of governance.

A government can design its procurement laws and policies to support various public policy objectives alongside value for money, integrity and accountability. This can include women's economic empowerment, for example, by promoting supplier diversity, fostering women-owned/led firms and ensuring better public services delivery for all.

This report examines the gender lens to government procurement through the public provision, consumption and employment channels. Government procurement decisions especially affect women, particularly those in low-income and disadvantaged communities, because they are relatively more dependent on public services such as transport, healthcare and education. Many cannot afford to buy from the private sector. In addition to using public services for themselves, women also rely on public goods and services in their unpaid role as the family's primary caregivers.

The report identifies basic social services and infrastructure that support women's economic empowerment because women typically become the safety net of last resort when there are few or no public services. In relation to employment, a gender-responsive approach to government procurement encompasses the women working at government contracting authorities and entities as well as the women-owned businesses that win government procurement tenders.

A growing body of evidence indicates that women's economic empowerment is both a critical economic challenge and a moral issue. In 2015, it was estimated that fully closing gender labour gaps could increase gross domestic product by 8% to 16% over 2015–25 in every region studied.³ Data also suggest that economies with high women's labour force participation rates are more resilient, experiencing economic growth slowdowns less often.⁴

Governments, businesses and international organizations are increasingly focusing on procurement as a lever to promote a more gender-equal distribution of economic resources.⁵ While data suggest that, under the right conditions, countries that are more open to international trade have higher levels of gender equality,⁶ there is also growing awareness of the gender-differentiated effects of trade liberalization.

This calls for greater understanding of how government procurement can best promote women's economic empowerment and how international government procurement agreements can be designed to support these efforts.

In 2017, the WTO Ministerial Conference Joint Declaration on Trade and Women's Economic

1 Bosio, E., and Djankov, S. (2020). 'How Large is Public Procurement?' World Bank Blogs. Retrieved 21 December 2022 from <https://blogs.worldbank.org/developmenttalk/how-large-public-procurement>.

2 See Tillipman, J., Merrill, A., and Korir, E. (11 March 2021) Gender and Equality in Public Procurement [Panel discussion]. World Bank Virtual Event. Retrieved 21 December 2022 from <https://www.worldbank.org/en/events/2021/02/11/gender-and-equality-in-public-procurement#3>.

3 Huang, J., Krivkovich, A., Starikova, I., Yee, L., and Zanoschi, D. (2019). *Women in the Workplace 2019*. McKinsey & Company. <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Gender%20Equality/Women%20in%20the%20Workplace%202019/Women-in-the-workplace-2019.ashx>.

4 International Labour Organization (2015). *World Economic and Social Outlook: The Changing Nature of Jobs*. ILO Research Department. Geneva: ILO. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_368626.pdf.

5 See <https://eige.europa.eu/gender-mainstreaming/tools-methods/gender-responsive-public-procurement> and <https://www.unwomen.org/en/about-us/procurement/gender-responsive-procurement>; Models of Gender Sensitive Procurement Used by International Aid Agencies. The United Nations Economic Commission for Europe (UNECE) has a Gender Responsive Standards Initiative aim at 'providing a practical framework for standards bodies seeking to make the standards they develop, and the standards development process they follow, gender responsive'. See UNECE (2022). *Declaration for Gender Responsive Standards and Standards Development*. Geneva: UNECE. https://unece.org/DAM/trade/wp6/AreasOfWork/GenderInitiative/UNCECEGenderDeclaration_English.pdf See also International Trade Centre (2020). *Making Public Procurement Work for Women*. Geneva: ITC. <https://intracen.org/media/file/2367>, and Combaz, E. (2018). *Models of Gender-Sensitive Procurement Used by International Aid Entities*. K4D Helpdesk Report. Brighton, United Kingdom: Institute of Development Studies. https://assets.publishing.service.gov.uk/media/5b3b697fe5274a6ffac66ac3/Gender_sensitive_procurement.pdf.

6 World Bank and World Trade Organization (2020). *Women and Trade: The Role of Trade in Promoting Gender Equality*. Washington, D.C.: World Bank. https://www.wto.org/english/res_e/booksp_e/women_trade_pub2807_e.pdf.



Empowerment highlighted that inclusive trade policies can help advance women's economic empowerment, which reduces poverty. To support this endeavour, this report seeks to develop the gender lens for the WTO Government Procurement Agreement (WTO GPA).

To this end, the legal and institutional framework of the agreement is set out, before examining the complex negotiating parameters of the agreement. The report notes that promoting good governance and greater competition for public tenders under the 2012 WTO Government Procurement Agreement (GPA 2012) should benefit women as consumers of public goods and services, as well as women-owned/led businesses and women employed in firms seeking to access a transparent, fair and competitive procurement market.

This report identifies opportunities to develop a gender lens for government procurement in the WTO, with the aim of informing and furthering the debate among negotiators, trade policymakers and government procurement stakeholders.

Options and recommendations are put forward for the WTO GPA signatory parties to consider when seeking

to promote women's economic empowerment through government procurement law and policy. These range from minimal, medium to maximum interventions. Examples of the interventions that the signatory parties to the WTO GPA have implemented illustrate the discussion.

The report concludes that signatory parties should lead by example in mainstreaming gender considerations in a whole-of-government approach that can complement and harness positive development made within their international government procurement agreements.

The analysis is set out as follows: Section 1 of the report studies the gender dimensions of government procurement from a global perspective, looking at some of the relevant policies implemented in different countries. Section 2 examines the GPA 2012 through a gender lens, identifying some of the ways signatories can promote women's economic empowerment. Section 3 weighs how gender considerations can be further promoted in future government procurement agreements. The report concludes with Section 4, which offers recommendations for promoting a gender lens for governments in the WTO.

Chapter 1

Gender dimensions of procurement: A global perspective

UN Women defines gender-responsive procurement as 'the selection of goods, civil works or services that take into account their impact on gender equality and women's empowerment'.⁷ A useful framework for thinking how procurement law and policy can be made gender-responsive sets up distinct channels through which government procurement-related changes can variously affect different groups of women and men in different contexts. These include the following:

The public provision and consumption channel

The size of procurement expenditure in a country reflects the level of engagement by the government in providing public goods, services and construction works. While governments spend 13% of gross domestic product (GDP) on average on such procurement, some large emerging economies such as Brazil, Egypt, India, Pakistan, South Africa, Turkey and Viet Nam spend more than 20% of GDP.⁸

At the other end of the spectrum, least developed and fragile states have a more limited ability to deliver public goods and services. In 2018, for example, Cameroon, the Democratic Republic of Congo, Niger, Sudan, South Sudan and Yemen each spent less than 5% of GDP on general procurement procedures.⁹ How much and how this money is allocated can reduce or exacerbate gender-based inequalities.

For instance, women typically become the safety net of last resort when there are few or no public services to offer medical support, education and care. Women spend an average of 3–6 hours on unpaid care activities every day, while men spend between half an hour and

two hours.¹⁰ While gender-based unequal distributions of unpaid work are discernible all over the world, they are especially pronounced for low-income and disadvantaged women.¹¹

Evidence on the gender impact of the COVID-19 pandemic further confirms that women's unpaid work burden intensifies during times of economic downturn.¹² Women are expected to compensate for insufficient public provision of health and other social services. Too great a burden on the unpaid economy weakens the capacity of women to contribute to production that generates tax revenues and to maintain activities that promote well-being and social cohesion.

Successful promotion of women's economic empowerment through government procurement provision channels is related to the level of public spending on basic social services and infrastructure that support women's economic empowerment, such as health, care, education, water and sanitation. For example, data indicate that the employment rates for women unpaid carers (ages 18–54) in countries that invest in a combination of policies to support the care needs of the working-age population tend to be higher than those in countries investing comparatively less.¹³

Given the challenges of balancing complex procurement decisions and management, sufficient resources are required to train and support contracting authorities and entities and officials to maintain the overall objective of ensuring value for money in public spending, while implementing women's economic empowerment policies. The transparent and consistent implementation of government procurement regulations are major barriers to inappropriate spending of the budget, corruption and organized crime.

7 UN Women (n.d.). 'Gender-Responsive Procurement.' Retrieved 21 December 2022 from <https://www.unwomen.org/en/about-us/procurement/gender-responsive-procurement>.

8 See Bosio, E., and Djankov, S. (2020), *op.cit.*

9 *Ibid.*

10 Ferrant, G., Pesando, L.M., and Nowacka, K. (2014). *Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes*. Issues Paper. Paris: Organisation for Economic Co-operation and Development (OECD) Development Centre. https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf.

11 Budlender, D. (2010). *Time Use Studies and Unpaid Care Work*. London: Routledge.

12 Organisation for Economic Co-operation and Development (2021). *Caregiving in Crisis: Gender Inequality in Paid and Unpaid Work During COVID-19*. Paris: OECD. https://read.oecd-ilibrary.org/view/?ref=1122_1122019-pxf57r6v6k&title=Caregiving-in-crisis-Gender-inequality-in-paid-and-unpaid-work-during-COVID-19.

13 International Labour Organization (2018). *Care Work and Care Jobs for the Future of Decent Work*. Geneva: ILO. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf.



As such, the professionalization of decision-making over how contracts are tendered, awarded and managed – as well as the quality and quantity provided – has a major impact on society, particularly women, and the perceived legitimacy of government.

Procurement decisions especially affect women, especially those in low-income and disadvantaged communities, because they rely more on the public provision of transport, healthcare services and education. They cannot afford to buy from the private sector. In addition to using public services for themselves, women also depend on public goods and services in their unpaid role as the family's primary caregivers.

In Peru, the direct participation of women in the design of a rural road project ensured that upgrading included not only the main roads, but also many non-motorized transport tracks used mostly by women and ignored by other infrastructure programmes. As a result, women

took part more in markets and fairs and spent less time obtaining food and fuel supplies, and a share of them reported earning higher incomes.¹⁴

Improving road networks in rural areas can reduce the time women spend selling and buying goods, increase their safety and make it easier for them to access medical care or education – thereby supporting them in both their productive and reproductive responsibilities.

For government procurement to be more beneficial to women, it should be part of a broader set of public service solutions that aim to meet the needs of women.¹⁵ This means examining women's involvement in the allocation, choice and design of government contracts, including the tendering, awarding and monitoring phases. As noted, gender considerations are relevant when defining procurement needs, such as developing the specifications, requirements and terms of reference. This focus can carry on in other stages, including the evaluation and selection of suppliers.

¹⁴ World Bank (2004). Promising Approaches to Engendering Development: Making Rural Roads Work for Both Women and Men: The Example of Peru's Rural Road Program. No. 34839. Washington DC: World Bank. <https://documents1.worldbank.org/curated/en/177491468145164947/pdf/348390PE0REV0Rural0men0RRP.pdf>.

¹⁵ Babinard, J., et al. (2010). *Mainstreaming Gender in Road Transport: Operational Guidance for World Bank Staff*, Transport Papers TP-28, Washington DC: The World Bank. <https://documents1.worldbank.org/curated/en/669831468330934298/pdf/569540NWP0Tran10Box353751B01PUBLIC1.pdf>.

The employment channel

A gender-responsive approach to government procurement (in relation to employment) encompasses women working at government contracting authorities and entities as well as those who win government procurement tenders – that is, equally from the supplier and government/demand perspectives.

Women's employment at government contracting authorities and entities

Government contracting authorities and agencies should set best practice and lead by example to ensure that women are sufficiently represented on procurement committees and in agencies at all levels and stages of the tendering process. Officials should be fully supported by gender-equality policies and training along with continuous professionalization. Contracting agents and practitioners need to ensure that the products and services they procure either contribute to gender equality or do not undermine gender-equality objectives. This requires proportionate gender representation among both government buyers and managers.

The design and implementation of public health, education, road and transport contracts are more likely to be gender-responsive if women themselves – including beneficiaries – are involved in decision-making and project management.

The types of services, supplies or works that governments intend to buy will have different implications for different women and men because they will have distinct needs in relation to the services, supplies or works that are to be purchased. Government needs assessments should therefore include preliminary market consultations with potential bidders, past unsuccessful bidders, users, gender-equality bodies, industry consultants, social partners and civil society organizations including trade unions to identify and address the impacts of a tender, including on women's economic empowerment.

Training and capacity-building programmes are needed to ensure that the gender lens at contracting agencies and entities addresses conscious and unconscious biases. There are persistent stereotypes that women lack the skills needed for procurement roles, such as

hard negotiation, and that long hours do not fit into the work–life balance of women in the sector.¹⁶

One poll of British universities found that women make up 37% of students taking supply-chain courses – at the career level, however, this falls to around just 15%.¹⁷ Women hold only 5% of the top-level supply chain positions in Fortune 500 companies.

In the United States and Western Europe, where procurement organizations are the most advanced, a 2019 study found that just 20% of the top 60 listed companies have a woman as chief procurement officer. This highlights the 'motherhood leadership penalty', which is demonstrated by the fact that only 25% of managers with children under six years of age are women, and this figure rises to just 31% for women managers without young children.¹⁸

Women-owned/led businesses as potential suppliers

While there are efforts to standardize definitions and understandings of women-owned/led businesses, such as ISO IWA 34 on women's entrepreneurship,¹⁹ each jurisdiction determines its own definition. This leads to differences across some countries. Most definitions of the term 'women-owned/led businesses' involve a practical look at the legal and ownership structure, as well as the issue of control of the day-to-day operations of a business. This will qualify the business for preferences.

A common approach, followed in the United States, is to define a women-owned firm as a business that is at least 51% owned by one or more women or, in the case of any publicly owned company, at least 51% of the stock is owned by one or more women, and whose management and daily business operations are controlled by one or more women.²⁰

A procurement gender lens examines the characteristics and differing needs of women-owned/led businesses in different sectors of the economy. Simplifying tendering processes and requirements will have a greater benefit for women as they are generally more disadvantaged than men when dealing with complex processes. As women spend far more time than men on unpaid and care work, they cannot afford the burden of complex

16 Phillips, W. (2022). 'Lack of Opportunities' for Women to Enter Procurement,' *Supply Management*. <https://www.cips.org/supply-management/news/2022/march/lack-of-opportunities-for-women-to-enter-procurement/>.

17 See Kenward, K. (n.d.). 'Career Progression: Women in Procurement,' Michael Page. <https://www.michaelpage.co.uk/our-expertise/procurement-and-supply-chain/career-progression-women-procurement>.

18 International Labour Organization (2019). *A Quantum Leap for Gender Equality: For a Better Future of Work For All*. Geneva: ILO. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_674831.pdf.

19 Efforts to standardize these understandings include ISO IWA 34:2001. See International Organization for Standardization (2021). 'IWA 34:2021 – Women's Entrepreneurship – Key Definitions and General Criteria.' <https://www.iso.org/standard/79585.html>.

20 See <https://www.acquisition.gov/far/52.204-5>.

or lengthy procedures.²¹ Research also suggests that women may face higher levels of ‘interference’ in interacting with government officials or complying with government regulations.²²

Government procurers are also typically risk-averse when dealing with small and medium-sized enterprises (SMEs) – especially when women own or lead these firms. The barriers to SME participation in government procurement are often related to their scale and low administrative, financial and technical capacity. Other difficulties that small companies face in the market, including their relatively limited access to finance, can affect these barriers.

The obstacles that SMEs face when competing for government procurement contracts differ across gender, particularly in developing and least developed country (LDC) contexts, and have been addressed by various initiatives.²³ Some of these obstacles are gender-differentiated and need to be addressed through separate interventions because women-led SMEs have less capacity and fewer resources. These include:

- Lack of information/transparency.
- Suppliers incur threshold administrative or ‘fixed’ costs.
- Onerous supplier and contractor registration requirements.
- Unnecessarily detailed or complex tender information and documentary requirements.
- Costs of supplying a performance bond or guarantee.
- Costs of inspection requirements during tendering.
- Protracted supplier qualification, tender evaluation and award procedures.
- Lengthy payment intervals after tender award require interim cash flows.
- Complex tender dispute resolution procedures.

- Government procurers’ risk-aversion when dealing with SMEs, particularly those led by women.
- Inability to raise capital to cover financing needs.

Efforts from the public sector often focus on facilitating SME access to government procurement and making it easier to do business with governments.²⁴ Transparent and clearly written tendering procedures will make it easier for small companies to find and prepare a good tender, placing less burden on their administrative resources.

Contracting authorities and entities increasingly promote the use of e-procurement systems to improve integrity, transparency, access and accountability in awarding contracts. A well-designed e-procurement system can help smaller businesses identify the information necessary to tender for contracts and save on resources.²⁵ In some countries’ procurement systems, suppliers must pay for hard-copy tender documents, further disincentivizing smaller companies.

A gender lens to government procurement would encompass local level women’s training and capacity building not only in business development to prepare a successful tender, but also in e-procurement systems. This is because there is a gender participation gap related to both access and use of technology.

While digital access has spread rapidly, many developing countries and LDCs lag badly behind. Especially in Africa, there is a substantial and growing gap between the number of men and women online.²⁶ This prevents many women from being able to participate fully in e-commerce (domestic and international), either as employees or as business owners and potential suppliers.

The need to provide information technology training and capacity building for women and women-owned firms seeking to tender online should be built into women’s economic empowerment programmes. The option for both paper-free and electronic procurement tendering is an important consideration to attract tenders from more

21 Ferrant, G., Pesando, L.M., and Nowacka, K. (2014), op. cit.

22 Chamblou, N., Klapper, L., and Muzi, S. (2008). *The Environment for Women’s Entrepreneurship in the Middle East and North Africa* (World Bank Publications). <https://doi.org/10.1596/978-0-8213-7495-5>. Also, Simavi, S., Manuel, C. and Blackden, M. (2010). *Gender Dimensions of Investment Climate Reform; A Guide for Policy Makers and Practitioners*. Washington, D.C.: The World Bank. <https://documents1.worldbank.org/curated/en/260721468321276647/pdf/528610PUB0gend101Official0Use0Only1.pdf>.

23 See OECD (2018). *SMEs in Public Procurement: Practices and Strategies for Shared Benefits*. OECD Public Governance Reviews, OECD Publishing, Paris: OECD. <https://doi.org/10.1787/9789264307476-en>.

24 See, for example, Trade4MSMES (n.d.). ‘Government Procurement.’ <https://trade4msmes.org/tag/government-procurement/>.

25 Eeu, Khu Say, Husain, W., and Mustaffa, N. (2012). ‘Survey on Benefits and Barriers of E-Procurement: Malaysian SMEs Perspective.’ *International Journal on Advanced Science Engineering Information Technology*, 2(6), pp. 424–429. DOI:10.18517/ijaseit.2.6.238.

26 Joekes, S., Frohmann, A., and Fontana, M. (2020). *A Primer on Gender on Trade*. Gender, Social Inclusion and Trade Knowledge Product Series. BKP Economic Advisors. https://www.bkp-development.com/images/reports/A_PRIMER_ON_GENDER_AND_TRADE_bkp_07052020.pdf.

women-owned businesses without access to information and communication technology.

In some cases, governments have taken specific measures to support women-owned businesses. In the United States, for example, the Federal Acquisition Streamlining Act created a 5% government-wide goal of contracting with women-owned small firms. The Equity in Contracting for Women Act of 2000 authorized the Women-Owned Small Business Federal Contracting Program to provide greater opportunities for small firms to compete in the federal marketplace.²⁷

Softer interventions such as encouraging smaller tenders (for instance, dividing a tender into lots, if appropriate), capacity and skill building, and targeted technical assistance are essential to help women-owned/led businesses carry out contracts successfully and make successful tenders. Stronger interventions such as set-asides need to comply with any existing commitments governments have negotiated under international agreements. They require careful legal assessment, cost-benefit analyses and monitoring to ensure they are legally compliant, correctly targeted and also meet their objectives.

Women's employment in supplier companies

From the supplier perspective, there is great scope to diversify the supplier base by stepping up sourcing from both gender-responsive companies and women-owned businesses. Equal remuneration for work of equal value is legally mandated in line with international standards in only 95 economies worldwide.²⁸ Moreover, the lack of women's access to formal employment, decent work and managerial jobs in the general labour market is magnified in developing economies and LDCs.²⁹

Various studies have examined women's underrepresentation in the construction industry, which is a key element of government procurement in many

economies. For example, construction in Australia remains male-dominated despite the increase in women studying and working in the industry in the last two decades, with women accounting for 14% of employees in 2020.³⁰

Women's underrepresentation has been attributed to gender-discrimination practices common in the construction industry, such as sexual harassment,³¹ and recruiting policies dominated by networking influences when hiring occurs.³² This underrepresentation of women in the industry is reflected in other countries, for example constituting, 11.6% of construction employees in the United Kingdom, 11.5% each in Austria and Canada, 9% in the United States and 7.2% in Sweden.³³

Government and private bodies are increasingly endorsing and requiring women's economic empowerment principles and requirements in their constitutions and operations to address underrepresentation and inequality.

For example, Australia's Workplace Gender Equality Act 2012 requires public companies and non-public sector employers with 100 or more employees to supply a letter of compliance issued by the Workplace Gender Equality Agency with any tender submissions prior to contracting in Australia. To receive this letter, these companies must submit a compliance report to the agency containing information on gender equality indicators that include the gender composition of the workforce.³⁴

Malta has developed an equality mark for organizations taking specific steps to foster gender equality, relating to recruitment, training, promotion, equal pay, family-friendly policies and equal access to goods and services.³⁵ In a World Bank-financed operation in Albania, the standard bidding documents for tenders above a certain value were amended to mandate firms to declare adherence to principles of non-discrimination and equal pay for equal work.³⁶

27 See <https://www.whitehouse.gov/cea/written-materials/2021/12/01/the-benefits-of-increased-equity-in-federal-contracting/>.

28 See <https://www.worldbank.org/en/topic/gender/overview>.

29 Goldstein, M., Martinez, P.G., and Papineni, S. (2019). *Tackling the Global Profitarchy Gender and the Choice of Business Sector*. Policy Research Working Paper 8865. Washington, DC: World Bank. <https://openknowledge.worldbank.org/server/api/core/bitstreams/cdec052-b862-5b52-89b0-5650074e9a89/content>.

30 Tang, L., Sohail, S., Shorthouse, E., Sullivan, L., and Williams, M. (2022). 'Put Gender on the Tender in Australian Public Projects.' *World* (3), pp. 681–691. <https://www.mdpi.com/2673-4060/3/3/38/pdf>.

31 Navarro-Astor, E., Román-Onsalo, M. and Infante-Perea, M. (2017). 'Women's Career Development in the Construction Industry Across 15 Years: Main Barriers.' *Journal of Engineering, Design and Technology*, 15(2), pp. 199–221. <https://doi.org/10.1108/JEDT-07-2016-0046>.

32 Aboagye-Nimo, E., Wood, H., and Collison, J. (2019). 'Complexity of Women's Modern-Day Challenges in Construction.' *Engineering, Construction and Architectural Management*. 26(11).

33 Carnemolla, P., and Galea, N. (2021). 'Why Australian Female High School Students Do Not Choose Construction as a Career: A Qualitative Investigation into Value Beliefs about the Construction Industry.' *Journal of Engineering Education*, 110(4), pp. 819–839. <https://doi.org/10.1002/je.20428>.

34 Australian Government (2021). Workplace Gender Equality Agency. Workplace Gender Equality Procurement Principals. <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles#:~:text=A%20new%20focus%20on%20gender,through%20the%20development%20of%20benchmarks>.

35 As of January 2021, about 100 organizations had achieved this certification in sectors including cleaning services, security services, banking, consultancy, pharmacies and medical supplies.

36 See <https://www.worldbank.org/en/topic/gender/overview>.

Initiatives have also been directed at promoting women's economic empowerment within the top management of businesses. India issued the Companies Bill in 2013, which requires public companies to have at least one woman as a director. Malaysia adopted a policy in 2011 for businesses with more than 250 employees to have boards that are at least 30% women by 2016.³⁷

As more databases and networks are established of businesswomen, women's-owned businesses and companies implementing gender-equality policies,³⁸ contracting entities can more easily identify and verify qualified women-owned firms and businesses that implement gender-equality requirements. Data needed to support these initiatives include:

- In which sectors are women-owned/led businesses predominately operating (e.g. healthcare, education and hospitality services)?
- What type of suppliers do women and men tend to run?
 - large/medium-sized/small/micro
 - formal/informal
 - location, for example, rural/urban
 - years in operation
 - management structure
 - legal form, for example, incorporated/unincorporated
- What information exists on the nonmarket workloads of men and women and their implications for economic and business activity?
- Are women and men located in different parts of the economy, e.g. supply chain?
- Which suppliers are successfully incorporating gender-equality standards?

Box 1: Channels through which government procurement can promote gender equality

In principle, government procurement can contribute to greater gender equality via these channels:

- Public provision and consumption. For example:
 - ensuring effective and equitable delivery of healthcare, sanitation and other infrastructural services, with emphasis on services that are of particular value to disadvantaged women and by using competitive tender procedures to ensure accountability and taxpayer value for money;
 - simplifying and making more accessible tender procedures and measures to support and encourage women-owned or women-led businesses/SMEs;
 - greater engagement with women as consumers of public goods and services to promote gender-responsive procurement.
- Employment. For example:
 - hiring more women in government contracting entities;
 - promoting gender equality in contracting authorities and agencies, through training and capacity building, to embed gender-equality principles in the workplace and in government tendering;
 - improving knowledge of government procurement and tendering procedures among women-owned/led businesses and women-owned SMEs, including capacity building and technical assistance to enable more small women-owned firms to tender for government contracts;
 - diversifying sourcing of suppliers in favour of women-owned/led businesses and companies with a good track record in hiring women.

³⁷ See <https://www.spglobal.com/esg/csa/yearbook/articles/gender-equality-workplace-going-beyond-women-on-the-board>.

³⁸ See, for example, www.shetrades.com/#/?lan=en.

Chapter 2

Do procurement talks adequately recognize gender issues?

The WTO Informal Working Group on Trade and Gender, which covers the multilateral agreements, does not discuss government procurement issues. This is because the GPA 2012 is a plurilateral and not a multilateral accord. Government procurement is excluded from the coverage of the General Agreement on Tariffs and Trade 1947 (GATT) pursuant to the GATT Article III:8(a) derogation.³⁹ The plurilateral Procurement Code negotiated under GATT was succeeded by the WTO GPA 1996 and revised in 2012.

In 2022, the GPA 2012 parties included 48 predominantly developed economy WTO Members, including the European Union (EU) and its 27 member states. Another 36 WTO members are observers to the agreement.⁴⁰ The WTO Committee on Government Procurement (CGP) administers the GPA 2012, supported by the WTO Secretariat, and the GPA 2012 is enforceable through the WTO Dispute Settlement Understanding.

How to strengthen the gender lens in policy design and application?

Each acceding party to the GPA 2021 negotiates the coverage of government procurement agreements along four basic parameters:

- **the threshold values** above which the agreement covers procurement activities.
- **the identity of the contracting authority or entity** covering only those listed by each party in its annexes (divided into three categories: central government entities, subcentral government entities and other entities).
- **the type of goods, services and construction services** covered.
- **exceptions** to the above coverage.

For the Appendix 1 procurement that the GPA 2012 'covers', Article IV non-discrimination obligations seek to promote transparency, competition and procedural fairness in government procurement markets. They do this by prohibiting discrimination in favour of domestic suppliers. This implies that for any Appendix 1 government tender covered by the agreement, not specifically exempted and valued above a specific threshold, policies that discriminate in favour of domestic businesses are not permitted.

Under GPA 2012 Article III, however, general exceptions there are permitted exemptions from these obligations for certain procurements. The provision states that nothing in the agreement prevents any party from imposing or enforcing measures necessary to pursue security and public policy objectives, such as health, disability and prison labour.

To date, the few disputes falling under the GPA 2012 offer little guidance on implementing gender-equality policies.⁴¹ This is partly because the vast majority of disputes concern the tendering of individual contracts and are heard at the national level in the domestic review mechanism that is required under Article XVIII GPA 2012.⁴²

While not challenged under the GPA, some relevant issues have emerged in the Canada-Renewable Energy,⁴³ Solar Cells⁴⁴ and Turkey – Pharmaceutical Products⁴⁵ disputes. In these cases, the GPA 2012 did not cover the challenged procurement measures, which sought exclusion from the scope of GATT Article III non-discrimination obligations by virtue of the Article III.8(a) derogation.

However, GATT Article III:8(a) only provides for a carve-out from Article III obligations for specific types of measures governing the procurement of products. The procurement must be 'products purchased

39 'The provisions of GATT Article III.8(a) shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.'

40 Eleven observers are in the process of acceding to the agreement. See www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

41 1997, United States – Measures Affecting Government Procurement; 1998, DS73: Japan – Procurement of a Navigation Satellite; DS88 – DS95: 1999 DS163: Korea – Measures affecting Government Procurement (procurement practices of the Korean Airport Construction Authority).

42 Article XVIII – Domestic Review Procedures. Each party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure.

43 DS412: Canada – Certain Measures Affecting the Renewable Energy Generation Sector www.wto.org/english/tratop_e/dispu_e/cases_e/ds412_e.htm.

44 India – Certain Measures Relating to Solar Cells and Solar Modules. Appellate Body Report and Panel Report. WT/DS456/AB/R.

45 Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products (DS583).



for governmental purposes’ and ‘not with a view to commercial resale or with a view to use in the production of goods for commercial sale’.⁴⁶

Moreover, these elements are cumulative in nature, and a measure that fails to meet one of these requirements will not be exempted from Article III:4 or Article 2:1 of the Trade Related Investment Measures Agreement.⁴⁷ The Agreement on Subsidies and Countervailing Measures also addresses distortions that government purchasing rules and practices generate in the market. These disputes underscore the need to carefully consider any domestic set-aside or price preference measure in light of existing non-discrimination commitments under WTO agreements, in addition to the GPA 2012.

Notwithstanding this, GPA signatory parties apply domestic policies to promote women’s economic empowerment through government procurement policies along the following GPA 2012 parameters:

Thresholds

The GPA 2012 only applies to covered procurement contracts of a minimum estimated value that equals or exceeds certain specified financial value thresholds.⁴⁸ Table 1 indicates the thresholds that have been negotiated by most parties to the GPA 2012. While goods and services thresholds range from 130,000 special drawing rights (SDRs) to 400,000 SDRs depending on the type of contracting authority or entity, the construction services thresholds are set at 5 million SDRs.⁴⁹

Table 1 Value thresholds applied by most WTO GPA parties

Party	ANNEX 1 (Central government entities)		ANNEX 2 (Subcentral government entities)		ANNEX 3	
	Goods and services	Construction services	Goods and services	Construction services	Goods and services	Construction services
Thresholds applied by most parties	130,000	5,000,000	200,000	5,000,000	400,000	5,000,000

Note: Thresholds are shown as SDRs.

Source: https://www.wto.org/english/tratop_e/gproc_e/thresh_e.htm.

46 Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products Arbitration Award WT/DS583/ARB25 para 6.31.

47 DS412: Canada – Certain Measures Affecting the Renewable Energy Generation Sector para 5.57, 5.69 and 5.74.

48 These thresholds, in International Monetary Fund SDRs, are set out in each party’s annexes to Appendix I to the WTO GPA.

49 SDRs are based on a basket of international currencies comprising the US dollar, Japanese yen, euro, pound sterling and Chinese renminbi. In July 2022, \$1 SDR was valued at US\$0.76.

Government procurement contracts valued at less than the specified threshold need not observe GPA 2012 commitments. Parties to the agreement have adopted various domestic measures to promote women's economic empowerment in tenders valued below these thresholds.

For example, in Spain, which is a party to the GPA through its EU membership, for those tenders valued below the GPA 2012 thresholds, Article 71(d) of Law 9/2017 on public sector contracts sets out an exclusion criterion based on gender discrimination. To qualify to tender, companies with more than 250 employees must have an equality plan, which is in accordance with the provisions of Article 45 of Organic Law 3/2007, of 22 March 2007, on equality between women and men.⁵⁰

Similarly in Italy, for below-threshold tenders, Article 41 of the code of equal opportunities between men and women sets out a clause that offers the possibility to exclude an economic operator from public contracts for up to two years if discrimination is discovered.⁵¹ This is relevant because small firms and microenterprises with limited capacity are less likely to be attracted to bigger contracts. Contracts are often too large for a small company and data suggest that women-owned/led businesses are more likely to be micro, small or medium-sized firms.

The GPA parties also encourage domestic contracting authorities and entities to split tenders by dividing large GPA-covered contracts into multiple or smaller lots to be more relevant and attractive to small women-owned firms or women-owned SMEs. Under GPA 2012 Article II rules, it is necessary when lots are split to stipulate that those contracts must not be artificially divided with the aim of avoiding the application of relevant government procurement rules.

In the European Union, lot splitting is strongly encouraged under the 2014 Public Sector Directive as one of the measures intended to facilitate SME participation in government procurement.⁵² The EU approach includes a 'divide or explain' principle, whereby contracting authorities and entities must

provide in writing the main reasons for their decision not to subdivide into lots.⁵³

Subcontracting is another tool that some GPA 2012 parties use to encourage SME participation in large-value government procurement contracts that are too big for them to perform alone. Under the Small Business Subcontracting Program in the United States, suppliers for all tenders that exceed the simplified acquisition threshold should give small firms the maximum practicable opportunity to participate in tendering, specifying various types of small businesses, including those owned by women.

For tenders expected to exceed \$650,000 that contain subcontracting opportunities, the successful supplier must submit a detailed subcontracting plan that includes the separate percentage revenue goals to be awarded to different small firms, including women-owned small business concerns as subcontractor. Failure to submit the plan renders the supplier ineligible for award.

A supplier or subcontractor that fails to comply in good faith with the requirements of the subcontracting plan is considered to be in material breach of its contract. However, the requirement for a subcontracting plan does not apply when the selected supplier is itself a small business.⁵⁴ The Strengthening Subcontracting for Small Businesses Act of 2022 requires the federal government to consider prior compliance with a subcontracting plan when evaluating a supplier's past performance.⁵⁵

Negotiating above-threshold coverage of the GPA 2012

When seeking to negotiate accession to the GPA 2012, the coverage of the agreement will set out the scope of application of the commitments for tenders valued above the negotiated thresholds. For example, under the GPA 2012, the United States' negotiated coverage includes 37 of the 50 states and explicitly excludes certain goods and services from individual government entities. US Department of Defense contracts for textiles, clothing, buses, ships and shipping equipment are excluded from the agreement.⁵⁶

50 See <https://eige.europa.eu/gender-mainstreaming/toolkits/grpp/exclusion-grounds>.

51 *Ibid.*

52 Article 46 and Recitals 78 and 79 oblige contracting authorities to consider at the planning stage whether to divide a contract into lots. Article 46(1) provides that contracting authorities are free to decide whether to divide a contract into lots. Where a contracting authority decides to divide a contract into lots, it is free to determine the size of the lots and the object of the contracts.

53 Recital 78 includes some examples of when it may be inappropriate to divide a contract into smaller lots, such as if it i) results in excessive technical difficulties or ii) creates disproportionate expenses and risks undermining the proper execution of the contract, as a result of the need to coordinate the different contractors for the lots.

54 See <https://www.acquisition.gov/far/subpart-19.7>.

55 HR 7694, the Strengthening Subcontracting for Small Businesses Act of 2022.

56 See <https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=1&ContentCulture=en>.

In exceptional circumstances, and following lengthy negotiations, the general notes to the annexes have been used to further calibrate market access commitments to allow for domestic policy objectives. The United States has included (under Annex 7) general notes stipulating that the agreement 'does not apply to any set-aside on behalf of a small- or minority-owned business. A set-aside may include any form of preference, such as the exclusive right to provide a good or service, or any price preference'. Australia has negotiated a similar exception in its general notes.⁵⁷

SME- and minority-owned business set-asides are used in the United States to target and promote small, women-owned firms in government procurement tendering. US federal law requires government agencies to award a minimum of 23% of all contracts annually to small companies. The Department of Defense, for example, says it awarded \$80 billion of contracts to small firms in 2020, with 45% of those dollars going to disadvantaged and women-owned businesses.⁵⁸

It is extremely challenging for governments to renegotiate their coverage after they complete their negotiations and accede to the GPA 2012. Modifications or rectifications to any party's market access coverage must be notified, and any objecting party may ultimately withdraw substantially equivalent coverage in response.⁵⁹

Supplier qualifications and award criteria

GPA 2012 Article VIII.4 Conditions for Participation provides for the possibility to exclude suppliers when there is evidence on grounds such as: a) bankruptcy; b) false declarations; c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts; d) final judgements in respect of serious crimes or other serious offences; e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier or f) failure to pay taxes.

The use of the words 'such as' indicates that the list is not exhaustive, but illustrative and may be expanded. As such, the concept of e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier could be interpreted to include failure to implement domestic laws and/or international

principles promoting gender equality and social inclusion.

GPA 2012 parties have incorporated gender-equality considerations into the domestic government procurement laws through the supplier qualifications and award criteria. In Switzerland, the Federal Act on Public Procurement requires, under Article 12, that contracts for goods, works and services can only be given to tenderers that comply with the workplace health and safety regulations and the terms and conditions of employment applicable at the place of performance, in accordance with the Federal Act on Measures to Combat Illegal Employment and provisions on the equal treatment of men and women in terms of equal pay.

For those tenders to be performed abroad, suppliers must apply health, labour and environmental standards including the provisions on the equal treatment of men and women in terms of equal pay and core International Labour Organization (ILO) conventions, including Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value and Convention No. 111 concerning Discrimination in Respect of Employment and Occupation. These obligations must also be included in the contracts between tenderers and subcontractors.

The authorities and supervisory bodies responsible for ensuring compliance with these requirements report to the contracting authority or entity on the results and on any measures taken.⁶⁰

Under GPA 2012 Article XV:5, contracting authorities and entities can award a tender to the supplier that has submitted either the most advantageous tender or, where price is the sole criterion, the lowest price. Using the lowest price criterion is unlikely to promote women-owned firms, as they are largely in the micro and small business category with fewer economies of scale or financial resources to offer the lowest price.

GPA 2012 parties have used the most advantageous tender criterion to incorporate socioeconomic considerations. An illustrative list of acceptable award criteria to be set out in the notice of intended tender documentation is found under GPA 2012 Article X:9, which says acceptable award criteria may include price and other cost factors, quality, technical merit,

57 See <https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=Australia&AnnexNo=7&ContentCulture=en&AdvancedSearch=False>.

58 See <https://www.defense.gov/News/News-Stories/Article/Article/2810965/why-small-businesses-are-essential-to-us-national-security/>.

59 WTO Article XIX Modifications and Rectifications to Coverage, para 6 Withdrawal of Substantially Equivalent Coverage.

60 See [www.bkb.admin.ch/dam/bkb/it/dokumente/Oeffentliches_Beschaffungswesen/Revision_Beschaffungsrecht/Federal%20Act%20on%20Public%20Procurement%20\(PPA\).pdf.download.pdf/Federal%20Act%20on%20Public%20Procurement%20\(PPA\).pdf](http://www.bkb.admin.ch/dam/bkb/it/dokumente/Oeffentliches_Beschaffungswesen/Revision_Beschaffungsrecht/Federal%20Act%20on%20Public%20Procurement%20(PPA).pdf.download.pdf/Federal%20Act%20on%20Public%20Procurement%20(PPA).pdf).

environmental characteristics and terms of delivery. This could potentially include gender equality criteria.

In some jurisdictions, such as the European Union and the United Kingdom, it is held that these considerations need to be linked to the subject matter of the contract. This means the award criteria cannot relate to general corporate policies or practices, but must be specific to the goods, services or works being purchased under the contract.

For example, it would be possible to have a criterion that specifically concerns gender equality in recruitment and staffing for the purposes of the contract being awarded. It is not possible to award more marks to a company on the basis of its overall gender balance, as this would go beyond what is relevant to the contract.

Since 2021, the United Kingdom has taken the most advantageous tender approach to require its central government agencies to expressly evaluate key environmental, social and governance-related factors in their procurement exercises. This model requires a 10% minimum weighting to be given to environmental, social and governance-related goals in each procurement, with a higher weighting if justified. This gives firms an incentive to incorporate factors such as women's economic empowerment into their business operations.

Award criteria must be linked to the subject matter of the contract to ensure that SMEs are not disadvantaged by the imposition of any requirements that are disproportionate and are not relevant or linked to the works, services or supplies actually being procured.⁶¹ A legal requirement for suppliers to publish their annual gender pay data online is also directed at companies with 250 employees or more.⁶²

There may be constraints to promoting women's economic empowerment policies if the award criteria must be linked to the contract. A direct link between gender requirements and the subject matter of the contract is not always obvious, particularly in the supply chain, which could detract from promoting these equality objectives. Of relevance here is the WTO GPA 2012 Article VIII.1, which seeks to ensure that procuring entities limit conditions for participation to those that are essential to 'ensure that a supplier has the legal and financial capacities and the commercial and technical ability to undertake the relevant procurement'.⁶³

Special and differential treatment

The GPA 2012 Preamble recitals recognize the need to take into account the development, financial and trade needs of developing countries, especially LDCs. Accordingly, Article V focuses on supporting the negotiations of these countries on GPA 2012 accession and on the implementation and administration of the agreement. Article V.1 says the parties shall accord special and differential treatment (SDT) to LDCs. They will also accord SDT to any other developing economy, where and to the extent that this treatment meets its development needs.

Least developed and other developing countries contemplating accession to the GPA 2012 can seek to negotiate transitional SDT measures to protect and promote domestic women's economic empowerment policies through government procurement contracting in the form of (i) a price preference programme; (ii) a set-aside; (iii) the phased-in addition of specific entities and sectors; and (iv) a threshold that is higher than the permanent threshold. All such transitional measures can be extended by decision of the committee, and new measures can be authorized in special circumstances.

Under the GPA SDT provisions, all transitional measures are tailor-made through negotiation by the individual developing country during the accession process, based on its developmental needs. The GPA parties negotiating these provisions seek to maintain a suitable balance of their opportunities. As a result, unlike other SDT provisions, the GPA 2012 requires more bespoke outcomes, with a roadmap for development and graduation away from SDT within the negotiated deadlines.

This means that before entering into accessions, acceding governments should amass sufficient viable data and information to support a negotiating strategy that effectively promotes domestic gender-equality objectives. The SDT measures are designed to be temporary or transitional; acceding governments need to know which are the most important and valuable to prioritize women's economic empowerment policies with suitable timeframes and use other permanent complementary domestic interventions as necessary.

⁶¹ See <https://www.weightmans.com/insights/evaluating-environmental-social-and-governance-esg-factors-in-public-procurement/>.

⁶² UK Government Commercial Function (3 December 2020). The Government Social Value Model. Edition 1.1.

⁶³ See Article VIII of the Agreement on Government Procurement at https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm#articleVIII.



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Negotiating government procurement chapters in RTAs

The number of regional trade agreements (RTAs) with explicit gender-related provisions has been increasing. By 2022, the WTO reported that more than 300 gender provisions were included in upwards of 100 RTAs currently in force and notified to the WTO by its Members.⁶⁴

The parties to several RTAs have also subsequently adopted specific declarations, directives, resolutions or agreements on gender or established gender-related institutions. For example, the parties to the Southern Common Market, known as Mercosur, have issued several recommendations, resolutions and decisions on gender-related issues, including the creation of a 'specialized meeting of women', gender-equality policy guidelines and recommendations and resolutions on international trafficking and domestic violence.⁶⁵

Canada's Gender-Based Analysis Plus (GBA+) approach examines ex-ante and ex-post distributional effects of trade agreements to make them more inclusive and has been applied by Mercosur to develop further gender-responsiveness.⁶⁶

The government procurement chapters in RTAs to which the United States is a party – including with Chile, Colombia, Central America and the Dominican Republic, Morocco, Panama and Peru – contain references to women's economic empowerment. These agreements explicitly specify in their annex setting out the coverage of the government procurement chapter that the agreements' rules do not apply to preferences or restrictions associated with programmes promoting the development of distressed areas, or businesses owned by minorities, disabled veterans or women.

Governments seeking to negotiate new government procurement chapters in RTAs could include explicit gender-equality language and commitments to promote women's economic empowerment, such as in the United Kingdom–New Zealand government procurement chapter. Here under Article 16.22, the Government Procurement Working Group⁶⁷ shall address matters related to the implementation and operation of this chapter, such as the 'facilitation of participation by women in government procurement to the extent possible, acknowledging the objectives set out under Chapter 25 on Trade and Gender Equality'.⁶⁸

64 See https://www.wto.org/english/news_e/news22_e/women_28jul22_e.htm.

65 See Monteiro, José-Antonio (2018). Gender-Related Provisions in Regional Trade Agreements. WTO Staff Working Paper ERSD-2018-15, p. 15.

66 See <https://women-gender-equality.canada.ca/en/gender-based-analysis-plus.html>.

67 The Government Procurement Working Group established under Article 30.10 Working Groups Institutional Provisions.

68 Article 16.22 (e).

In Chapter 25, the parties affirm their intention to apply the provisions of the agreement in a manner that advances women's economic empowerment and promotes gender equality. It notes that other chapters of the agreement also contain articles that seek explicitly to support this objective, including the Article 16.22 Working Group on Government Procurement.

Regional procurement agreements can promote domestic measures to ensure that women – especially less advantaged women – also benefit from trade liberalization. If the government procurement negotiations form part of a broader trade agreement, various options can be considered.

Alongside integrating gender-related provisions into the government procurement chapter, a specific chapter can be incorporated in the RTA with different articles addressing exclusively gender following the approach in the United Kingdom–New Zealand RTA. Next to the main text of the RTA, gender-related provisions can also be included in annexes or side agreements negotiated in parallel to the RTA or at a later date.

However, the effectiveness of these provisions may depend on whether they are enforceable by a dispute settlement body. The Canada–Chile RTA contains Appendix II – Chapter N bis-06 Trade and Gender, which reaffirms gender-equality objectives and international conventions, sets out cooperation activities and establishes a trade and gender committee. In the event of non-compliance, a party cannot avail itself of the agreement's dispute resolution mechanism to enforce these provisions.⁶⁹

With this caveat in mind, future government procurement agreements in RTAs could further promote gender-equality principles in the following areas:

Preamble recitals

Although preamble recitals are non-binding, they provide the context for interpreting the agreement and may be referred to in settling disputes. Depending on the domestic laws of the parties, the preamble recitals of procurement agreements could, for example:

- Recognize the importance of equality between men and women when formulating, implementing and reviewing measures in the field of government procurement.⁷⁰

- Reaffirm commitment to effectively implement the obligations under the *Convention on the Elimination of all Forms of Discrimination Against Women*, adopted by the United Nations General Assembly on 18 December 1979.
- Reaffirm commitment to implement the obligations under other international agreements addressing gender equality or women's rights to which it is a party.

Where applicable domestically, other relevant conventions to reference and endorse in preamble recitals include the following:

- United Nations Guiding Principles for Business and Human Rights – 2011.
- Declaration of the Elimination of Violence against Women – 1993.
- United Nations Beijing Declaration and Platform for Action – 1995.
- Women's Empowerment Principles – 2010.
- Sustainable Development Goals, particularly SDG 5 To achieve gender equality and empower all women and girls.
- UNECE Declaration for Gender-Responsive Standards and Standards Development – 2019.
- Gender Lens to the United Nations Guiding Principles on Business and Human Rights – 2019.
- OECD Due Diligence Guidance for Responsible Business Conduct.
- ILO C111 – Discrimination (Employment and Occupation) Convention – 1958.
- ILO C100 – Equal Remuneration Convention – 1951.
- ILO C156 – Workers with Family Responsibilities Convention – 1981.
- ILO R165 – Workers with Family Responsibilities Recommendation – 1981.
- ILO C183 – Maternity Protection Convention – 2000.
- ILO C190 – Violence and Harassment Convention, 2019.

⁶⁹ Article N bis-06: Non-application of Dispute Resolution.

⁷⁰ Based on Dutch model bilateral investment treaty preamble language.

Coverage of non-discrimination obligations

Government procurement coverage negotiations aim to create reciprocity in the value of market access provided by the negotiating parties. Within this framework, acceding parties can negotiate in accordance with their existing international commitments, clearer and more targeted exceptions from the coverage of the agreement for women-owned businesses.

A successful gender-responsive negotiating strategy is based on relevant data and assessments of the impact of government procurement market liberalization on women and women-owned firms. This will allow for careful calibration of the value thresholds and the market access schedules for different purchasing entities, goods, services and construction works. Where advisable, this may include considering explicit set-asides to promote women-owned businesses.

RTAs should reference applicable equality legislation, encouraging capacity building, support and technical assistance targeting sectors where women-owned/led firms may have potential to perform government contracts, such as education, healthcare and hospitality, as well as where more women could and should be represented as employees, such as construction.

Qualification and exclusion grounds

To promote women's economic empowerment objectives, the illustrative list of exclusions of the RTA's procurement chapter could indicate the possibility to exclude a supplier from a procurement on grounds such as non-compliance with gender-equality laws and women's economic empowerment principles, in accordance with already applicable legal frameworks and existing international commitments.

Evaluation criteria

Governments should encourage contracting authorities and entities to use the most advantageous tender criteria to evaluate a tender, taking social considerations into account, as appropriate.

Institutional bodies

When establishing working groups, a fair representation of women should be encouraged to address matters related to the implementation and operation of the agreement and specifically the chapter on government procurement. Matters for examination could explicitly incorporate the facilitation of participation by women in government procurement to the greatest extent possible.

Dispute settlement

Consideration can be given to whether, in the event of non-compliance with the gender-related provisions of the agreement, including the government procurement chapter, a party can avail of the RTA's dispute resolution mechanism to enforce these provisions.

Chapter 3

Strengthening the gender lens for the WTO GPA 2012

How to grasp the potential gender effects of the GPA?

The GPA 2012 is premised on the belief in the potential trade gains to be garnered based on legally assured competitive access to the covered foreign procurement markets, as well as the contributions that a transparent, competitive and predictable government procurement regime makes to good governance in the procurement sector.

From the outset, promoting good governance and greater competition for public tenders under the GPA 2012 should benefit women as consumers of public goods and services, as well as women-owned/led businesses and women employed in firms seeking to access a transparent, fair and competitive procurement market.

Article XXI of the GPA 2012 creates a Committee on Government Procurement composed of government representatives chosen by each government that is a party to the agreement. The CGP could seek to adopt a policy on chair selection to include gender balance as a criterion to the greatest extent possible.

Encouraging alliances between trade officials of GPA signatory parties and with the WTO Informal Working Group on Trade and Gender could also help to push forward a women's economic empowerment agenda within the CGP and the GPA work programmes and among trade officials. Such efforts should aim to develop understanding of negative or positive gender effects of the agreement and appropriate responses.

The CGP could set up a working group or body on gender and procurement that could draft an advisory note on the promotion of women's economic empowerment through government procurement contracting under the GPA 2012. Additionally, through the outputs of this group, gender considerations can be discussed by existing working groups and in talks facilitated among the GPA parties to gain further understanding.

Negotiations to revise the GPA 2012 resulted in the adoption of a package of work programmes. Where

operational, some of these programmes could be directed towards examining issues of explicit relevance to the promotion and mainstreaming of gender equality through government procurement contracting.

The SME work programme could incorporate a distinct analysis of women-owned SMEs, their experience of tendering, their participation in different tiers of significant supply chains and gendered market segmentation.

The Sustainable Procurement work programme could include a specific analysis of gender-responsive procurement practices in line with United Nations Sustainable Development Goal 5 to 'achieve gender equality and empower all women and girls'.

The Data Collection and Statistical Reporting work programme could develop a robust methodology for parties to carry out impact assessments on gendered lines and gather gender-disaggregated data about women-owned/led businesses in different tiers of the supply chain, unsuccessful bidders, subcontracting to women-owned/led firms and women-owned/led businesses involved in joint tendering. It could seek data to monitor gender equity in access to public services, such as health, education, transportation and other public infrastructure.

Ensure consistency between WTO rules and gender-equality policies

For parties to the GPA 2012, tenders exceeding the valued thresholds and listed in each country's annexes are subject to the general non-discrimination, transparent tendering and due process requirements set out under the agreement. This means set-asides or price preferences on covered procurement agreements that have not been agreed may be challenged as inconsistent with the GPA 2012.

GPA 2012 parties have included domestic technical assistance and capacity building that can target potential women-owned/led suppliers. This can support business development and help them participate competitively in these markets. Subject to the valuation criteria set out under Article II:6(a),⁷¹ measures that encourage

⁷¹ Article II:6 states in relevant part: 'In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall: a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement.'



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splitting contracts into lots and aggregation, along with subcontracting requirements for those targeted contracts, are also consistent with the GPA 2012.

Furthermore, GPA parties can promote women's economic empowerment by using the most advantageous tender framework under the agreement. This means that procuring entities may include gender equality and other social inclusion/sustainable development conditions in the procurement evaluation criteria. To date, as discussed above, these requirements have been linked to the subject matter of the specific contract.

For countries eligible for SDT, negotiators can seek technical assistance to build gender-responsive negotiating strength and identify gender-sensitive markets, supply chains and the gendered segmentation of the domestic economy. These can then be analysed to see how market liberalization will affect them. Realistic transitional measures can also be negotiated for implementing the obligations and thresholds. These should be carefully targeted and monitored to ensure appropriate exceptions from the coverage of the agreement.

Ensure GPA negotiating processes represent women's interests

Governments should set best practice by including a fair representation of women and gender expertise in the negotiating process. Negotiating an agreement

to reflect gender concerns that support domestic efforts requires a whole-of-government approach and stakeholder consultation involving representatives from government ministries of trade and industry, women's affairs and equality; the business sector including women entrepreneurs and women-owned business representatives, legal affairs, trade unions, women's consumer groups and other civil society bodies.

The negotiating strategy should seek to incorporate further considerations of gender-equality commitments in the coverage as well as the text of the agreement, including preamble recitals, award criteria and in training and capacity building. This should inform the basis of the negotiating agenda and introduce women's economic empowerment provisions into the main discussion from the outset rather than as an afterthought.

The GPA 2012 parties' institutional bodies could also encourage to the fullest extent possible a fair representation of women internally in their committees, working groups and the parties' implementing bodies. Intergovernmental coordination through a working group on gender and procurement could draw on gender experts from economics, law, and human rights as well as women's business associations, cooperatives and non-governmental organizations in an advisory capacity.

Such an initiative could usefully promote greater communication and cooperation with the WTO Informal Working Group on Trade and Gender. This could allow for the development and dissemination of

robust methodologies for gender-disaggregated data collection, impact assessments and market research. It could also help identify further synergies across the gender and trade and gender and government procurement negotiating process.

Implement and monitor agreements in gender-sensitive ways

Trade agreements can set up committees on government procurement and women's empowerment to oversee the implementation and monitoring of the agreement and report among the parties on its impact on gender equity. These committees can both review and report on the implementation of gender provisions, and also undertake cooperation activities.

They can invite international donor institutions, private-sector entities and non-governmental organizations to help develop and carry out cooperation activities; exchange information and experience on integrating the gender perspective in national policies and applying gender-equality policies; and discuss matters related to the gender chapter's interpretation.

As noted, the CGP could encourage the representation of women from among the signatory parties and establish a gender and procurement work programme and working group to ensure effective gender representation across GPA work programmes and in domestic government procurement processes and procedures. This work programme could communicate and cooperate with the WTO Informal Working Group on Trade and Gender. This would prevent duplicating and competing work silos developing on overlapping issues, and also allow for a more coherent and comprehensive approach to negotiation and implementation.

Creating strong communication channels between trade officials from the GPA parties and their domestic constituencies will facilitate more coherent approaches to mobilize and implement women's economic empowerment policies across a whole-of-government approach, including stakeholder consultations. This prevents gaps, inconsistencies and incoherent policy design and implementation at the domestic and international levels.

Strengthen the gender-responsiveness of Aid for Trade initiatives

Aid for Trade initiatives can distinguish between the supply and demand factors related to increasing gender equality in government procurement markets in the design and implementation of their programmes.

Demand-led Aid for Trade initiatives could usefully do the following:

- Provide further training and professionalization of government procurement agents that mainstreams women's economic empowerment considerations.
- Build the capacity of women procurement officers to take on managerial positions. This would mean greater women's representation in the life cycle of procurement contracts and deliver effective gender-equality training within the procuring entities. This would improve the gender-responsiveness of policies for the provision of public goods, services and construction.
- Give procuring entities capacity-building and data analysis training for collecting and disaggregating government procurement data on gender lines (as discussed below) monitoring and inspecting the application of gender-empowerment laws and policies. This can be used to better target women's economic empowerment policies towards specific industries, sectors and tiers in the supply chain.
- Offer technical support to make national procurement laws, regulations and platforms more accessible to SMEs, especially those owned/led by women, and generally supportive of national gender-equality commitments.
- Provide gender-aware negotiating strategies (or equip trade officials in developing countries to design their own) to join the GPA 2012 or to include government procurement chapters in any new RTAs.

Supply-led Aid for Trade programmes can do the following:

- Design and deliver capacity-building programmes for women-owned/led businesses to identify and prepare tenders for government procurement contracts, with a particular focus on e-commerce and the use of e-procurement systems.
- Support women-owned/led businesses to meet the eligibility criteria for the certification and accreditation necessary to tender for government contracts or receive preferences.
- Identify and develop strong communication channels between women-owned/led businesses, women entrepreneurs and procuring entities to exchange information and identify capacity-building needs and implement programmes, including eligible women-owned business databases, pre-contract consultations and certification assistance.

Improve the production and use of gender data and evidence

At the heart of effective gender mainstreaming is the production of robust and relevant data on the economic, social and political challenges facing women seeking to participate in government procurement markets. More robust and comprehensive comparable data are needed on how women employees are benefiting from procurement contracts and on the gender-differentiated effects of public services delivered through procurement contracts.

International standards such as the 2021 ISO IWA 34 on Women's Entrepreneurship address the lack of consistency in the terminology defining and referring to women's businesses.⁷² This initiative can provide for further clarity and harmonization of definitions related to women's entrepreneurship, such as those for women-owned/led businesses as well as women-led cooperatives and women-led informal enterprises. These definitions can then be transposed to international and national government procurement policies and programmes to promote women's economic empowerment.

The ISO IWA 34 on Women's Entrepreneurship can support efforts to collect internationally comparable data by providing the criteria for evaluating important factors related to these definitions, such as ownership, management and control, as well as how to handle dilution by investment.

Using these data will allow for targeted training of government officials, girls and women's education, and scholarship programmes in government procurement tendering, e-procurement and opening up business opportunities to enable more women entrepreneurs and women-owned companies to tender successfully for government contracts and participate more equitably in this business activity.

When negotiating thresholds, it is important to identify those sectors of the economy and tiers of the supply chain in which women-owned businesses are already competitive, or with support could operate more successfully to win public contracts – for example,

education, healthcare and hospitality. This requires good data collection and analysis prior to negotiations.

Government procurement data findings typically reflect only the perspectives of successful bidders. That is, they do not capture SMEs that submitted tenders but were unsuccessful. This should be addressed, with specific reference to women-owned firms with unsuccessful tenders.

Data should also be collected on subcontracting strategies to target policies to increase the number of women-owned/led businesses participating in government contracts. Surveys often do not include questions about subcontractor enterprises. This is information that would likely provide even more insights about SMEs and women-owned/led businesses in government supply chains.

Carrying out gender impact assessments and market research will allow governments to harness the untapped potential of women in the economy, while minimizing the cost to value for money and the overall provision of these important public goods and services. For example, a study in Canada found that most women-owned firms were underrepresented as SME suppliers to government in some sectors. Women-owned SMEs in wholesale and retail and in other services were, all other things being equal, half as likely to be government suppliers as counterpart SMEs owned by men.

On the other hand, there were no significant gender differences in the propensity to supply the federal government among goods producers and for professional, scientific and technical services SMEs.⁷³

For governments to effectively target coverage to promote and protect women-owned/led businesses, they need more comprehensive gender-disaggregated data on those suppliers tendering for government procurement contracts and the gendered segmentation of different tiers of the supply chain in different markets. For example, the World Bank's Corporate Procurement collects gender-disaggregated data for Tier 1 and Tier 2 suppliers. Using these data allowed the bank to more effectively allocate 4.5% of annual procurement spend to women-led SMEs in 2020, with a target of 7% by 2023.⁷⁴

⁷² See International Organization for Standardization (2021), *op.cit.*

⁷³ Orser, B., Liao, X., Riding, A.L., Duong, Q., and Catimel, J. (2021). 'Gender-Responsive Government Procurement: Strategies to Support Women-Owned Enterprises.' *Journal of Public Procurement*, 21(3), pp. 260–284. <https://www.emerald.com/insight/content/doi/10.1108/JOPP-11-2019-0078/full/pdf?title=gender-responsive-public-procurement-strategies-to-support-women-owned-enterprises>.

⁷⁴ See McGann, N.E., and Ali, N.I. (2021). 'Mainstreaming Gender in Public Procurement,' World Bank Blogs. <https://blogs.worldbank.org/governance/mainstreaming-gender-public-procurement>.



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More data must be gathered on the levels of implementation of gender-equality rules and norms in the tendering suppliers and their impacts in improving women's economic empowerment in the workplace and in government procurement contracts. Information is required on the impact and use of exclusions for suppliers from tendering if they do not implement gender-equality laws.

There is also a need to understand the gendered nature of whistleblowing policies and how they can be improved to report on violations and bid-rigging practices that discriminate against women as workers and women-owned/led businesses.

A whole-of-government approach to implementing gender economic empowerment policies must be based on robust gender-disaggregated impact assessments and market data on different tiers of the supply chain in different markets for goods and services. This will allow governments to form a negotiating strategy incorporating their specific domestic gender-equality considerations and policies. This will support consistent policy implementation at the domestic and international level, and also avoid potential disputes arising between the parties and bidders over the application of the agreement.

Box 2: The role of governments

- Using a whole-of-government approach, governments work with stakeholders to harmonize definitions of women-owned businesses and evaluation criteria through initiatives such as the ISO IWA 34 on Women's Entrepreneurship.
- Gender-disaggregated data should be collected on, for example:
 - the type of businesses women and men tend to run;
 - the nonmarket workloads of men and women and their implications for economic and business activity;
 - the location of women and men working in different parts of the supply chain;
 - the types and size of contracts for which women-owned businesses tend to bid, or have the potential to bid, to target support measures effectively;
 - the constraints that women-owned firms face when tendering for government contracts, to target support measures effectively.
- Governments should monitor the levels of implementation of gender-equality rules in the workplace, including contracting authorities and entities.
- Governments should undertake independent gender-impact assessments, cost-benefit analyses of interventions and market research to harness the economic potential of women-owned businesses, while minimizing the cost to competition and value for money in government expenditure.
- Gender-sensitive data can be used to inform the negotiating strategy of acceding parties and enable governments to target women's economic empowerment more effectively through capacity building and technical assistance, along with its promotion in negotiating the coverage of the agreement.

Chapter 4

Recommendations

The WTO Ministerial Conference 2017 Joint Declaration on Trade and Women's Economic Empowerment highlighted the importance of incorporating a gender perspective when promoting inclusive economic growth and underscored that inclusive trade policies can help advance women's economic empowerment, which reduces poverty. The recommendations following from this assessment are made in the context of the WTO's efforts to become more gender-responsive:

- The GPA parties could try to the fullest extent possible to have a fair representation of women on the CGP.
- The CGP could seek to propose, pursuant to Article XX.2, a work programme on gender and procurement to promote understanding and develop the WTO's gender lens. This work programme could monitor and report on domestic gender-related procurement issues and undertake cooperation and capacity-building activities to ensure gender equality in government procurement. A GPA 2012 Work Programme on Gender and Procurement could also seek to coordinate and cooperate with the WTO Informal Working Group on Trade and Gender.
- The GPA parties' procuring entities could consider encouraging the use of the most advantageous tender criteria to evaluate bids and incorporate non-economic criteria related to gender equality and women's economic empowerment, where/if appropriate.
- GPA trade officials could seek to coordinate and cooperate with government ministries, procuring entities and relevant gender experts to support a whole-of-government approach to women's economic empowerment in government procurement and in data collection.
- The GPA parties' procuring agencies and other bodies could consider collecting gender-disaggregated domestic data on both successful and unsuccessful bidders, their markets and supply chains, and subcontractor enterprises to target policies that increase women-owned businesses in government supply chains.

The GPA parties' domestic gender-sensitive impact assessment reports and monitoring tools can help to ensure their public procurement policies are based on robust data, consultations, impact assessments and cost-benefit analyses. This will allow for more

effectively designed and proportionate women's economic empowerment policies involving capacity building, technical assistance or, if compliant, set-asides – without unnecessarily compromising other enduring objectives such as value for money and good governance.

- The GPA parties should seek to ensure ongoing training and professionalization in their domestic procuring agencies to promote gender-sensitive procurement that can better serve women as consumers of public goods and services, as well as suppliers and employees.
- Governments seeking to accede to the GPA 2012 should identify their most gender-sensitive procurement markets to allow for a coherent whole-of-government approach to opening up markets. Domestic support measures such as capacity building, technical assistance and encouraging subcontracting and lot-splitting can increase the ability of women-owned/led businesses to tender successfully for covered contracts.
- LDCs and some developing economies could consider using the flexibilities provided for under SDT. These countries can try to negotiate higher thresholds, carve-outs and transitional measures that target gender-empowerment objectives in the specific markets and sectors of most relevance to women in their country, such as healthcare, education and hospitality services.
- WTO GPA 2012 parties could consider developing draft provisions supporting gender equality in government procurement to negotiate for their future incorporation in a revised WTO GPA or in future RTA procurement chapters. Preamble recitals referencing and endorsing relevant domestic objectives and gender-equality principles can provide context to the objectives of the agreement.

Besides incorporating provisions that support women's economic empowerment objectives, such as in the supplier qualifications and award criteria, provisions promoting small businesses in public procurement markets could also include a specific reference to addressing the needs of women entrepreneurs and women-led SMEs. This would also seek to require that, to the fullest extent possible, there is fair representation of women on institutional bodies and committees.

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