

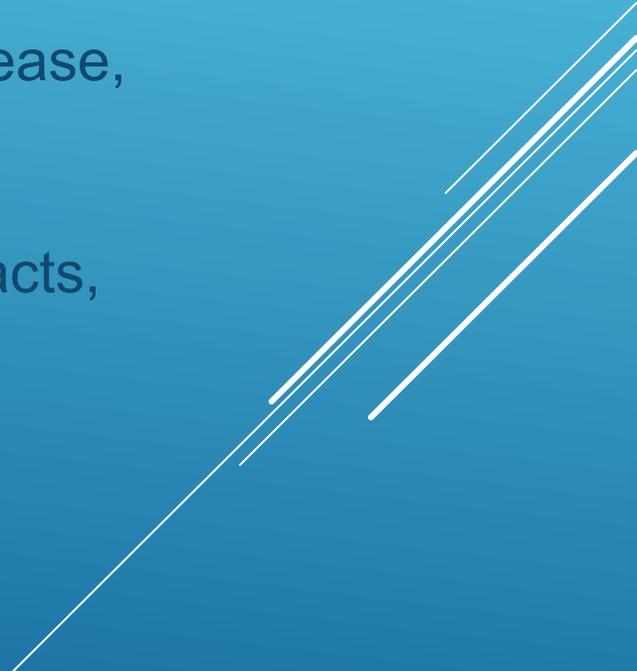
GOVERNMENT PROCUREMENT

Trade vs Socio-Economic Objectives

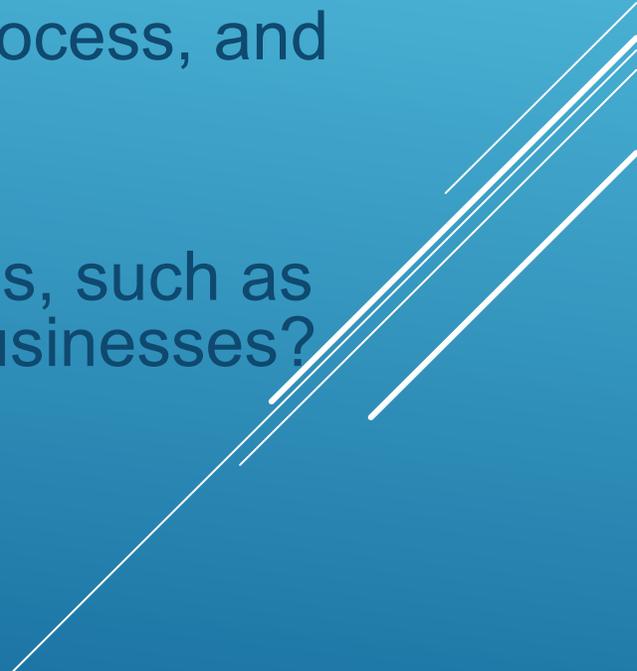
November 26, 2020



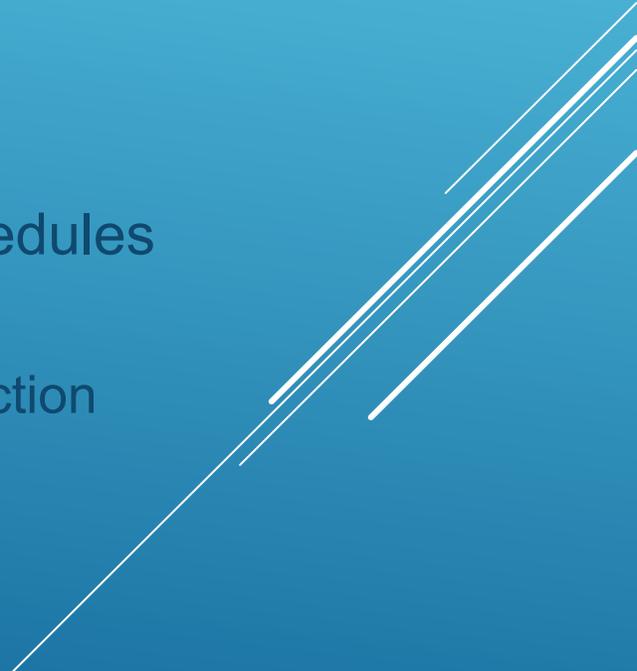
What is Government Procurement in Trade Agreements?

- ▶ Procurement of goods, services and construction services for governmental purposes **not** procured with a view to commercial sale or resale
 - ▶ Procurement by any contractual means, including purchase, lease, or rental with or without option to buy
 - ▶ Procurement does not include a number of government contracts, such as public-employment contracts
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Why is it important to include GP in trade?

- ▶ Promotes transparency, integrity, impartiality and fairness in spending of tax dollars
 - ▶ Promotes competition, predictability of procedural process, and deters corrupt practices
 - ▶ Is it still possible to advance socio-economic priorities, such as green procurement or promote small and minority businesses?
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Structure of Government Procurement in Trade

- ▶ Procedural rules
 - ▶ National treatment and non-discrimination
 - ▶ Prohibition of offsets
 - ▶ Competitive tendering as the norm, with limited exceptions
 - ▶ Domestic review and dispute settlement
 - ▶ Market access commitments divided into country-specific schedules
 - ▶ List of governmental entities
 - ▶ Specified dollar thresholds for covered goods, services, construction
 - ▶ General notes (country-specific exclusions)
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Market Access: Annex 1 Central Entities

- ▶ Positive list of central (federal) departments, agencies, and others
- ▶ Specified monetary threshold for goods, services and construction services that will determine if a procurement by a listed entity will apply
- ▶ CETA:
 - ▶ Goods above SDR 130,000
 - ▶ Services above SDR 130,000
 - ▶ Construction services above SDR 5,000,000

Market Access: Annex 2 Sub-Central Entities

- ▶ Negative or positive list or a combination thereof
 - ▶ In CETA, British Columbia uses a negative list to include all of its provincial government entities, as well as regional, local, district or other forms of municipal government, and, school boards, publicly-funded academic, health and social service entities (MASH)
 - ▶ In GPA, British Columbia uses a negative list for provincial level entities **but does not include the MASH sector**
- ▶ CETA thresholds:
 - ▶ Goods above SDR 200,000
 - ▶ Services above SDR 200,000
 - ▶ Construction services above SDR 5,000,000

Market Access: Annex 3 Other Entities

- ▶ The purpose of this annex is to specify different thresholds for some entities listed in Annexes 1 and 2
- ▶ Other entities are defined by each Party
- ▶ CETA thresholds for Canadian Crown corporations (central and sub-central):
 - ▶ Goods and services above SDR 355,000
 - ▶ Construction services above SDR 5,000,000
- ▶ CETA thresholds for entities that have core activities, such air, marine and rail transportation
 - ▶ Goods and services above SDR 400,000
 - ▶ Construction services above SDR 5,000,000

Market Access: Annexes 4, 5 and 6

- ▶ Annex 4 Goods: negative list, meaning all goods are covered with limited exclusions
 - ▶ EXCEPT purchases by defense and policing entities
 - ▶ Negative list – only those goods listed are covered
 - ▶ Much more limited coverage
 - ▶ Annex 5 Services, positive list most often used
 - ▶ Annex 6 Construction Services, negative list most often used
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Market Access: Country-Specific Exclusions

- ▶ Parties further specify what's not included
- ▶ For example, in CETA Canada does not include any measure adopted or maintained with respect to Aboriginal peoples, nor set-asides for aboriginal businesses; existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada protected under section 35 of the *Constitution Act, 1982*
- ▶ In agreements like the GPA and the CPTPP, there are also reciprocity notes
 - ▶ For example, US uses a negative list for services; however, in its general notes, the US specifies that services is covered with respect to a particular Party only to the extent such Party has included that service

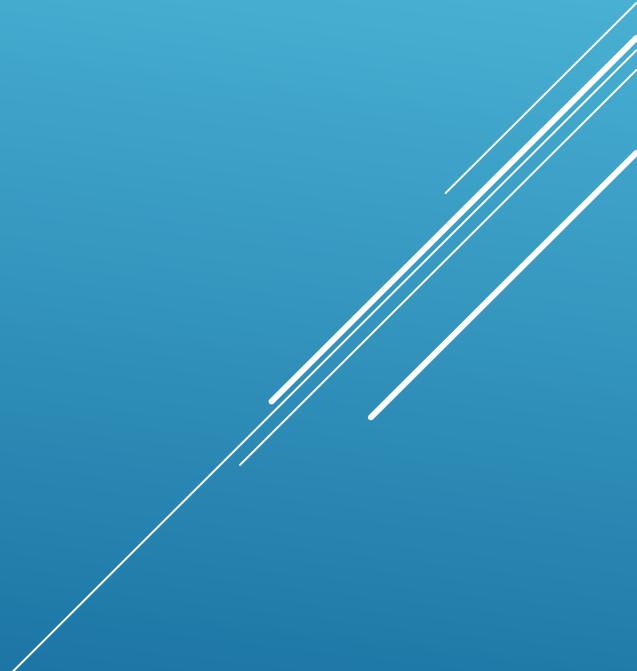
COVID and GP Commitments

- ▶ Public Services and Procurement Canada has new emergency contracting limits to execute an effective and rapid response to the pandemic
- ▶ Until March 31, 2021, emergency contracting limit increased to \$500,000,000 for COVID-19 related procurements
- ▶ Until March 31, 2021, the Minister has been granted and unlimited emergency contracting limit for the research, development, acquisition and deployment of vaccines related to COVID-19
- ▶ Until March 31, 2021, the Minister has been granted the authority to indemnify contractors and transfer risk to the Crown when entering into vaccines-related contracts

Negotiating Dynamics with the US

- ▶ Had NAFTA chapter 10 – no Canada/US GP commitments in CUSMA
- ▶ Had TPP – no US in CPTPP
- ▶ WTO-GPA only agreement with Canada/US commitments

US GPA commitments exclude

- ▶ Buy America funding for mass transit and highway projects
 - ▶ Restrictions attached to Federal funds for airport projects
 - ▶ Buy American waiver on all power generation projects
 - ▶ Set-asides for small and minority businesses
 - ▶ 13 states, plus the 37 states that are covered have BIG exclusions
 - ▶ All entities below the state level (e.g. cities)
 - ▶ And more!
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Conclusion: Why is it Important to include GP in Trade?

- ▶ It does promote transparency, integrity, impartiality and fairness in spending of tax dollars
 - ▶ It does promote competition, predictability of procedural process, and deters corrupt practices
 - ▶ It does offer a complaint mechanism for bidders
 - ▶ Yes, it is possible to advance socio-economic priorities, such as green procurement, and promoting small and minority businesses
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