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Mapping the OECD Government Procurement Taxonomy with International Best Practices

AN IMPLEMENTATION TO ASEAN COUNTRIES

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OECD TRADE AND AGRICULTURE DIRECTORATE

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Mapping the OECD Government Procurement Taxonomy with International Best Practices: An Implementation to ASEAN Countries

Julien Gourdon, OECD

The OECD developed a taxonomy of measures affecting government procurement which provides a classification system for different GP measures, policies and procedures, which can impact cross-border government procurement. This project aims to further assist countries in assessing their procurement regimes by mapping the taxonomy against international good practices. The project maps the taxonomy against both the WTO Government Procurement Agreement and the UNCITRAL Model Law on Public Procurement (2011). It further tests this methodology with data collection in four ASEAN countries (Indonesia, Malaysia, Philippines and Viet Nam).

Key words: Government procurement, regulation, public good, Government Procurement Agreement (GPA), international trade, Asia

JEL Codes: F13, K20, H41, H57, F53, N55.

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Executive Summary

Behind-the-border measures have emerged as an increasingly significant factor in global trade and efforts towards increased economic integration. These measures include the policies maintained by states with the effect of giving preference to domestic firms over foreign firms in government procurement contracts. These policies have caught the attention of trade policy makers and highlighted gaps in the evidence base needed for policy decisions. Information on government procurement (GP) measures at the global level is sparse; in particular, there is a lack of data on the types of discriminatory procurement measures implemented by governments.

To help address this gap, the OECD developed a taxonomy of measures affecting government procurement (Gourdon, Bastien and Folliot-Lalliot, 2017) which provides a classification system for different GP measures, policies and procedures which can impact cross-border government procurement. The taxonomy aims to facilitate data collection across countries and to provide a basis for further analysis. Importantly, the taxonomy can also be used by countries to map and better understand the nature of their own procurement regimes, including in relation to existing international good practice. The OECD Taxonomy is not designed to pass judgment on the legitimacy of the public policy objectives that measures seek to achieve, but rather to highlight the trade impact of the measures as one element for consideration in policy-making and with a view to promoting consideration of less trade restrictive measures to achieve the same policy objectives.

The taxonomy comprises 44 different sub-categories covering both measures that have an explicit effect on trade and implicit measures that can potentially affect cross-border procurement. The explicit categories gather measures or practices that directly and intentionally reduce or prevent foreign companies' access to a government procurement system. These are explicit market access restrictions, domestic price preferences or local content requirement policies.

The implicit categories group measures or practices that do not expressly target foreign bidders but that may, indirectly or potentially, affect cross-border procurement opportunities. These measures or practices may not be restrictive *de jure* but in their application they may prevent or hinder access to procurement by foreign firms. These measures can pertain to the conduct of procurement (type of tendering), or the qualification and evaluation criteria. They can also include measures related to the review and complaint mechanisms or the transparency and information system which may not at first look to be barriers, but which may deter companies wishing to enter a foreign GP market, depending on how they are implemented.

This project aims to further assist countries in assessing their procurement regimes by mapping the taxonomy against international good practices. The project maps the taxonomy against both the WTO Government Procurement Agreement (GPA) and the UNCITRAL Model Law on Public Procurement (2011).

Overall, 18 articles of the WTO GPA are of relevance to the taxonomy (out of 22 articles in GPA; others are administrative-type provisions). All 1-digit and 2-digit taxonomy entries have

corresponding articles in the GPA. On average, each taxonomy entry is addressed in two to three GPA articles (up to nine in the case of M9 Transparency and information). Conversely, one article of GPA can map on average to six different taxonomy entries (up to twenty for Article IV *General principles* and fifteen for Article II *Scope and coverage*).

For the UNCITRAL Model Law, overall 55 articles are covered (out of 69 articles). All 1-digit entries in the Taxonomy have corresponding articles in the Model Law. Some 2-digit entries do not have corresponding articles: these can be found in offsets (M3), Collateral (M4), Qualification criteria (M6), and Evaluation criteria (M7) and sub-measures of e-procurement (M92). On average, each taxonomy entry maps to four to five Model Law Articles (up to ten for M5 conduct of procurement and M9 Transparency and information). Conversely, one Article of Model Law corresponds to, on average, three different entries in the taxonomy (up to fifteen for Articles 8 Participation and 9 Qualification which are broad provisions)

In sum, the mapping exercise shows that all non-administrative type of provisions of the GPA can be mapped with OECD Taxonomy entries and that all trade related articles of the Model Law also are mapped with the Taxonomy. There are some instances where the OECD Taxonomy exceeds the current provisions of the GPA and cannot be precisely mapped against its provisions (as is the case for ethics and anti-corruption).

Second, the study has provided an initial collection of measures using the OECD Taxonomy in four ASEAN countries to help gain a picture of key measures that may have a trade restricting effect in countries' systems. Initial data collection was undertaken for four ASEAN countries (Indonesia, Malaysia, Philippines and Viet Nam). This initial review indicates the presence of a range of explicit measures affecting government procurement in these four countries, including market access restrictions for specific sectors; joint venture requirements; and various forms of preferences for domestic suppliers or local content requirements. Implicit measures are also found, including in relation to the process for tendering and for challenging awards. Given resource constraints, this collection is by no means comprehensive; that said, it provides some useful insights into and examples of the nature and range of measures affecting government procurement in the region.

1. Introduction

Behind-the-border measures have emerged as an increasingly significant factor in global trade and efforts towards increased economic integration. These measures include the policies maintained by states with the effect of giving preference to domestic firms over foreign firms in government procurement contracts. These policies have caught the attention of trade policy makers and highlighted gaps in the evidence base needed for policy decisions. Information on government procurement (GP) measures at the global level is sparse; in particular, there is a lack of data on the types of discriminatory procurement measures implemented by governments.

To help address this gap, the OECD developed a taxonomy of measures affecting government procurement (Gourdon, Bastien and Folliot-Lalliot, 2017) which provides a classification system for different GP measures, policies and procedures which can impact cross-border government procurement. The taxonomy aims to facilitate data collection across countries and to provide a basis for further analysis. Importantly, the taxonomy can also be used by countries to map and better understand the nature of their own procurement regimes, including in relation to existing international good practice.

The OECD Taxonomy has already been used in several projects aimed at collecting information on measures affecting government procurement. The MAST initiative led by the United Nations Conference on Trade and Development (UNCTAD) and including the World Bank Group (WBG), International Monetary Fund (IMF), World Trade Organisation (WTO) and OECD, will adopt most of the 44 categories and use the taxonomy to start collecting information on measures worldwide. The European Bank for Reconstruction and Development (EBRD) has also used the taxonomy as the basis for data collection in several European and Central Asian countries; and the European Commission has adopted the taxonomy for its Public Procurement Initiative Project, which involves assessing procurement regimes in major trading partners.

This project aims to further assist countries in assessing their procurement regimes by mapping the taxonomy against international good practices. The project maps the taxonomy against both the WTO Government Procurement Agreement and the UNCITRAL Model Law on Public Procurement (2011). It further tests this methodology with data collection in four ASEAN countries (Indonesia, Malaysia, Philippines and Viet Nam).

2. Background on the OECD Taxonomy

In identifying categories of measures that can impact access to cross-border procurement, the OECD taxonomy has two objectives: to promote further consideration of the nature of measures, and to determine whether and how they impact foreign suppliers. The OECD taxonomy is not designed to pass judgment on the legitimacy of the public policy objectives that measures seek to achieve, but rather to highlight the trade impact of the measures as one element for consideration in policy-making and with a view to promoting consideration of less trade restrictive measures to achieve the same policy objectives.

The taxonomy (Annex 1) comprises 44 different sub-categories covering both measures that have an explicit effect on trade and implicit measures that can potentially affect cross-border procurement. The explicit categories gather measures or practices that directly and intentionally reduce or prevent foreign companies' access to a government procurement system. These are explicit market access restrictions, domestic price preferences or local content requirement policies.

The implicit categories group measures or practices that do not expressly target foreign bidders but that may, indirectly or potentially, affect cross-border procurement opportunities. These measures or practices may not be restrictive *de jure* but in their application they may prevent or hinder access to procurement by foreign firms. These measures can pertain to the conduct of procurement (type of tendering), or the qualification and evaluation criteria. They can also include measures related to the review and complaints mechanisms or the transparency and information system which may not at first look to be barriers, but which may deter companies wishing to enter a foreign GP market, depending on how they are implemented.

Some marginal organisational changes to the taxonomy were implemented following the last expert meeting in October 2017 and are displayed in the detailed Taxonomy in Annex 4. All the entry groups now include a sub-entry for "not elsewhere classified" measures (-9). The three conditional access measures (joint venture, commercial presence and mutual reciprocity) which were single entries in *market access restriction* (M1) are now grouped under the sub-entry *conditional access* (M13). The entry M94 *complexity of procurement rule* has been dropped at this stage as it was considered to be too vague for meaningful data collection. The label of the entry *local content requirement* (M3) is now *offsets* (but still includes local content requirement measures).

3. Mapping the OECD Taxonomy to International Best Practices

The OECD taxonomy (2017) included a first attempt at mapping its provisions with those of the WTO Agreement on Government Procurement (GPA). The GPA provisions were indicated in a column to permit side-by-side comparison between the GPA provision and the corresponding relevant national/subnational measure¹. This section takes this initial effort further and maps in more detail the specific sub-categories of the OECD Taxonomy with the main international legal instruments and recognized sources of good practices in government procurement: the WTO GPA and the UNCITRAL Model Law on Public Procurement (2011).

The GPA establishes GP trade rules based on non-discrimination and transparency among countries that have signed the agreement², whereas the UNCITRAL Model Law provides States with a model national procurement law based on principles of transparency, objectivity and competition. By encouraging the harmonization of national GP laws, it also seeks to facilitate trade. While the WTO GPA is binding among signatories, the UNCITRAL Model law is not a legally binding instrument.

Mapping the OECD Taxonomy against these two instruments helps establish a broad and comprehensive map of international GP rules and guidance and can serve as a more precise tool to help countries, as they use the taxonomy to gain a better understanding of the detail of their own systems, to explore where their GP system stands vis-à-vis international benchmarks. This may also help promote greater consistency and openness of approaches and thus greater government procurement trade.

¹ A practical example was tested on Tunisia, where 32 out of the 54 measures collected could be mapped to GPA provisions by category, but without assessment as to how closely they reflected the best practice outlined in the GPA provision.

² Further information on the GPA generally can be found at:
http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

3.1. Mapping the OECD Taxonomy with the provisions of the WTO GPA

The WTO GPA has evolved since it first entered into force in 1996, particularly through regular expansions in national commitments. Initially, only a limited number of WTO Members were signatories; however, over the last two decades the GPA membership has more than doubled (from 23 Parties in 1996 to 47 parties in 2018). Approximately two-thirds of the WTO members are not part of the GPA and members are largely comprised of OECD countries; in total, 31 OECD members are parties to the GPA. As of now, one ASEAN country, Singapore, is a party to the GPA and four are observers: Indonesia, Malaysia, Thailand, and Viet Nam³. The GPA is a plurilateral agreement, within the WTO framework.

The GPA is a significant and influential tool for promoting international trade in GP, both by guiding domestic policy reforms and serving as a model for procurement chapters in bilateral/regional trade agreements, including in Asia (see Anderson, Muller and Pelletier, 2016). Based on the principles of non-discrimination and transparency, the WTO GPA seeks to ensure that foreign suppliers can participate in procurement markets covered by the GPA. It also promotes further competition by encouraging greater liberalization of procurement markets, based on principles of reciprocity, and to the extent agreed between WTO Members. The agreement sets out minimum international benchmarks.

Examining the WTO GPA in light of the entries of the taxonomy can help countries to establish a correspondence between the key international obligations under the GPA and their domestic procurement legal framework. This analytical diagnostic could enable countries to thoroughly examine their procurement measures and assess where they stand vis-à-vis the GPA requirements. In other words, it provides a picture of existing measures that could help structure consideration of the factors and changes that may be needed to conform with GPA obligations. While the mapping exercise can assist countries in identifying which GPA provisions may be relevant to the measures implemented by their respective countries, it does not of course interpret the scope of the relevant GPA provisions nor indicate whether certain measures maintained by countries are in compliance with the GPA or not.⁴ While the mapping of the Taxonomy with the WTO GPA below was undertaken by OECD staff, it benefitted from close consultation with the WTO Secretariat.

In addition, since many preferential trade agreements (PTAs) directly transpose GPA provisions into their GP chapters, the taxonomy may also be useful in providing countries with a common analytical grid with which to negotiate GP provisions in PTAs. This mapping exercise thus provides an opportunity to enhance countries' understanding of their procurement system as well as the variables and flexibility they need to reach the standards set out in the GPA and existing PTAs.

The subsequent tables show a detailed mapping of articles in the GPA (see Annex 2) with the sub-entries of the OECD Taxonomy. Overall, 18 articles of the GPA are of relevance to the taxonomy (out of 22 articles in GPA; others are administrative-type provisions). All 1-digit and 2-digit taxonomy entries have corresponding articles in the GPA. On average, each taxonomy entry is addressed in two to three GPA articles (up to nine in the case of M9 Transparency and information). Conversely, one article of GPA can map on average to six

³ Observership to the GPA is open to all WTO Members (Article XXI:2).

⁴ While in some cases it may be relatively clear whether a country's measure conforms to a specific GPA obligation, in other cases this may require more judgment so this assessment is not attempted in this exercise. In any event, it is not the role of the OECD Secretariat nor of this exercise to determine the scope of the provisions of the GPA.

different taxonomy entries (up to twenty for Article IV *General principles* and fifteen for Article II *Scope and coverage*).

For all explicit measures affecting government procurement in the taxonomy, reference needs to be made to Article II (Scope and Coverage) of the GPA. This is because GPA signatories can specify the scope of procurement covered by the agreement in their case. For procurement they indicate as covered by the GPA, the explicit measures in the taxonomy would be disciplined and in some cases (e.g. M1 market access restrictions) prohibited.

Table 3.1 shows a detailed mapping of articles in the GPA with the Market access restriction entries M1 of the taxonomy. Many of the M1 measures of the taxonomy correspond to measures that would fall under the general principles of non-discrimination and transparency found in the GPA (Article IV). Most of the relevant information is found in Articles II and IV Sections 1 and 2, with the exceptions of M133 (Reciprocity) and M14 (Exclusion for safety reasons). The information on M15 (Thresholds) is found in Article II and also referenced in Article V.

Table 3.1. Mapping with the GPA for market access restriction (M1)

Market access restrictions		Article II (Scope and Coverage); Article III (Security and General Exceptions); Article IV (General Principles)
M11	To National supplier	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination)
M12	To Local supplier	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination)
M13	Conditional Access	
M131	To Joint ventures with national supplier	Article II (Scope and Coverage) Article IV:2 (General Principles: Non-discrimination)
M132	Commercial presence required	Article II (Scope and Coverage) Article IV:1-2 (General Principles: non-discrimination)
M133	Access based on reciprocity	Among GPA Members Appendix 1, Annexes
M14	Exclusion for national security or safety reasons	Article III (Security and General Exceptions) Appendix I, Annexes
M15	Thresholds	Article II:6-7-8 (General Principles: Valuation) Article II:2 (c) Article V:3(d) (Developing Countries) Appendix I, Annexes

Table 3.2 shows a detailed mapping of articles in the GPA with the Domestic price preference entries in M2 of the taxonomy. Most of other relevant information is found in the general principles of non-discrimination (Article IV), in Sections 1 and 2, but also in Section 5 on rules of origin. The relevance of this Section is in determining what is “domestic”; e.g. the price preference may not only take into account where the supplier is registered, but may also looks at other requirements for “domestic” goods and services. Therefore, the GPA only requires that the general rules of origin applied in other areas of trade should also be applied in procurement. Hence it may be important to map what such rules are and whether there are any special rules for government procurement. Developing countries may also adopt or maintain certain negotiated transitional measures such as price preference programmes (see Article V Section 3a).

Table 3.3 shows a detailed mapping of articles in the GPA to the Offset entries (M3) of the taxonomy. Each of the M3 measures in the taxonomy corresponds to information found in Article IV Sections 1 and 2, as for the Market access restriction entries. Again, as for Domestic

preference (M2), Section 5 of Article IV on rules of origin matters. Indeed, the GPA suggests that the rules of origin (i.e. those applied for local content requirements) should follow those applied in the normal course of trade to imports or suppliers of the same goods or services from the same Party. Developing countries may also adopt or maintain offsets as negotiated transitional measures, provided these are on a transitional basis only and applied in a manner that does not discriminate among the other parties (see Article V section 3B).

Table 3.2. Mapping with the GPA for domestic price/point preference (M2)

Domestic price/point preferences		Article II (Scope and Coverage) Article III (Security and General Exceptions) Article IV (General principles) Article V (Developing countries)
M21	For National supplier	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination) Article IV:5 (General Principles: Rules of origin) Article V:3(a) (Developing countries)
M22	For Local supplier	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination) Article V:3(a) (Developing Countries) Article IV:5 (General Principles: Rules of origin)
M23	Conditional Access	Article II (Scope and Coverage) Article IV:2 (General Principles: Non-discrimination) Article IV:5 (General Principles: Rules of origin)

Table 3.3. Mapping with the GPA for offsets (M3)

Offsets		Articles II (Scope and Coverage); Article III (Security and General Exceptions); Article IV (General Principles); Article V (Developing Countries); Appendix I Annexes
M31	Local content requirement on Inputs and data storage	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination) Article IV:5 (General Principles: Rules of origin)
M32	Local content requirement on Services	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination) Article IV:5 (General Principles: Rules of origin)
M33	Local content requirement on Staff requirement	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination) Article IV:5 (General Principles: Rules of origin)
M34	Subcontract requirements	Article II (Scope and Coverage) Article IV:1-2 (General Principles: Non-discrimination) Article IV:5 (General Principles: Rules of origin)
M35	Offsets	Article IV:6 (General principles: offsets) Article V:3(B) (Developing countries)

Table 3.4 shows a detailed mapping of Articles in the GPA with the Collateral measures (M4) of the taxonomy. Most of the relevant information is found in Article IV, Sections 1 and 2, as well as in Section 7 of Article IV on measures not specific to procurement, which stipulates that the non-discrimination principles in Sections 1 and 2 shall not apply to any charges related to importation.

There is a more direct correspondence between the implicit measures set out in the Taxonomy and the GPA requirements pertaining to qualification and evaluation criteria or the conduct of procurement, although these are spread across several Articles of the GPA.

Table 3.5 shows a detailed mapping of Articles in the GPA with the conduct of procurement (M5) of the taxonomy. The equivalent provisions in the GPA can be found in Article IV (*General principles*), in particular Section 4 (on conduct of procurement). Measures related to conduct of procurement which can intentionally or unintentionally favour domestic suppliers are covered by Article XV of the GPA on treatment of tenders and awarding contracts. The different methods of procurement (registration M52, shortlist of bidders M53, and selective tendering M55), are addressed in Article IX on qualification of suppliers (respectively, Sections 1-3 on registration systems, Sections 7-12 on multi-use lists and Sections 4-6 on selective tendering). Article XIII is entirely dedicated to limited tendering procedures (M54). Finally, on time periods (M57), Section 1 of Article VII (*Notices*) provides rules on period for notices of intended procurement; and Article XI on time periods is of course also relevant.

Table 3.6 shows a detailed mapping of articles in the GPA with the qualification criteria (M6) of the taxonomy. For certification or licence criteria (M61), the GPA non-discrimination principles set out in Article IV, Sections 1-2 are relevant; set asides for specific groups (M62) may also be incorporated as negotiated exclusions from coverage in the Annexes of individual GPA parties. Section 2a of Article VIII, on conditions for participation stipulates that the procuring entity shall not impose the condition that the supplier has previously been awarded a contract by a procuring entity of a given Party (past performance requirements, M63) At the same time, in accordance with section 2b of Article VIII the procuring entities may require “relevant” prior experience where essential (prior experience requirement in M64).

Table 3.4. Mapping with the GPA for collateral measures (M4)

Collateral restriction/restrictive effects	Article II (Scope and Coverage)	Article III (Security and General Exceptions)	Article IV (General principles)
M41 Tax on procurement from foreign entity	Article II (Scope and Coverage)	Article IV:1-2 (General Principles: Non-discrimination)	Article IV:7 (General principles: Measures not specific to procurement)
M42 Barriers to FDI	Article II (Scope and Coverage)	Article IV:1-2 (General Principles: Non-discrimination)	Article IV:7 (General principles: Measures not specific to procurement)
M43 Restricted eligibility to subsidies and tax preferences	Article II (Scope and Coverage)	Article IV:1-2 (General Principles: Non-discrimination)	Article IV:7 (General principles: Measures not specific to procurement)

Table 3.5. Mapping with the GPA for conduct of procurement (M5)

Conduct of procurement		Articles II (Scope and Coverable); IV (General Principles); VII (Notices); VIII (Conditions for participation); IX (Qualification of suppliers); XI (Time-periods); XIII (Limited tendering); XV (Treatment of Tenders and Awarding of Contracts)
M51	Design of procurement methods	Article IV:1-2 (General Principles; Non-discrimination) Article IV:4 (General principles: conduct of procurement) Article XIII (Limited tendering) Article XIV (Electronic Auctions) Article XV (Treatment of Tenders and Awarding of Contracts)
M52	Registration	Article IV:1-2 (General Principles; Non-discrimination) Article IX:1-3 (Qualification of suppliers: Registration Systems and Qualification Procedures)
M53	Shortlist / preselected list of bidders	Article IV:1-2 (General Principles; Non-discrimination) Article IX:1-3 (Qualification of suppliers: Registration Systems and Qualification Procedures) Article IX:7-12 (Qualification of suppliers: multi-use list)
M54	Direct/Limited tendering	Article IV:4 (General principles: conduct of procurement) Article XIII (Limited tendering)
M55	Selective tendering	Article IV:4 (General principles: conduct of procurement) Article IX:4-6 (Qualification of Suppliers: Selective tendering) Article XI:2 (Time-periods: Deadlines)
M56	Securities	Article IV:1-2 (General Principles; Non-discrimination)
M57	Time period	Article VII:1 (Notices: Notices of intended procurement) Article IX: 11;13 (Qualification of suppliers: multi-use list; Annex 2 and Annex 3 Entities. Information on Procuring Entity Decisions) Article XI (Time-periods)

Table 3.6. Mapping with the GPA for qualification criteria (M6)

Qualification criteria		Articles IV; VIII-IX
M61	Certification or license criteria	Article IV:1-2 (General Principles; Non-discrimination)
M62	Set asides for specific groups (SMEs, minorities)	Article IV:1-2 (General Principles; Non-discrimination) Appendix I Annexes
M63	Past performance requirements	Article VIII:2(a) (Conditions for Participation)
M64	Prior experience requirements	Article VIII:2(b) (Conditions for Participation)

Table 3.7 shows a detailed mapping of Articles in the GPA with the evaluation criteria (M7) of the taxonomy. As in the case of set asides (M62), for measures referring to specific groups (M73) Article IV, Sections 1-2 (non-discrimination) are of relevance. Financial requirements are mentioned in Article VIII on conditions of participation, where Section 3 states that the procuring entity shall evaluate the financial capacity of suppliers on the basis of their business activities both inside and outside the territory of the party. Possible measures related to technical contractual conditions that may favour domestic firms are covered in Article X on technical specifications.

Table 3.7. Mapping with the GPA for evaluation criteria (M7)

Evaluation criteria		Articles IV (Scope and Coverage); VIII (Condition for Participation); X (Technical specification and Tender Documents); XV (Treatment of Tenders and Awarding of Contracts)
M71	Technical contractual conditions	Article X (Technical specification and Tender Documents)
M72	Financial requirements	Article VIII:3 (Condition for participation)
M73	Offer-backs for specific groups (SMEs, minorities)	Article IV:1-2 (General Principles: Non-discrimination) Article V:3(b) (Developing countries)

Table 3.8 shows a detailed mapping of Articles in the GPA with the review and complaint system (M8) entries in the taxonomy. For measures in M8, all entries correspond to various Sections of Article XVIII (*Domestic Review Procedures*). Section 2 stipulates that suppliers shall be accorded impartial and timely consideration of their complaints (relates to M81); while Sections 4-6 require that an impartial authority be designated for the complaint and for the appeal (referring to measures under M82). The time period to prepare and submit a challenge is covered in Section 3. Additionally Section 7 sets out the requirements for the availability of interim measures and corrective actions or compensation for loss and damages suffered, both of which relate to M85 (suspension of bidding process) and remedies (M86).

Table 3.8. Mapping with the GPA for review and complaint system (M8)

Review / Complaint Mechanisms		Article XVIII (Domestic Review)
M81	Challenge of bidding process or award	Article XVIII:2 (Domestic Review Procedures)
M82	Choice of complaint forum	Article XVIII:4-6 (Domestic Review Procedures)
M83	Time period	Article XVIII:1;3;6f:7 (Domestic Review Procedures)
M84	Cost	Article XVIII:1 (Domestic Review Procedures)
M85	Suspension of bidding process	Article XVIII:1;7a (Domestic Review Procedures)
M86	Sanction and remedies	Article XVIII:7b (Domestic Review Procedures)

Table 3.9 shows a detailed mapping of Articles in the GPA with transparency and information (M9) in the taxonomy. These measures are more challenging to map, as relevant issues are addressed consistently in different parts of the GPA. Measures relating to accessible publication (M91) can be found in Article VI (*Information on the Procurement System*), and Article VII (*Notices*), Sections 3 and 4), but also in Article IX (*Qualification of suppliers*), Sections 6 and 7), and of course in Article XVI (*Transparency of procurement information*).

The GPA encourages use of electronic media, hence measures related to e-procurement (M92) are found in different Sections of GPA related to online publication (Article VI, Section 2); the online tender process (Article VII, Sections 1, 2 and 4); online award processes (Article VII, Section 7); communication (Article X, Section 7); or signature (Articles XI, Sections 5 and 6). In the same vein, measures falling under the Taxonomy entry related to notification (M93) find their equivalents in different sections of the GPA, depending on whether they refer to notices of the tender (Article VII), information on the decision (Article IX, Sections 14-15) or potential modification of specifications (Article X, Section 11).

Table 3.9. Mapping with the GPA for transparency and information (M9)

Transparency and Information		Articles IV; VI-VII; IX-XI; XIV; XVI-XVII; XIX
M91	Publication in accessible Publication	Article VI:1-2 (Information on the procurement system)
		Article VII:1; 3-4 (Notices: Notices: Summary of notices; Notice of Planned Procurement)
		Article IX:6-7 (Qualification of suppliers: selective tendering; multi-use lists)
		Article XVI:1 (Transparency of procurement information: Publication of Award Information)
M92	Accessible e-procurement	Article IV:3 (General principles: Use of electronic means)
M921	online publication	Article VI:2 (Information on the procurement system)
M922	online tender process	Article VII: 1-2;4 (Notices: Notice of Intended Procurement ; Notice of Planned Procurement specifically referring to e-procurement) Article X:7(d) (Technical specification for tender)
M923	online award process	Article IX:7 (Qualification of suppliers: multi-use lists)
M924	e-communication	Article X:7(d-e) (Technical specification and Tender Documents: tender documents)
M925	e-signature	Article XI :5-6 (Time-Periods: Deadlines)
M926	other online requirements	Article XIV (Electronic Auctions)
		Article XVI :3 (Transparency of procurement information : Maintenance of Documentation, Reports and Electronic Traceability)
M93	Notification	Article VII (Notices)
		Article IX:14-15 (Qualification of suppliers: Information on Procuring Entity Decisions)
		Article X:11 (Technical specification and Tender Documents: Modifications)
		Article XVI:1 (Transparency of procurement information: Information provided to suppliers)

Table 3.10 shows a detailed mapping of Articles in the GPA with the measures related to the effectiveness of ethics and anti-corruption systems in the OECD Taxonomy. Here GPA Article IV, Section 4 contains a general requirement that procurement should be conducted in a transparent and impartial manner that should avoid conflicts of interest and prevent corrupt practices.

Table 3.10. Mapping with the GPA for effectiveness of ethics and anti-corruption system (M10)

Effectiveness of ethics and anti-corruption system	Article IV:4 (General principles: Conduct of Procurement)
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3.2. Mapping the Taxonomy with the provisions in the UNCITRAL Model Law

The UNCITRAL Model Law offers States a baseline for a legal framework. It is not meant to provide a full and complete list of measures for adoption in national procurement law; additional laws and regulations are needed to complete the legal framework. Furthermore, local specificities may also need to be reflected in national enactments of the UNCITRAL Model Law. Nevertheless, the UNCITRAL Model Law (Annex 3) covers procurement procedures in more detail than the Taxonomy and offers countries a baseline for a legal framework.

While not a legally binding instrument, the UNCITRAL Model Law also addresses some issues related to trade restrictiveness. The Model Law can help countries to reform their procurement systems by increasing the performance of their procurement market, and by implementing further transparency and integrity rules to address corruption. Countries implementing the Model Law also are likely to bring their regimes closer to the standards in the WTO GPA. That said, it should be noted that the Model Law is not focused on market opening per se; indeed, it permits requirements aimed at limiting the participation of suppliers provided such restrictions are authorized by procurement regulations or law.

Given that the Model Law is not binding and there is no obligation on States to notify when it is implemented, it is difficult to determine how many or which countries have used it. Official numbers recorded by UNCITRAL indicate that 30 countries enacted the 1994 Model Law and 24 the 2011 Model law. However, these numbers likely do not reflect the full extent of use of the text which serves as an important template for reforming or establishing rules on procurement.

Indeed, the aim of the Model Law initially was to respond to a significant fragmentation in national rules and legislation on GP, as well as to some degree to ineffective legislation (Nicolas and Muller, 2017). By fostering coherence of GP systems among countries the Model Law can contribute to enhanced GP market access. This is in keeping with one of the overarching goals of UNCITRAL, which is to “further the progressive harmonization and unification of the law of international trade”. That said, as noted above the Model Law does allow for restrictions on the participation of suppliers on the grounds of socio-economic policies.

Examining the Model Law with the Taxonomy will help countries that are undergoing a legislative reform to assess how their legal system compares to the international benchmark. It will also help countries seeking to accede to the GPA since provisions of the Model Law are designed to foster and encourage participation in procurement proceedings by suppliers regardless of nationality. Adding this mapping exercise to the WTO GPA ensures a more complete evaluation of a country’s GP system both with respect to procurement covered by GPA and procurement outside the scope of coverage by GPA that nevertheless may be of interest to cross-border suppliers.

The tables below show a detailed mapping of articles in the Model Law with the sub-entries of the OECD Taxonomy. While work on mapping the Taxonomy with the Model Law has been undertaken by OECD staff, it involved close consultation with UNCITRAL Secretariat.

Overall 55 articles of the Model law are covered (out of 69 articles). All 1-digit entries in the Taxonomy have corresponding articles in the Model Law. Some 2-digit entries do not have corresponding articles: these can be found in offsets (M3), Collateral (M4), Qualification criteria (M6), and Evaluation criteria M7) and sub-measures of e-procurement (M92). On average, each taxonomy entry maps to four to five Model Law Articles (up to ten for M5 conduct of procurement and M9 Transparency and information). Conversely, one Article of Model Law corresponds to, on average, three different entries in the taxonomy (up to fifteen for Articles 8 Participation and 9 Qualification which are broad provisions)

Table 3.11 shows a detailed mapping of Articles in the Model Law with the Market access restriction entries (M1) of the taxonomy. The correspondence lies essentially in Articles 8 to 10 of the Model Law. The default position under the Model Law is to provide for full, unrestricted and international participation in government procurement. In particular, Articles 8:1 and 8:2 provide for participation in the procurement process regardless of nationality.

However, the Model Law provides for exceptions where a limitation on participation is grounded in law and regulation. For example, Articles 3 and 8 permit procurement where only domestic suppliers or contractors can participate. This was included in to allow the use of single-source procurement to implement socio-economic policies. Hence the Model Law permits restrictions as long as they are authorized by procurement regulations or law.

Hence measures relating to restriction of procurement to domestic tenderers (M11 and M12) would be covered under Article 8 (*Participation by suppliers or contractors*), Article 9 (Qualification of suppliers, Section 6) and Article 10 (conditions of the procurement contract, section 2). Article 30.5.e (Conditions for use of single-source procurement for implementation

of socio-economic policies) allows domestic procurement as an exception rather than a rule and requires certain conditions to be fulfilled⁵.

Conditional access (M13) is governed by the same Article (8 and 9:6, but also Article 3 on international obligation for measures related to M133 (access based on reciprocity) since some regional integration treaties impose reciprocity).

Articles 24 (on confidentiality) and 30 (allowing single source procurement in certain circumstances) can be used to assess whether a measure in M14 (Exclusion for security or safety reasons) is valid under the Model Law (see Article 35 on solicitation in request-for-proposal proceeding).

Table 3.12 shows a detailed mapping of Articles in the Model Law with the Domestic preferences entries (M2) of the Taxonomy. A key corresponding Article for M2 measures is Article 11.3 that allows “domestic preferences” for the benefit of domestic suppliers or contractors or for domestically produced goods. The provision allows the enacting State to balance the objectives of international participation in procurement proceedings and fostering local capacities, without resorting to purely domestic procurement. Conditions for the use of domestic preferences are the same as for domestic procurement⁶. Besides Article 11.3, Articles 9.6 and 10.2 are also of interest, as well as Article 49.3 which governs the pre-selection process and also refers to domestic preference.

Table 3.13 shows a detailed mapping of Articles in the Model Law with the Offset entries (M3) of the Taxonomy. Articles 9.6, 10.2, 11.3 and 30.5.e are relevant. They permit the procuring entity, in limited circumstances, and solely in order to promote the Government’s socio-economic policies, to impose local content requirements, such as minimum qualification requirements (Article 9). Alternatively, the procuring entity can define its local content requirements (Article 10), and can design its evaluation criteria to give credit for compliance with local content requirements beyond any required minimum (Article 11). Finally, the need to pursue a particular socio-economic policy, including the protection of local suppliers, can justify the use of single-source procurement under Article 30.5.e of the Model Law.

⁵ 1. The procurement regulations or other provisions of law of the enacting State must be the source of the procuring entity’s authority to resort to domestic procurement;
2. A declaration that a particular procurement is the domestic procurement must be made at the outset of the procurement proceedings (the declaration cannot be altered thereafter);
3. The procuring entity is required to put on the record the reasons and circumstances on which it relies to justify its decision, indicating in particular the legal authority for domestic procurement (under Article 8 (4) and 25 (d)). The same information is required to be provided to any person upon request (Article 8(5)).

⁶ 1. The procurement regulations or other provisions of law of the State must authorize or require the procuring entity to use them and provide further details on their use (e.g. which supplier will be considered domestic and which goods will be qualified as domestically produced; the amount of the margin of preference and the manner of application of preferences);
2. The margin of preference and the manner of application must be pre-disclosed in the solicitation documents at the outset of the procurement proceedings (under paragraphs (5) and (6) of Article 11);
3. The use and manner of application of any socio-economic criterion or margin of preference is to be reflected in the record of the procurement proceedings (under Article 25 (1) (i) and (t) of the Model Law).

Table 3.11. Mapping with the Model Law for market access restrictions (M1)

Market access restrictions		Articles 3, 8-10, 24, 29.2, 33.4, 30.2.c, 30.4.c, 30.5.d, 35.2.c, and 30.5.e
M11	To National supplier	Articles 8.1, 9.6, 10.2, 30.5.e
M12	To Local supplier	Articles 8.1, 8.2, 9.6, 10.2 and 30.5.e
M131	To Joint ventures with national supplier	Article 8.2
M133	Access based on reciprocity	Articles 3 and 8
M132	Commercial presence required	Articles 8.2 and 9.6
M14	Exclusion for national security or safety reasons	Articles 24, 30.2.c, 30.4.c, 30.5.d, 35.2.c

Table 3.12. Mapping with the Model Law for domestic price/point preferences (M2)

Domestic price/point preferences		Article 10.2 11.3 9.2;4;6 49.3
M21	For National supplier	Articles 9.2, 9.4, 9.6, 10.2, 11.3, 49.3
M22	For Local supplier	Articles 9.2, 9.4, 9.6, 10.2, 11.3, 49.3
M23	Conditional access	Articles 9.2, 9.4, 9.6, 10.2, 11.3, 49.3

Table 3.13. Mapping with the model law for offsets (M3)

Offsets		Articles 9-11, 24 and 30.5.e
M31	Inputs and data storage (M311: national/ M312: local)	Articles 9-11, 24 and 30.5.e
M32	Services (M321: national/ M322: local)	Articles 9-11, 24 and 30.5.e
M33	Staff requirement (M331: national/ M332: local)	Articles 9-11, 24 and 30.5.e
M34	Subcontract requirements	Articles 9-11, 24 and 30.5.e

Table 3.14 shows a detailed mapping of Articles in the Model Law with the collateral entries (M4) of the Taxonomy. Generally, such measures will fall outside the scope of the Model Law, but some, such as requiring foreign suppliers to pay a tax on GP projects that they carry out, or commercial presence requirements (especially if accompanied by measures impeding the establishment of such local presence) would be considered discriminatory under the Model Law. Some articles of the Model Law, in particular Articles 17.1 and 20 may enable collateral restrictions, e.g. requirements to use only local banks for tender securities or grounds for rejection of abnormally low submissions that may be discriminatory against foreign suppliers.

Table 3.4. Mapping with the model law for collateral measures (M4)

Collateral restriction/restrictive effects		articles 3, 17.1b and c and 20
M41	Tax on procurement from foreign entity	Article 3
M42	Barriers to FDI	
M43	Restricted eligibility to subsidies and tax preferences	
M44	Time period	Articles 17.1.b and c; 20
M49	Other	

The implicit categories of the Taxonomy, namely M5 to M7, cover in general terms the cycle of procurement from the conduct of procurement (M5), the qualification criteria for suppliers (M6) and the evaluation criteria to be complied with by the procuring entity (M7). These Taxonomy entries also correspond to various Articles in the Model Law.

Table 3.15 shows a detailed mapping of articles in the Model Law with the conduct of procurement entries (M5) of the taxonomy. Articles 7 (on communications), 12 (rules on estimation of the procurement value), 18 (on pre-qualification proceeding) and 24 (confidentiality) contain provisions that cover any measures related to the design of procurement (such as allotments) covered under M51. The Model Law does not regulate general registration in the procurement system (M52), such as lists of suppliers, but does

regulate registration for each procurement method (covered in Taxonomy entries M53 to M55).

Use of a short list of bidders (M53) is covered under Articles 35.1.a, 49.3 and 6.b, 53.1.k, 53.2, 60.3.d.ii and 60.7 since they allow this as an exception to the general rule of open participation. Single-source procurement (M54) is permitted under the Model Law under conditions listed in Article 30.5. In all other cases of limited or direct procurement/tendering, several Articles of the Model Law set conditions for direct solicitation of submissions from more than one supplier. Finally, for selective tendering (M55), guidance can be found in Article 18 (Pre-qualification proceedings), which states that pre-qualification may be held in any procurement providing that all prequalified suppliers will be admitted to the next stage of procurement on a pass/fail basis (no comparative assessment is involved). Article 49.3 addresses pre-qualification proceedings involving shortlisting/pre-selection where not all prequalified suppliers will be allowed to proceed to the next stage but this is only permitted up to a maximum number of suppliers identified from the outset.

Tender securities (M56) are permitted but not required in all cases under Article 17 (*Tender securities*) of the Model Law. Articles 14 on rules of selection and 15.3 on clarification and modification of documents address different aspects of requirements regarding time periods (M57) in the process.

Table 3.15. Mapping with the model law for conduct of procurement (M5)

Conduct of procurement		Articles 7; 8, 12-63
M51	Design of procurement methods	Articles 7, 12, 18, 24, 27 – 35
M52	Registration	.
M53	Shortlist / preselected list of bidders	Articles 35:1(a), 49.3, 53.1.k, 53.2, 60.3.d.ii and 60.7.
M54	Direct/Limited tendering	Articles 29, 30.2, 30.3, 30.4, 30.5, 34, 35:2, 45-47, 49-52
M55	Selective tendering	Articles 18 and 49.3
M56	Securities	Articles 17 and 39.k
M57	Time period	Articles 14, 15:3 (Clarification and modification of solicitation documents)
M59	Other	Article 13 (Rules concerning the language of documents)

Table 3.16 shows a detailed mapping of Articles in the Model Law with qualification criteria (M6) in the Taxonomy. Articles 8 (participation) and 9 (qualification) are the two relevant references. In particular, set-aside programs (M62) are permissible under Article 8 of the Model Law and prior experience requirements (M64) are permitted under Article 9.2.a of the Model Law.

Table 3.16. Mapping with the model law for qualification criteria (M6)

Qualification criteria		Articles 8 and 9
M61	Certification or license criteria	Articles 8 and 9
M62	Set asides for specific groups (SMEs, minorities)	Articles 8 and 9
M63	Past performance requirements	Articles 8 and 9
M64	Prior experience requirements	Articles 8 and 9
M69	Other criteria	Article 9.7

Table 3.17 shows a detailed mapping of Articles in the Model Law with evaluation criteria (M7) in the Taxonomy. Only Article 11 on rules concerning evaluation criteria and procedure is relevant to this entry.

Table 3.17. Mapping with the model law for evaluation criteria (M7)

Evaluation criteria		Article 11
M71	Technical contractual conditions for domestic firms	Article 11
M72	Financial requirements	Article 11
M73	Offer-backs for specific groups (SMEs, minorities)	Article 11
M79	Other restrictive criteria	Article 11

Table 3.18 shows a detailed mapping of Articles in the Model Law with review and complaint systems (M8) in the Taxonomy. The Model Law also provides a template text for challenge proceedings (Articles 64 to 69), a process which is reflected in M8 of the Taxonomy. The Model Law allows for review or appeals of decisions made in challenge proceedings (Articles 66-67) through the courts (corresponds to M81). Chapter VIII (Articles 64 to 69) of the Model Law deals with challenge proceedings and contains several provisions covering M82 entries related to the choice of complaint forum and the time period (M83). Article 22.2 to 22.4 addresses the standstill period that has the effect of an automatic suspension of procurement proceedings (M85) from the time the notice is served until the expiry of the standstill period unless a review body orders otherwise. Article 65 of the Model Law prohibits the entry into force of the procurement contract during the challenge proceedings.

Table 3.18. Mapping with the model law for review and complaint systems (M8)

Review / Complaint mechanisms		Articles 22.2-4, 25, 64-69
M81	Challenge of bidding process or award	Articles 22.2-4, 64:1; 66-68
M82	Choice of complaint forum	Article 64.2, 66.1 and 67.1
M83	Time period	Articles 66:2 and 67.2
M84	Cost	
M85	Suspension of bidding process	Articles 22.2-4, 65, 66.3 and 67.3-7
M86	Sanction and remedies	Articles 66.5 and 67.9

Table 3.19 shows a detailed mapping of Articles in the Model Law with transparency and information (M10) in the Taxonomy. The Model Law includes transparency as one of its objectives and provides for prompt and public availability of procurement documents, publication of contract awards, and specification of qualification requirements to ensure a more non-discriminatory procurement system and compliance with rules. Provisions related to transparency corresponding to the Taxonomy (M9), include for example, publication of GP rules; publication of calls for tender; and transparency of conduct of procurement according to set rules and procedures. As for the GPA, relevant provisions on transparency are spread across the entire Model Law, making mapping more challenging.

Accessible publication (M91) is covered in Article 5 (*Publication of Legal Text*); Article 6 (Information on possible forthcoming procurement); and Article 23 (*Public notice of the award of a procurement contract or framework agreement*) but, as with other transparency-related provisions, also in appear in provisions of other articles.

Some articles in the Model Law are specifically relevant to M92 (e-procurement); Article 7 makes the Model Law technology neutral and based on the principle of functional equivalence, hence, throughout the Model Law, references to signatures, publications, and opening of tender, etc., should be interpreted as also encompassing e-signatures, e-publications, virtual meetings, etc.

Table 3.20 shows a detailed mapping of Articles in the Model Law with ethics and anti-corruption systems (M10) in the Taxonomy. In setting out rules for transparency and ensuring fair and equitable treatment, anti-corruption could be argued to be one of the aims of

the Model Law (and of the GPA). However, there are no specific provisions related to mechanisms for anti-corruption, for example related to protection of whistle-blowers (see Taxonomy M10).

Table 3.19. Mapping with the model law for transparency and information (M9)

Transparency and Information		Articles 5-7, 18.2, 19.2, 23-26, 33, 34.5, 35.1, 35.4, 36, 60, 66.3, 67.5, 69
M91	Publication in accessible publication	Articles 5 Publication of Legal Texts and 6 forthcoming procurement Articles 18.2, 19.2, 23, 26, 33, 34.5, 35.1, 35.4, 36, 60, 66.3, 67.5
M92	Accessible e-procurement	Articles 7, 31; 33; 53-57; 59.3; 60-61; 40
M93	Notification	Articles 9.8.d; 14.5; 15; 16.2; 18.9, 18.10, 19.2, 20.2, 21.2; 22.2; 22.10; 40; 47.7; 49.3.e; 49.6; 50.3; 53.4, 54; 55; 60.8; 65.3; 66-68

Table 3.20. Mapping with model law for effectiveness of ethics and anti-corruption system (M10)

Effectiveness of ethics and anti-corruption system	Article 21; 26 [other provisions throughout the ML are relevant, e.g. articles 16, 19, 22.6.b; 24, 25; 28, 44, 56, 63, all publication and notification and challenge proceedings provisions as listed above]
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4. Pilot exercise on ASEAN countries

This section presents the results of efforts to collect information on measures affecting trade in government procurement for countries in the ASEAN region using the OECD Taxonomy⁷. This section focuses on measures identified for four ASEAN countries (the Philippines, Viet Nam, Indonesia, and Malaysia). While efforts were made to collect measures, comprehensive data collection was not possible within the available resources for this project and the listing below is by no means exhaustive or comprehensive. It nonetheless provides useful insights into and examples of the nature and range of measures in place. The detailed measures with original text and sources are displayed in Annex 5.

Examining the WTO GPA and UNCITRAL Model Law provisions in light of the entries in the OECD Taxonomy can help countries to establish a correspondence between global best practise and their domestic procurement framework. While relevant provisions in the GPA and Model Law are highlighted, this section does not draw conclusions on the compliance of countries' measures with specific provisions of the GPA.

4.1 Insights from the taxonomy on explicit measures

Both the Philippines and Indonesia maintain market access restrictions in their GP market in favour of domestic suppliers (Table 4.1). In the Philippines, this takes the form of a general principle of preference for Filipino nationals in the award of government procurement contracts. Indeed, the Philippines' 2016 Revised Implementing Rules and Regulations include an explicit clause restricting bidding to Filipino citizens. In Indonesia, an amendment by the Minister of transportation imposes restrictions on market access for foreign ships. Similarly, Viet Nam and Malaysia also maintain restrictions requiring international bidding only when relevant domestic supply is not available.

⁷ The opportunity to undertake this work arose in the context of a joint ERIA/UNCTAD publication on Government Procurement in ASEAN.

Four ASEAN countries impose conditional access (M13) (Table 4.1). The Philippines⁸ and Viet Nam both maintain restrictions related to requirements to form partnerships or joint ventures (M131), in particular for infrastructure, while Indonesia foreign companies may only bid in cooperation with a national company (unless no national company can provide the relevant goods and services). Malaysia requires commercial presence (M132), while Viet Nam accords preferential treatment to suppliers with commercial presence.

Other forms of restriction are also applied. Access based on reciprocity (M132) is found in The 2016 Revised Implementing Rules and Regulations of the Philippines. Indonesia, the Philippines and Malaysia also maintain a specific threshold above which foreign firms can participate in bidding processes. In Malaysia, foreign suppliers are excluded from three sensitive sectors for security reasons (M14).⁹

Domestic preferences in government procurement are applied in Malaysia, Indonesia and Viet Nam (Table 4.2). For instance, Viet Nam grants awards to domestic firms when two firms have submitted equally competitive offers and one is domestic (i.e. there is discrimination in favour of domestic suppliers). Indonesia applies a range of preferences for domestic firms, include price discounts to make bids more competitive, or preference if their bid is within a certain percentage margin of the most competitive bid. In Malaysia, preferences are also applied among domestic suppliers to those qualifying as ethnic Malay (*Bumiputera*) firms.

Local content requirements on goods and inputs (M31) are also found in the four ASEAN countries studied (Table 4.3). These can be sector specific (agricultural commodities in the case of Philippines) or of more general application; for instance, Malaysia and Indonesia apply local content requirements in services (M32). Local content requirements in relation to employment of staff (M33) have been found in both Viet Nam and Indonesia. In the latter, companies must give preference to qualified Indonesian personnel and train such personnel, including for positions in administration and executive management.¹⁰

⁸ Foreigners can bid provided that the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement, as determined by the Head of the Procuring Entity. These foreign entities have to form a joint venture with a Filipino entity, and the Filipino ownership or interest should not be less than twenty-five percent (25%). The Filipino ownership or interest must be based on the contributions of each of the members of the joint venture, as specified in the joint venture agreement (JVA). (IRR-A section 23.11.2.1 [d])

⁹ Both the Model Law and the GPA contain scope for exclusions on essential national security grounds. The Model Law permits foreign suppliers to be excluded under provisions protecting essential security interests of the State justifying direct confidential procurement (Articles 24 and 30.5.d). Procurement involving classified information may justify additional requirements on contractors and subcontractors (Article 24.4), including the use of only particular local sub-contractors. The relevant provision of the GPA is Article III which stipulates that “*Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.*”

¹⁰ The Model Law permits local content requirements and focuses on ensuring objectivity and transparency in their application: (a) local content requirements may be imposed by the procuring entity only if procurement regulations or other provisions of law of the State authorize or require the procuring entity to do so; (b) such requirements and the manner of their application in procurement proceedings are to be disclosed at the outset of the procurement proceedings and

Table 4.1. M1 ASEAN market access restrictions

M11: To national supplier	
Philippines	Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens
Indonesia	Prior to the granting of the license to use a foreign vessel, the tender shall prioritize (i) Indonesian-flagged vessels and (ii) foreign-flagged vessels if the purchase by an Indonesian individual or entity is financed by a leasing company pursuant to a capital lease.
Vietnam	Under Prime Minister's Directive No. 494/2010/CT-TTg of 20 April 2010, Viet Nam should only use international bidding if domestic goods, materials, and equipment do not meet the specifications of the tender package, or cannot be provided locally. In May 2010, the Ministry of Industry and Trade issued a list of machinery, equipment, and materials that can be produced domestically. ²²² The procurement of such imported goods is thus discouraged in projects involving the use of state funds, and Ministries and People's Committees are to instruct tendering bodies under their authority to apply this list in the evaluation of bids.
Malaysia	As stated in WTR from WTO (2018), foreign suppliers are not allowed to participate in domestic tenders; international tenders are called if there are no domestically produced supplies or services available
M131: To joint ventures with national supplier	
Philippines	Often the Department of Public Work and Highway includes a clause restricting bidding to Filipino citizens/sole proprietorships, partnerships, or organizations with at least seventy five percent (75%) interest or outstanding capital stock belonging to citizens of the Philippines. Foreigners are allowed to bid in infrastructure procurement if JV of two or more with Filipino interest or ownership in JV be at least 75% or if less than 75% if technical requirements are not possessed by Filipino with 75% of interest but need to be at least 25% of Filipino interest or ownership
Viet Nam	Requirement of partnership with domestic contractor if foreign tenderer when participating in international bid in Viet Nam unless domestic contractors have not full capacity to participate. The Law on Tendering (Article 14) stipulates that preferential treatment shall be accorded to partnership contractors that include partners defined in Article 14, clause 1 that undertake work worth more than 50% of the contract
Indonesia	As stipulated in PR54 (Article 104), foreign companies may only bid in cooperation with a national company (unless no national company has the ability to provide the goods and services requested)
Malaysia	For specific works, if domestic contractors do not have the expertise and capability, tenders may be called on a joint-venture basis between domestic and foreign contractors to encourage the transfer of technology.
M132: Commercial presence required	
Malaysia	A foreign company is mandated to have a local subsidiary to be eligible to bid.
Viet Nam	The Law on Tendering (Article 14) stipulates that preferential treatment shall be accorded to contractors established in Viet Nam under the Enterprise Law and the Investment Law
M133: Access based on reciprocity	
Philippines	Foreign bidders are allowed to participate in procurement when a) When provided for under any Treaty or International or Executive Agreement or when the foreign supplier is a citizen, corporation or association of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippine
M14: Exclusion for national security and safety issues	
Malaysia	There may also be a restriction to bid for tenders pertaining to national defence, hazardous waste disposal, and security services etc. however this depends on sector specific regulations and policies which may have local equity requirements.
M15: Thresholds	
Philippines	Foreigner to have access only for procurements above a certain threshold (1 million pesos) or for certain contracts.
Malaysia	A locally incorporated foreign company may not submit bids for tenders relating to construction work below the value of RM 30 million nor bid for tenders open only to <i>Bumiputera</i> companies.
Indonesia	Foreign bidders are eligible to submit bids only above a certain threshold or for certain contracts. Procurement of goods and services above Rupiah 20 billion, consultation services above Rupiah 10 billion and construction services above Rupiah 100 billion

cannot be altered thereafter without triggering new procurement proceedings; (c) they are to be put on the part of the record of procurement proceedings open for public inspection together with a statement of the reasons and circumstances on which the procuring entity relied to impose such requirements; and (d) they and the manner of their application may be challenged.

Table 4.2. M2 ASEAN domestic preferences

M21: To national supplier	
Malaysia	Price preference to <i>Bumiputera</i> companies for tender above RM 100 000 (USD 25 000). The margin of preference for bumiputera suppliers has remained unchanged since 2014. For goods and services contracts between RM 100 000 and RM 15 million, bumiputera suppliers receive a margin of preference between 2.5% and 10% inversely proportional to value. For purchases exceeding RM15million, no price preferences apply. In addition, a price preference exists for suppliers using content produced by bumiputera manufacturers; the margin is up to 10% for contracts valued below RM 10 million, up to 5% for contracts valued at between RM 10 million and RM 100 million, and up to 3% for contracts valued above RM 100 million.
Viet Nam	The contract is awarded to the domestic firm when two firms have submitted equally competitive offers and one of them is domestic. If a system of points/weights is used during the assessment, domestic firms are awarded one or several extra points.
Indonesia	A system of price discount is applied to domestic firms' offers, in order to make them more competitive. In the oil and gas sector, Indonesia has adopted measures to favour local goods, services, and technology, as well as Indonesian design and engineering capabilities so long as they are of comparable quality, price and availability (CCSI, 2015). Local goods must be given preference if their prices are within 15% of the lowest tender within 7.5% for local services

Many ASEAN countries have measures that restrict foreign investment (Table 4.4), which may also adversely impact cross-border procurement. This is particularly so where bidding in a sector is subject to a local presence or joint venture requirement; in these cases, restrictions on investment would have the effect of also preventing access to government procurement opportunities. For example, all countries studied (Philippines, Viet Nam, Malaysia, and Indonesia) impose a cap on foreign ownership in the telecommunications sector. Indonesia provides an exemption for maximum of 70% for ASEAN foreign investors. Malaysia removed its general foreign equity ceiling of 70% in 2009; nevertheless, foreign equity restrictions remain in certain sectors. In addition, Malaysia favours investments that involve ethnic Malays; other areas which are subject to such *Bumiputera* reservations include banking and finance, water, batik production, agriculture, defence, energy and telecommunications.

Table 4.3. M3 ASEAN offset measures

M31: Local content requirement on input	
Philippines	Cooperatives have preferential right to supply government institutions and agencies with rice, corn and other grains, fish and other marine products, meats, eggs, milk, vegetables, tobacco and other agricultural commodities produced by their own members
Malaysia	Government agencies are encouraged to use locally produced supplies or service available.
Viet Nam	If bidder uses 25% (or more) of domestic production, it will be granted preferential treatment. In international tendering, the Law on Tendering (Article 14) stipulates that preferential treatment shall be accorded to contractors participating in bids when the domestic production costs represent 30% or more of the procurement. Decree No. 85/2009/ND-CP (Article 4) establishes that when bids of foreign contractors are ranked equal, a higher rank will be given to the bid proposing higher domestic content.
Indonesia	In October 2012, the government of Indonesia announced a change in the local input requirements for the participation in certain public purchases According to the latest TPR, PR54 (Article 97) mandates the use of domestic products in government procurement if there are providers offering goods or services with a local content exceeding 40%.
M32: Local content requirement on services	
Malaysia	Government agencies are encouraged to use locally produced supplies or service available
Viet Nam	Decree No. 85/2009/ND-CP (Article 4) establishes that when bids of foreign contractors are ranked equal, a higher rank will be given to the bid proposing higher domestic content.
Indonesia	Procuring entity to direct projects to Small and Medium Enterprises (SMEs), and small cooperatives if the value of the project is up to Rupiah 2 500 000 000. This requirement is waived if the project requires technical competence that

SMEs or small cooperatives do not have. The Procurement of Construction Work, and Consultancy Services Regulation similarly requires construction work with a value up to Rupiah 2 500 000 000 to be allocated to small enterprises, unless technical competence that a small enterprise may not have is required

According to the latest TPR, PR54 (Article 97) mandates the use of domestic products in government procurement if there are providers offering goods or services with a local content exceeding 40%.

M33: Local content requirement on staff

Indonesia	<p>The use of expatriate personnel is allowed for certain positions and areas of expertise that cannot be fulfilled by Indonesian personnel. These positions are controlled by the regulator, and Indonesianization plans for these positions are reviewed annually. Specific regulations detail the procedure to be followed, including the obtaining of approval from the regulator</p> <p>Domestic companies operating in the downstream sector are required to give priority to local employment, which shall be done in coordination with the regional government and shall favour employment in the area of operation</p> <p>Companies must give preference to qualified Indonesian personnel and train such personnel for staff positions including in administration and executive management</p>
Viet Nam	Decree No. 85/2009/ND-CP (Article 4) outlines the specific preferences, which are aimed to encourage the use of local labour and to enhance the capability of domestic contractors to compete for international tenders

M34: Other offset

Malaysia	The offset policy, known as the Industrial Collaboration Programme (ICP), was reviewed in December 2014. An ICP may take place in the form of helping the recipients: develop their capacity; manufacture products related to the procured equipment; jointly develop and enjoy new technology and know-how; use local products; access the global market via the offset provider's network; and attract FDI
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Table 4.4. M4 ASEAN collateral measures

M42: Barriers to FDI

Philippines	Some sectors have restrictions with regards to foreign ownership: 20% foreign equity for private radio network; 25% for recruitment of staff and the construction and repair of public buildings; 30% foreign shareholding for advertisement; 40 % for operating public utilities and educational institutions, and supplying goods and materials to local government or state-owned enterprises
Malaysia	Some sectors have restrictions with regards to foreign ownership: 20% foreign equity for private radio network; 25% for recruitment of staff and the construction and repair of public buildings; 30% foreign shareholding for advertisement; 40% for operating public utilities and educational institutions, and supplying goods and materials to local government or state-owned enterprises
Viet Nam	Some foreign investments require a decision from the Prime Minister: Foreign investment into sea transport, provision of telecommunication services, afforestation, journalism, publishing and the establishment wholly foreign-owned science and technology companies
Indonesia	<p>Some sectors can be forbidden to foreign ownership, permitted with or without restrictions:</p> <p>Closed to foreign ownership: Telecommunications towers</p> <p>Max. 67% of foreign Ownership: Investment in Telecommunication services</p> <p>Max. 67% of foreign Ownership (70% for ASEAN countries): hospital services, public works, tourism and creative economy sector (golf courses, museums, motels)</p> <p>Max 49% of foreign ownership: energy and mineral resource sectors</p> <p>Foreign ownership with partnership with domestic SME: Cane sugar; Construction consultancy services</p>

4.2 Insights from the taxonomy on implicit measures

The four ASEAN countries studied have numerous texts setting out the processes and procedures for GP, which can in itself lead to a lack of transparency and be discouraging for foreign firms. For instance, the GP system in Malaysia is governed by various fragmented instruments which also leads to inconsistency (Xavier and Xavier, 2016).

With regards to other M5 implicit measures, the review indicates a tendency for the four ASEAN countries studied to use securities requirements (M56), be it tender securities (M561) or performance securities (M562), to impose additional requirements on foreign

firms (Table 4.5). For example, in Malaysia, local suppliers and contractors registered with the Government are exempted from tender deposits. However, international bidders are required to deposit a bid security which ranges in amount depending on the value of the bid. The Philippines requires tender securities as a routine matter.

Table 4.5. M5 ASEAN conduct of procurement

M52: Registration	
Malaysia	Malaysia maintains a supplier registration system. Any suppliers intending to participate in government procurement of goods and services must register with the Ministry of Finance
M54: Direct / Limited tendering	
Malaysia	For procurement of supplies and services up to RM 20 000, procuring entities are allowed to purchase directly from any known supplier consistently supplying goods and services at acceptable quality and reasonable prices. The registration requirement is exempted. For procurement of works up to RM 20 000, procuring entities are allowed to purchase directly from a contractor who is registered with the Contractor Service Centre and the CIDB. For procurement of supplies and services above RM 20 000 and up to RM 500 000, procuring entities are required to invite quotations (minimum number five) Limited tendering, as an exception to the Government Procurement Regulations and subject to Ministry of Finance approval, may be applied based on strict criteria (i.e. security, uniformity, urgency and sole sourcing)
Indonesia	PR54 Procurement law revised in 2012 increased the limit for direct procurement (sole sourcing) from Rp 50 million to Rp 100 million (except for consultancy services); direct procurement (procurement of a maximum value of Rp 200 million) and introduced direct appointment of one provider for goods and services that have a well-known price list, such as hotels, as well as for defence contracts
M55: Selective tendering	
Malaysia	Selective tendering is used to address specific concerns such as security, or when the number of registered companies is very limited.
M561: Tender securities	
Philippines	Bid security from any commercial or universal bank of the value of 2 to 5 % in the form of cash deposit, Bank guarantee, and Insurance guarantee. All bid securities must be in Philippines pesos - except that foreign bidders which are allowed to submit foreign currency denominated bids may also
Malaysia	Local suppliers and contractors registered with the Government are exempted from tender deposits. However, international bidders are required to furnish a tender deposit ranging from RM 60 000 for bids below RM 5 million, if tender amount is between RM 5 million and RM 10 million, the deposit is RM 150 000, and RM 1 million for bids exceeding RM 30 million for supplies and services
Viet Nam	Bidding guarantee required between 1% to 3% of the bidding package for all bidders
M562: Performance securities	
Philippines	Performance security from any commercial or universal bank of the value of 5% (goods and consulting services), 10% (infrastructure), in bank draft, bank guarantee, irrevocable letter of credit. In case of Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security - the value of the securities are 30%. All performance securities must be in Philippines pesos
Malaysia	Procurement Procedure of Government Tenders states that for contracts valued at more than RM 200 000, contractors shall submit a performance bond of 5% of the total contract price.
Viet Nam	Performance guarantee between 2% to 10% for all bidders

The formalities and expenses involved in a tender security may discourage the participation of suppliers and contractors in procurement processes. Tender securities may be important in the procurement of high-value goods or construction but for low-value items, the risks of delivery or performance faced by the procuring entity and its potential losses are generally low, and the cost of providing a tender security – which will normally be reflected in the contract price – may be less justified.

The review found fewer measures in qualification criteria (M6) (Table 4.6), although set asides for SMEs exist in the Philippines and Viet Nam. While preferential prices or other preferential programs in favour of SMEs can serve industrial policy objectives, and effectively increase SME participation in the GP market, they can also dampen competition, and increase the cost of public contracts (Arrowsmith and Anderson,

2011). Viet Nam maintains an additional requirement that a certain percentage of SME bids come from companies employing only female workers and wounded soldiers or disabled employees, which will receive preferential treatment. Requirements for prior experience (M64) exist in the Philippines.

Table 4.6. M6 ASEAN qualification criteria

M62: Set asides	
Philippines	Under the General Appropriations Act, the Government is asked to procure at least ten percent (10%) of its total purchases from duly registered cooperatives and another 10% from SMEs
Viet Nam	If a construction contract is worth less than VND 05 billion, only small and ultra-small enterprises are allowed to bid. At least 25% of the bids received must be from companies who employ only female workers and wounded soldiers or disabled employees, and these companies should receive preference over similarly ranked companies who do not meet that criteria.
Indonesia	Procuring entity to direct projects to Small and Medium Enterprises (SMEs), and small cooperatives if the value of the project is up to Rupiah 2 500 000 000. This requirement is waived if the project requires technical competence that SMEs or small cooperatives do not have. The Procurement of Construction Work, and Consultancy Services Regulation similarly requires construction work with a value up to Rupiah 2 500 000 000 to be allocated to small enterprises, unless technical competence that a small enterprise may not have is required.
M64: Prior experience	
Philippines	Prior experience of having successfully completed a single contract similar to the bid and of at least 50% of the value of the contract

In terms of systems for review and complaints regarding procurement decisions, this review found that in Malaysia no effective system of appeal is provided for complaints (M81) (Table 4.7). Three ASEAN countries do not provide a choice of complaint forum (M82) and often the complaint must be filed before the procuring entity; in Indonesia, the head of the procuring authority is also the final avenue of appeal. In the Philippines, the cost of filing a complaint (M84) appears to be high and can be a barrier for access to effective review, especially for SMEs. In Indonesia, while the amount of the complainant's bond has been reduced, it is only returned if the complainant is successful. None of the countries studied provides for suspension of the tendering process in the event of a challenge.

The review of transparency largely focused in particular on the e-procurement system (M92) (Table 4.8), although one restriction was found in Malaysia related to information (bidders cannot ask questions for clarifications to the procuring entity, either through regular channels of communication or during a clarification meeting with bidders organized by the procuring entity).

The four ASEAN countries are putting, or have recently put, in place an electronic procurement system. However, in practice, the system can be limited due to lack of information infrastructure or the geographical situations of some of the countries. For instance, in Indonesia, each region has authority to conduct its own procurement, and there is no enforcement of e-procurement (Nurmandi and Kim, 2015). On the other hand, in Malaysia, the Treasury Instruction Letter on 28 June 2013 stipulates that Cost Responsibility Centres of government agencies are required to ensure that at least 75% of their annual allocation of procurement must be made electronically (Xavier and Xavier, 2016). In Indonesia, e-procurement has contributed to significantly increase transparency (Trimurni et al., 2015) as well as budget savings (18.4% budget saving in 2009, LKPP.2009).

Table 4.7. M8 ASEAN review and complaint systems

M81: Challenge of bidding process or award	
Malaysia	No second-tier review (i.e. no appeal)
M82: Choice of complaint forum	
Philippines	Complaint has no choice of the judicial entity before which to file a claim - Philippines has 3-tier system which begins with a complaint to the Procuring entity; 2-tier is with the Head of the Procuring Entity and the third-tier is with Regional Trial Court. A court action may be filed in the Regional Trial Court only after the finality of the resolution of the local chief executive on protest.
Malaysia	The review mechanism and any choice on whom to bring a complaint to will likely be provided for in the request for proposal, bid documents or PPP contract. However, the procuring authority typically has discretion on the decision it makes and whether to waive any non-compliance of the bid documents. There is no specific complaints mechanism in the current framework in Malaysia. The request for proposal or bid documents would typically provide for a right of the procuring authority to exercise discretion on how the PPP process is undertaken leaving bidding parties will little room or grounds to make a complaint.
Indonesia	The procuring entity is where the complaint can be filed The only (and final) avenue for appeal is the head of the procuring entity,
M84: Cost	
Philippines	Cost to appeal the decision before the second-tier review body is USD 11 346
Indonesia	The complainant must provide a bond equal to 1% (down from 2% as of 2012) of the value of the contract or a maximum of Rp 50 million. The bond is only returned if the complainant wins the appeal
M85: Suspension of bidding process	
Philippines	Filing of complaint does not lead to suspension of procurement process
Malaysia	No suspension of procurement process
Viet Nam	No suspension of procurement process during first-tier. Suspension however during second-tier if required by complaint.

Table 4.8. M9 ASEAN e-procurement

M92: Accessible e-procurement	
Philippines	Winning bidder cannot sign the contract on-line
Malaysia	No e-signature of procurement contract
Viet Nam	No online signature of contract awarded
	No online payment
Indonesia	No online payment

5. Conclusion

This study has built on the initial work-related to the OECD Taxonomy (OECD, 2017) in two respects. First, it has mapped in greater detail the specific sub-categories of the taxonomy with the existing and recognized sources of good practices in government procurement: the WTO GPA and the UNCITRAL Model Law. This provides countries with a more precise tool to better understand their own GP systems through the trade lens and *vis-à-vis* international benchmarks.

The mapping exercise has shown that all non-administrative type of provisions of the GPA can be mapped with OECD Taxonomy entries and that all trade related articles of the Model Law are mapped with the Taxonomy. There are some instances where the OECD Taxonomy exceeds the current provisions of the GPA and cannot be precisely mapped against its provisions (as is the case for ethics and anti-corruption).

Second, the study provided an initial collection of measures using the OECD Taxonomy in four ASEAN countries to help gain a picture of key measures that may have a trade restricting effect in countries' systems. Given resource constraints, this collection is by no means comprehensive; that said, it provides useful insights into and examples of the nature and range of measures affecting government procurement in the region.

References

- Anderson, R., A. Muller and P. Pelletier (2016), “Regional Trade Agreements and Procurement Rules: Facilitators or Hindrances?”, in A. Georgopoulos, B. Hoekman and P. Mavroidis (eds.), *The Internationalization of Government Procurement Regulation*, Oxford: Oxford University Press.
- Arrowsmith, S. and R.D. Anderson (eds.) (2011), *WTO Regime on Government Procurement: Challenge and Reform*, Cambridge University Press.
- Gourdon, J., V. Bastien and L. Folliot-Lalliot (2017), “OECD Taxonomy of Measures Affecting Trade in Government Procurement Processes”, *OECD Trade Policy Papers*, No. 198, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5bfb44c3-en>.
- Gourdon J. and J. Messent (2017), “How Government Procurement Measures Can Affect Trade”, *OECD Trade Policy Papers*, No. 199, OECD Publishing, Paris, <http://dx.doi.org/10.1787/d1ab07b8-en>.
- Nicholas C. and A.C. Müller (2017), “SME Participation in Government Procurement Markets: Legal and Policy Considerations under the WTO Agreement on Government Procurement and the UNCITRAL Model Law on Public Procurement”, in Thilo Rensmann (ed.), *Small and Medium-Sized Enterprises in International Economic Law* (Oxford University Press), pp. 123-161.
- Nurmandi, A. and S. Kim (2015), “Making E-Procurement Work in a Decentralized Procurement System: A Comparison of Three Indonesian Cities”, *International Journal of Public Sector Management*, Vol. 28, Issue: 3, pp.198-220, <https://doi.org/10.1108/IJPSM-03-2015-0035>.
- Trimurni, F., A. Siahaan and Dayana (2015), “E-Procurement Policy Model: Case Study of Health Agency in North Sumatra Province, Indonesia”, *Public Policy and Administration Research*, Vol. 5, No. 11, 2015.

Annex 1. OECD Taxonomy

M1 Market access restrictions		M5 Conduct of procurement
M11	To National supplier	M51 Design of procurement methods
M12	To Sub national supplier	M52 Registration
M13	Conditional access	M53 Shortlist / preselected list of bidders
	M131: To Joint ventures with national supplier	M54 Direct/Limited tendering
	M132: Commercial presence required	M55 Selective tendering
	M133: Access based on reciprocity	M56 Securities
M14	Exclusion for national security or safety reasons	M561: tender securities
M15	Thresholds	M562: performance securities
M19	Other	M57 Time period
M2 Domestic price preferences		M59 Other
M21	For National supplier	
M22	For Sub national supplier	M6 Qualification criteria
M23	Conditional access	M61 Certification or license criteria
M29	Other	M62 Set asides for specific groups (SMEs, minorities)
M3 Offsets		M63 Past performance requirements
M31	Local content requirement for Inputs and data storage	M64 Prior experience requirements
M32	Local content requirement for Services	M69 Other criteria
M33	Local content requirement for Staff requirement	
M34	Subcontract requirements	
M39	Offsets (transfer of technology...)	

M4 Collateral restriction/restrictive effects		M7 Evaluation criteria	
M41	Tax on procurement from foreign entity	M71	Technical contractual conditions
M42	Barriers to FDI	M72	Financial requirements
	M421: constraint on forming joint venture	M73	Offer-backs for specific groups (SMEs, minorities)
	M422 constraint to merger	M79	Other restrictive criteria
	M423: absence of national treatment	M8 Review / complaint mechanisms	
	M424: Closed sectors to FDI	M81	Challenge of bidding process or award
M43	Restricted eligibility to subsidies and tax preferences	M82	Choice of complaint forum
M44	Time period	M83	Time period
M49	Other	M84	Fees
		M85	Suspension of bidding process
M10 Effectiveness of ethics and anti-corruption system		M86	Sanction and remedies
M101	Conflict of interest policies and / or measures in public procurement.	M89	Other
M102	Anti-bribery measures in public procurement.	M9 Transparency and information	
M103	Whistle-blowing protection measures in public procurement.	M91	Publication in official gazette or accessible publication
M104	Guidelines on preventing and detecting bid rigging in procurement	M92	Accessible e-procurement
M105	Debarment regulations in public procurement		M921 online publication of tender
			M922 online tender process
			M923 online award process
			M924 e-communication
			M925 e-signature
			M926 Other online requirements
		M93	Notification
		M99	Other

Annex 2. GPA Articles

Articles	Area
Article I	Definitions
Article II	Scope and Coverage
Article III	Security and General Exceptions
Article IV	General Principles
Article V	Developing Countries
Article VI	Information on the Procurement System
Article VII	Notices
Article VIII	Conditions for Participation
Article IX	Qualification of Suppliers
Article X	Technical Specifications and Tender Documentation
Article XI	Time-Periods
Article XII	Negotiation
Article XIII	Limited Tendering
Article XIV	Electronic Auctions
Article XV	Treatment of Tenders and Awarding of Contracts
Article XVI	Transparency of Procurement Information
Article XVII	Disclosure of Information
Article XVIII	Domestic Review Procedures
Article XIX	Modifications and Rectifications to Coverage
Article XX	Consultations and Dispute Settlement
Article XXI	Institutions
Article XXII	Final Provisions

Annex 3. UNCITRAL Model Law Articles

Articles	Area
Article 1	Scope of application
Article 2	Definitions
Article 3	International obligations of [this State] relating to procurement
Article 4	Procurement regulations
Article 5	Publication of legal texts
Article 6	Information on possible forthcoming procurement
Article 7	Communications in procurement
Article 8	Participation by suppliers or contractors
Article 9	Qualifications of suppliers and contractors
Article 10	Rules concerning description of the subject matter of the procurement and the terms and conditions of the procurement contract or framework agreement
Article 11	Rules concerning evaluation criteria and procedures
Article 12	Rules concerning estimation of the value of procurement
Article 13	Rules concerning the language of documents
Article 14	Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions
Article 15	Clarifications and modifications of solicitation documents
Article 16	Clarification of qualification information and of submissions
Article 17	Tender securities
Article 18	Pre-qualification proceedings
Article 19	Cancellation of the procurement
Article 20	Rejection of abnormally low submissions
Article 21	Exclusion of a supplier or contractor from the procurement proceedings on the grounds of inducements from the supplier or contractor, an unfair competitive advantage or conflicts of interest
Article 22	Acceptance of the successful submission and entry into force of the procurement contract
Article 23	Public notice of the award of a procurement contract or framework agreement
Article 24	Confidentiality
Article 25	Documentary record of procurement proceedings
Article 26	Code of conduct
Article 27	Methods of procurement
Article 28	General rules applicable to the selection of a procurement method
Article 29	Conditions for the use of methods of procurement under chapter IV
Article 30	Conditions for the use of methods of procurement under chapter V
Article 31	Conditions for use of an electronic reverse auction
Article 32	Conditions for use of a framework agreement procedure
Article 33	Solicitation in open tendering, two-stage tendering and procurement by means of an electronic reverse auction

Article 34	Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement
Article 35	Solicitation in request-for-proposals proceedings
Article 36	Procedures for soliciting tenders
Article 37	Contents of invitation to tender
Article 38	Provision of solicitation documents
Article 39	Contents of solicitation documents
Article 40	Presentation of tenders
Article 41	Period of effectiveness of tenders; modification and withdrawal of tenders
Article 42	Opening of tenders
Article 43	Examination and evaluation of tenders
Article 44	Prohibition of negotiations with suppliers or contractors
Article 45	Restricted tendering
Article 46	Request for quotations
Article 47	Request for proposals without negotiation
Article 48	Two-stage tendering
Article 49	Request for proposals with dialogue
Article 50	Request for proposals with consecutive negotiations
Article 51	Competitive negotiations
Article 52	Single-source procurement
Article 53	Electronic reverse auction as a stand-alone method of procurement
Article 54	Electronic reverse auction as a phase preceding the award of the procurement contract
Article 55	Registration for the electronic reverse auction and the timing
Article 56	Requirements during the electronic reverse auction
Article 57	Requirements after the electronic reverse auction of the holding of the auction
Article 58	Award of a closed framework agreement
Article 59	Requirements for closed framework agreements
Article 60	Establishment of an open framework agreement
Article 61	Requirements for open framework agreements
Article 62	Second stage of a framework agreement procedure
Article 63	Changes during the operation of a framework agreement
Article 64	Right to challenge and appeal
Article 65	Effect of a challenge
Article 66	Application for reconsideration before the procuring entity
Article 67	Application for review before an independent body
Article 68	Rights of participants in challenge proceedings
Article 69	Confidentiality in challenge proceedings

Annex 4. OECD taxonomy

Sub-Chapter	Group	Definition	Examples
M1	Market access restrictions	<i>Market access restrictions group measures and practices that expressly restrict access to GP markets to national (or sub-national) suppliers or which require specific market access conditions</i>	
M11	To National supplier (incl. national flag carriers)	Market access restrictions that expressly restrict access to GP to national suppliers	Foreign bidders have no access to national procurement and/or subnational procurement
M12	To Local supplier	Market access restrictions that expressly restrict GP access to sub-national suppliers	Handloom textiles are reserved by the central government for exclusive purchase from local suppliers.
M13	Conditional access	Conditional access refers to requirements	
M131	To Joint ventures with national supplier	of joint ventures with a national/sub-national supplier	For public tenders exceeding a financial value threshold, foreign contractors are required to cooperate with local companies.
M132	Commercial presence required	to commercial presence requirements when a supplier can participate in a bid only if its business is established locally in the procuring country;	Procuring entities may request foreign companies to establish a national company or agency. This may be applied only with respect to the winning supplier before signing the contract
M133	Access base on reciprocity	to market access based on mutual reciprocity which captures measures allowing foreign suppliers to bid only if the supplier's country grants reciprocal market access	National treatment in GP is only granted to foreign suppliers if the same treatment is offered by the country of the foreign suppliers.
M14	Exclusion for national security or safety reasons	Exception for non-economic rationale captures the use of national security or safety clauses/considerations to exclude foreign suppliers from GP projects.	Operational safety clause" legislation prevents the procuring entity from accepting bids from foreign suppliers or gives it the right to exclude foreign bidders from the procurement of railway equipment and infrastructure.
M15	Thresholds		
M2	Domestic price/point preferences	<i>A price preference is a percentage by which prices offered by preferred suppliers (e.g. domestic suppliers) are adjusted for purposes of tender evaluation. It increases the domestic suppliers' chance to win a tender. A price preference can also be applied to tenders incorporating domestic goods or services.</i>	
M21	For National supplier	A procuring entity allocates a price preference only to national suppliers.	National bids are preferred to foreign ones that are of equal quality where national bids' price does not exceed 10% of the price quoted in the foreign one.

M22	For Local supplier	A procuring entity allocates a price preference only to sub-national suppliers	There is a price preference of 5% to local scheduled castes and tribes
M23	Conditional access	Conditional access refers to a requirement of a joint venture with a national/sub-national supplier (M231); or to a commercial presence requirement (M232) to benefit from a price preference	When suppliers are evaluated according to the preference point system, the extra number of points must be given to a joint venture.
M3 Offsets		<i>Offset means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement. A procuring entity may impose an offset to suppliers in order to satisfy an objective other than the acquisition of the procured product. Besides the examples mentioned above, subcontracts, training, foreign direct investment, etc. are other types of offsets.</i>	
M31	Local content requirement on inputs and data storage	Foreign suppliers are required to use national (M311) or sub-national (M312) inputs and/or data storage of the procuring country.	Public buyers of a country must grant at least 20% of favourable qualification to the offers containing agricultural products of the country's origin.
M32	Local content requirement on Services	Foreign suppliers are required to use national (M321) or sub-national (M322) inputs services of the procuring country	In case of equality between national and foreign suppliers, the attribution of services contracts will be in favour of the offer that proposes a higher degree of national content (national human resources).
M33	Local content requirement on staff	Foreign suppliers are required to hire national (M331) or sub-national (M332) inputs staff from the procuring country.	The government has set up a preferential policy to promote local job creation.
M34	Subcontract requirements	Foreign suppliers are required to subcontract with suppliers from the procuring country.	General conditions of contracts contain a clause that encourages use of national subcontractors.
M4 Collateral restriction/restrictive effects		<i>Measures not targeting PP per se but with collateral impact on PP</i>	
M41	Tax on procurement from foreign entity	Foreign suppliers must pay a tax on GP projects that they carry out.	A 2% tax is imposed on foreign suppliers in the procurement of goods and services by the federal government.
M42	Barriers to FDI M421 To joint venture M422 To merger M423 Absence National Treatment M424 Closed to FDI	All the explicit measures affecting FDI that can impede the commercial presence requirement. These identify constraints to forming joint ventures, to mergers, to lack of national treatment or sector close to FDI	

M43	Restricted eligibility to subsidies and tax preferences	Foreign suppliers are restricted from being eligible for subsidies or tax preferences	Direct subsidies and differential taxation favour local small and medium-sized enterprises.
M44	Time period	<p>Procuring entities should adopt adequate time-periods to notify bidders of the outcome and to pay suppliers.</p> <p>(1) Payment period: Time-period between the contractor's request for payment after fulfilling its contractual obligation and the payment. However, in some countries, procuring entities are not required to respect a particular deadline to pay their suppliers, unless payment terms are specified in the procurement contract.</p> <p>(2) Period for award notice: Adopt appropriate time-periods for the publication of an award notice and/or for notification to bidders that their bid was not successful.</p>	<p>Upon the completion of work, a procuring entity must provide a payment to a contractor within 100 days after the request of payment.</p> <p>Procuring entities are not legally required to notify unsuccessful bidders.</p>
M5 Conduct of procurement		<i>Conduct of procurement is the way GP is carried out under specific conditions and rules. These measures can be considered restrictive when their purposes or effects limit or avoid competition by protecting domestic suppliers.</i>	
M51	Design of procurement methods	Design of procurement method refers to any particularity in the scheme of contracts such as the division of contract into lots (allotment). Those specific measures may limit competition (e.g. by excluding procurements from the application of certain rules or trade agreements) and lead to less visibility of the call to foreign suppliers, for instance when dividing a large contract in small pieces to fit to SMEs.	The allotment (i.e. division of contracts) mechanism designed to encourage national suppliers' participation is mandatory.
M52	Registration	A supplier registration system is a process under which any supplier seeking to tender are required to register and provide certain information. This first registration process may be carried out by the procuring entity or by another public entity (e.g. Registration with the Ministry of Commerce). A supplier can submit its tender only upon completion of the registration process. Registration may involve a simple mechanism for identification of suppliers.	Foreign bidders must be registered in the bidders' national record. Registration must be renewed before the fifth working day of April each year.
M53	Shortlist / preselected list of bidders	Shortlist/pre-selected list is a list of pre-selected suitable potential suppliers established by a procuring entity. Only these shortlisted suppliers are allowed to submit tenders (to be distinguished from normal listing as part of an open tendering process). For example, shortlists may be compiled after rigorous international tendering.	The Ministry or Department should prepare a list of qualified suppliers.
M54	Direct/Limited tendering	Limited tendering is a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice. Direct tendering is a procurement method whereby the procuring entity awards a contract to a single supplier without competition. It is sometimes called direct contracting or single sourcing. []	Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department.

M55	Selective tendering	Selective tendering is a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender	After evaluation of pre-qualification application, a list of qualified suppliers will be prepared. Thereafter, only those suppliers that are pre-qualified for the works will be invited to submit tenders.
M56	Securities M561 Tender securities M562 Performance securities	<p>Securities are required from suppliers by procuring entities to secure the fulfillment of the suppliers' obligations. It includes arrangements such as bank guarantees, surety bonds, stand-by letters of credit, checks for which a bank is primarily liable, cash deposits, promissory notes and bills of exchange.</p> <p>A tender security is an amount of money asked to suppliers in order to deter them from withdrawing their tenders before the final selection or from refusing to sign the contract after the notification of the award. In such cases, suppliers would have to forfeit the tender security to the procuring entity. Tender securities may be calculated as a percentage of the budget estimate of a procurement or a percentage of a supplier's tender price.</p> <p>The performance securities refer to an amount of money retained from payments to a supplier, or provided to a procuring entity in advance in order to deter a case when a supplier refuses or fails to execute the agreed work after the award of the contract. Performance securities are usually returned to the supplier at the end of the satisfactory completion of the contract.</p>	<p>Upon receipt of tenders, the bond/guarantee will be accepted only on condition that it is issued by a treasury approved guarantor here is no timeframe for the procuring entity to return said instrument.</p> <p>The legal framework does not determine the amount of performance guarantee that can be requested from the supplier or the supplier does not have the choice regarding the form of the performance guarantee.</p>
M57	Time period	Minimum time-periods during which suppliers can prepare and submit tenders are generally defined in GP legislation. If the time-period is too short, smaller (or foreign) suppliers may have fewer opportunities to meet the deadline and submit competitive proposals. But for efficiency purposes, the time-period should not be excessively long	The minimum time-period to submit a tender is seven days.
M6 Qualification criteria		<i>Qualification criteria are requirements based on which a procuring entity determines the eligibility of suppliers to participate in GP opportunities.</i>	
M61	Certification or license criteria	Certification or license requirements beyond the regular professional qualifications required to undertake a given activity.	All suppliers will have to submit Minority Economic Empowerment rating certificates, issued by verification agencies accredited by the country's Accreditation System.
M62	Set asides for specific groups (SMEs, minorities)	A procuring entity reserves procurement opportunities, often smaller procurements, only for specific groups	Every federal government purchase with an anticipated value above the micro-purchase threshold of 3,500\$ is required to be automatically and exclusively set-aside for small businesses.
M63	Past performance requirements	Past performance requirements can impose, as a condition for participation in a procurement, that suppliers demonstrate that they have previously performed similar tasks.	Suppliers for construction procurement must have prior experience in building similar types of buildings. Experience in other countries is not taken into account.
M64	Prior experience requirements	This type of measures may require, as a condition for participation in a procurement, that the suppliers have previously been awarded procurement contracts by certain public entities within the country.	Suppliers must have achieved work of any nature with some national public entity listed.

M7 Evaluation criteria		<i>Those measures relate to the evaluation criteria the procuring entity relies on to select the successful bidder</i>	
M71	Technical contractual conditions for domestic firms	Technical specifications which may be geographically specific, or not aligned with international standards (where such exist), or which would impose a disproportionate compliance burden or cost on non-national suppliers	Technical specifications must be drafted in a way to promote local products or specific suppliers
M72	Financial requirements	This includes restrictions on the terms of payment. When a procuring entity pays a supplier for the fulfilment of its contractual obligations, it restricts the terms of payment such as payment method, currency, transfer to foreign countries, etc.	Payment will be made to a contractor only in the national currency of the procuring country
M73	Offer-backs for specific groups (SMEs, minorities)	A procuring entity holds a general competition for a specific procurement, and then selects the best supplier from a specific group if it can match the best terms offered in the competition (if necessary by revising its offer). This approach is taken to tackle high costs arising from set-aside.	Contracts should be awarded to a supplier registered to the minority scheme, if its tender is no less economically advantageous than the other tenders (on grounds of price alone), the opportunity to submit a revised offer should be given.
M8 Review / Complaint Mechanisms		<i>Countries should ensure that foreign suppliers have access to an independent judicial or administrative body/court allowing for a timely, effective, transparent and non-discriminatory complaint mechanism and/or review procedure to challenge a decision regarding the GP process.</i>	
M81	Challenge of bidding process or award	There is a review/complaint mechanism allowing foreign suppliers to challenge a breach of rules governing the tendering process or contract award.	If a dispute between a foreign supplier and a procuring entity arises, the supplier can file a complaint to the Administrative Review Board.
M82	Choice of complaint forum	GP systems may offer one or several judicial or administrative complaint fora, with or without a possibility to appeal. If several fora exist, a complaining party should have some choice in the review forum, especially if one of the reviewers is the procuring entity	There are three fora available to file a complaint: the procuring agency directly, the Government Accountability Office at the federal level, and the Court of Federal Claims
M83	Time period	There are four important time-periods in relation with review/complaint mechanism. (1) Stand-still period: Time-period between announcing a potential awardee and signing the contract during which suppliers can prepare and submit a complaint. (2) Time-period for submission of complaints: The suppliers can only submit a complaint within a certain time-period. (3) Decision rendering period: Time-period between the submission of a complaint and the rendering of a decision. A complaining party should be able to obtain a resolution in a timely manner. A short time limit does not permit a meaningful review, yet a long period could be disruptive to the GP process. (4) Time-period for appeal: A supplier can appeal the initial review decision within a certain time period.	The signature of the contract can only take place five working days after the date of the contract award decision. The complaint has to be submitted within ten working days after the complainant has learned (or should have learned) about the reason(s) for the complaint. Decision must be rendered within 100 days. The appeal has to be submitted within ten working days after the initial review decision has been made available to the complainant.

M84	Fees	The cost of filing a complaint.	When bringing a complaint before the relevant administrative authority, suppliers must pay fees that are not refundable.
M85	Suspension of bidding process	If a review body deems it appropriate, it can suspend the GP process through interim measures to preserve a supplier's opportunity to participate in a procurement. Overriding adverse consequences for the interests concerned, including the public interest, can be taken into account when deciding if interim measures should apply.	Automatic suspension exists only for suppliers which submitted a bid
M86	Sanction and remedies	Means the imposition of a punitive measure to counter irregularities in the GP process. During the pre-award stage, remedies usually aim at correcting irregularities that occurred during the preparation and submission stages of the GP process that may prevent fair competition. Remedies can take different forms: modification of the tender documents, payment of damages, compensation of tendering costs incurred by a supplier, payment of attorneys' fees, or overturning in whole or in part an act or a decision of the procuring entity	In some countries, the review body can grant the entire range of remedies described, in some countries only some of them.
M9 Transparency and Information		<i>Transparency and access to information is key to ensuring that all suppliers participate in the GP process on a level playing field and that fair conditions of competition are maintained. The measures include those that can potentially make it difficult (or impossible) for foreign suppliers to access the information required at any of the stages of GP process.</i>	
M91	Publication in accessible publication	Requirements to publish GP information. Among the various types of required information, the most important ones include: • GP laws and subsidiary regulations; • Procurement notices and tender documentation: The notice inviting suppliers to submit tender and relevant documentation presenting the terms of the tenders, the general conditions of contract, and the tender specifications; and • Contract award notices (to both awarded and competing suppliers): the document should include basic information regarding the winning tender	The head of each central office or the contracting officer shall notify tender information via the e-procurement system when conducting competitive tendering [
M92	Accessible e-procurement	Requirements to operate an e-procurement system. E-procurement system refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the GP process. Although the extent to which countries use e-procurement systems varies, e-procurement can enable the followings	
	M921 online publication of tender	Tender notices can be made publicly accessible online	Only the procurement contracts above 500,000\$ must be advertised in the National Treasury's e-Tender portal.
	M922 online tender process	Tender documents can be publicly accessible online and bidders can submit online.	Electronic tender procedures shall be implemented from the submission of a tender until the awarding of a contract to the successful supplier.

	M923 online award process	Award notices can be publicly accessible online.	The tender committee shall publish through the Electronic System the contract awarded to the successful supplier of the electronic tender and the documentation related to the electronic tender.
	M924 e-communication	The exchange of information/communication by electronic means between a user (e.g. a supplier, a potential supplier or another interested party) and the provider of information (e.g. a procuring entity or other relevant public authorities).	Information regarding the eligibility criteria and technical requirements (e.g. concerning foreign suppliers) shall be made available online. Suppliers seeking additional information on specific aspects of a tender (e.g. regarding registration requirements) shall communicate with the procuring entity through the designated website.
	M925 e-signature	Recognition of E-signature systems (some entities do not recognize e-signature system for foreign suppliers).	The electronic documents including bids with digital signature have the same validity with the paper documents with the signatures. [
	M926 Other online requirements		
M10 Effectiveness of ethics and anti-corruption system		<i>lack of provisions and effective anti-corruption tools that could limit participation of some of the foreign firms</i>	
M101	Conflict of interest policies and / or measures in public procurement.	According to the OECD Guidelines for managing conflict of interest in the public service, "citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way". Managing conflict of interests, a significant public concern, is a key component in ensuring integrity and transparency of decision-making by public officials. Matters of conflict of interests are often addressed through guidelines, laws and regulations and codes of ethics.	The Audit Office developed specific Good Practice for Purchasing by Government Departments guidelines that sets out the standards for identification and management of conflict of interest.
M102	Anti-bribery measures in public procurement.	A further risk for public procurement from corruption relates to bribery. An OECD analysis shows that among the proportion of bribes paid, per category of public official, 3% are procurement officials (OECD, 2016f). Moreover, among the bribes in cross-border business transactions involving foreign officials, 57% involved 'bribes to obtain public procurement contracts' (OECD, 2016f).	At the sector level there are "sector agreements such as Business Principles for Countering Bribery in Engineering and Construction Industry" (OECD, 2007).
M103:	Whistle-blowing protection measures in public procurement.	Whistle-blowing systems help detect and prevent corruption in the public sector and can be the starting point for investigations. Ensuring the effective protection of whistle blowers encourages accountability and integrity in public institutions (OECD, 2016e). While many countries have translated whistle-blower protection into dedicated law, only a few countries have specifically targeted procurement (e.g. United States).	The Public Procurement Service decided to introduce an 'Anonymous report system' to encourage and protect whistle-blowers while their reports would be carried out by an independent and external ombudsman.
M104	Guidelines on preventing and detecting bid rigging in procurement	GP systems should also ensure a competitive market, with two or more bidders that act independently and obtain a public contract by offering the most favourable terms (UNODC, 2013). The need for two or more bidders for a competitive and efficient public procurement process means that anticompetitive practices such as cartels or	Competition Authority, Fiscalía Nacional Económica has issued "guidelines and checklists for preventing and detecting bid rigging in public procurement in 2011". The guidelines include details on

M105	Debarment regulations in public procurement	<p>collusions should be prevented or deterred. Hence countries should put in place measures to avoid or detect bid rigging</p> <p>Corruption can be deterred or prevented in public procurement by, for example, eliminating corrupt companies in the early stages of the procurement process, or in the bidding or tendering stages.</p>	<p>what public procurement officials should do when they encounter suspicious patterns in tendering. (OECD, 2016d).</p> <p>Public Procurement Directive 2014/24/EU excludes companies that were involved in criminal acts such as corruption</p>
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Annex 5. ASEAN

SubChapter	Text quotation INDONESIA	Date of implementation	Regulation	Source
M11: To national supplier (incl. flag carriers)	Prior to the granting of the license to use a foreign vessel, the tender shall prioritize (i) Indonesian-flagged vessels and (ii) foreign-flagged vessels if the purchase by an Indonesian individual or entity is financed by a leasing company pursuant to a capital lease.	2015	PM 200 of 2015 regarding the Third Amendment of Minister of Transportation No. PM 10 of 2014 regarding Procedures and Requirements for Granting License for the Utilization of Foreign Ships for Other Activities Not Included in the Transportation of Passengers and/or Goods in Domestic Sea Transport Activity (December 29, 2015)	http://www.ssek.com/download/document/Indonesian_Legal_Review_123.pdf
M131 To joint ventures with national supplier	As stipulated in PR54 (Article 104), foreign companies may only bid in cooperation with a national company (unless no national company has the ability to provide the goods and services requested)	2010	Pursuant to Article 104 of Presidential Regulation No. 54 of 2010 on Procurement of Goods/Services by Government	
M15: Thresholds	Only for procurements above a certain threshold or for certain contracts. Procurement of goods and services above Rupiah 20 billion, consultation services above Rupiah 10 billion and construction services above Rupiah 100 billion	2010	Pursuant to Article 104 of Presidential Regulation No. 54 of 2010 on Procurement of Goods/Services by Government	
M21: For national supplier	Article 98(6) of Presidential Regulation No. 54 of 2010 on Procurement of Goods/Services by Government establishes that the price discounts.			
M31: Inputs and data storage	In October 2012, the government of Indonesia announced a change in the local input requirements for the participation in certain public purchases.	2012	See Global Trade Alert	http://www.globaltradealert.org/country/96/period-from_20090101/period-to_20170830/area_service
	According to the latest TPR, PR54 (Article 97) mandates the use of domestic products in government procurement if there are providers offering goods or services with a local content exceeding 40%.	2010	Article 97 of Presidential Regulation No. 54 of 2010 on Procurement of Goods/Services by Government	
M32: Services	Procuring entity to direct projects to Small and Medium Enterprises (SMEs), and small cooperatives if the value of the project is up to Rupiah 2 500 000 000. This requirement is waived if the project requires technical competence that SMEs or small cooperatives do not have. The Procurement of Construction Work, and Consultancy Services Regulation similarly requires construction work with a value up to Rupiah 2 500 000 000 to be allocated to small enterprises, unless technical competence that a small enterprise may not have is required	2015	Article 103 of Presidential Regulation No. 54 of 2010 on Procurement of Goods/Services by Government (as amended by Presidential Regulation No. 4 of 2015), requires the	
M33: Staff requirement	Domestic companies operating in the downstream sector are required to give priority to local employment, which shall be done in coordination with the regional government and shall favour employment in the area of operation	2010	Presidential Regulation No. 54 of 2010 on Procurement of Goods/Services by Government	
	The use of expatriate personnel is allowed for certain positions and areas of expertise that cannot be fulfilled by Indonesian personnel. These positions are controlled by the regulator, and Indonesianization plans for these positions are reviewed annually. Specific regulations detail the procedure to be followed, including the obtaining of approval from the regulator	2011	Supply Chain Management Manual PTK 007/2009 as revised in 2011/The 2005 Guidelines for Human Resource Management of BPMIGAS and revision of 2008/Ministry of Industry Regulation No. 15-16/2011 on local content calculation	http://documents.worldbank.org/curated/en/549241468326687019/pdf/789940REVIS000Box377371B00PUBLIC0.pdf

	Companies must give preference to qualified Indonesian personnel and train such personnel for staff positions including in administration and executive management		Article 12.1 he Model Production Sharing Contract of 2003 ("Model PSC") Reg. No. 95 confirms all existing PSCs remain in effect despite the Court ruling on Law 22 / Article 82 Regulation No. 35/2004 on Upstream Oil and Gas Business Activities ("Reg. 35") –last amended by Reg. No. 55 of 2009 Presidential Regulation No. 44 of 2016	http://ccsi.columbia.edu/files/2014/03/Local-Content-Indonesia-Petroleum-CCSI-Feb-2015.pdf
M42: Barriers to FDI	Some sectors can be forbidden to foreign ownership, permitted with or without restrictions: Closed to foreign ownership: Telecommunications towers Max. 67% of foreign Ownership: Investment in Telecommunication services Max. 67% of foreign Ownership (70% for ASEAN countries): hospital services, public works, tourism and creative economy sector (golf courses, museums, motels Max 49% of foreign ownership: energy and mineral resource sectors Foreign ownership with partnership with domestic SME: Cane sugar; Construction	2016		
M54: Direct / Limited tendering	PR54 Procurement law revised in 2012 has increased the limit for direct procurement (sole sourcing) from Rp 50 million to Rp 100 million (except for consultancy services); direct procurement (procurement of a maximum value of Rp 200 million).and introduces direct appointment of one provider for goods and services that have a well-known price list, such as hotels and for defence contract			WTO Trade Policy Review 2013
M82: Choice of complaint forum	The procuring entity is where the complaint can be filed The only (and final) avenue for appeal is the head of the procuring entity			WTO Trade Policy Review 2013
M 84: Cost	The complainant must provide a bond equal to 1% (down from 2% as of 2012) of the value of the contract or a maximum of Rp 50 million. The bond is only returned if the complainant wins the appeal			
M92: Accessible e-procurement	No online payment			

SubChapter	Text quotation	MALAYSIA	Regulation	Source
M11: To national supplier	As stated in WTR from WTO (2018), foreign suppliers are not allowed to participate in domestic tenders; international tenders are called if there are no domestically produced supplies or services available			WTO Trade Policy Review (2018)
M131: To joint ventures with national supplier	For specific works, if domestic contractors do not have the expertise and capability, tenders may be called on a joint-venture basis between domestic and foreign contractors to encourage the transfer of technology.			WTO Trade Policy Review (2018)
M14: Exclusion for national security safety reasons	There may also be a restriction to bid for tenders pertaining to national defense, hazardous waste disposal, and security services etc. however this depends on sector specific regulations and policies which may have local equity requirements.			Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconomies/malaysia/2017
M132: Commercial presence required	A foreign company is mandated to have a local subsidiary to be eligible to bid.			Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconomies/malaysia/2018
M17: Thresholds	A locally incorporated foreign company may not submit bids for tenders relating to construction work below the value of RM 30 million nor bid for tenders open only to Bumiputera companies.			Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconomies/malaysia/2018
M21: For national supplier	Price preference to Bumiputera companies for tender above RM 100.000 (USD 25.000). The margin of preference for bumiputera supplies has remained unchanged since 2014. For goods and services contracts between RM 100,000 and RM 15 million, bumiputera suppliers receive a margin of preference between 2.5% and 10% which is inversely proportional to value. For purchases exceeding RM15million, no price preferences apply. Furthermore, preferential treatment is given to bumiputera manufacturers for locally produced goods; the margin is up to 10% for contracts valued below RM 10 million, up to 5% for contracts valued at between RM 10 million and RM 100million, and up to 3% for contracts valued above RM 100 million.		Treasury Instructions	The document "Punca Kuasa, Prinsip, dan Dasar Perolehan Kerajaan" is stored the first heading of "PK: Perolehan Kerajaan."
M31: Inputs and data storage	Government agencies are encouraged to use locally produced supplies or service available.		Treasury Instructions	Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconomies/malaysia/2018
M32: Services	Government agencies are encouraged to use locally produced supplies or service available.		Treasury Instructions	Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconomies/malaysia/2018
M34: Other offsets	The offset policy, known as the Industrial Collaboration Programme (ICP), was reviewed in December 2014. An ICP may take place in the form of helping the recipients: develop their capacity; manufacture products related to the procured equipment; jointly develop and enjoy new technology and know-how; use local products; access the global market via the offset provider's network; and attract FDI			World Trade Review (2018)
M42: Barriers to FDI	Some sectors have restrictions with regards to foreign ownership: 20% foreign equity for private radio network; 25% for recruitment of staff and the construction and repair of public buildings; 30% foreign shareholding for advertisement; 40 % for operating public utilities and educational institutions, and supplying goods and materials to local government or state-owned enterprises			http://www.aseanbriefing.com/news/2015/10/23/foreign-investment-restrictions-across-asean-an-overview-of-the-regions-negative-lists-part-one.html
M52: Registration	Malaysia maintains a supplier registration system. Any suppliers intending to participate in government procurement of goods and services must register with the Ministry of Finance			WTO Trade Policy Review (2018)

M54: Direct / Limited tendering	<p>For procurement of supplies and services up to RM 20,000, procuring entities are allowed to purchase directly from any known supplier consistently supplying goods and services at acceptable quality and reasonable prices. The registration requirement is exempted. For procurement of works up to RM 20,000, procuring entities are allowed to purchase directly from a contractor who is registered with the Contractor Service Centre and the CIDB.</p> <p>For procurement of supplies and services above RM 20,000 and up to RM 500,000, procuring entities are required to invite quotations (minimum number five)</p> <p>Limited tendering, as an exception to the Government Procurement Regulations and subject to Ministry of Finance approval, may be applied based on strict criteria (i.e. security, uniformity, urgency and sole sourcing)</p>		WTO Trade Policy Review (2018)
M55: Selective tendering	Selective tendering is used to address specific concerns such as security, or when the number of registered companies is very limited.		WTO Trade Policy Review (2018)
M56: Securities	<p>Local suppliers and contractors registered with the Government are exempted from tender deposits. However, international bidders are required to furnish a tender deposit ranging from RM60,000 for bids below RM5 million, if tender amount is between RM5 million and RM10 million, the deposit is RM 150,000, and RM 1 million for bids exceeding RM30million for supplies and services</p> <p>Procurement Procedure of Government Tenders states that for contracts valued at more than RM 200,000, contractors shall submit a performance bond of 5% of the total contract price.</p>	<p>Article 175 (1) (a) of the Treasury Circular Letter No. 5 of 2007).</p> <p>Article 50.3 of the Treasury Circular Letter No. 5 of 2007</p>	<p>Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconcomies/malaysia/2018</p> <p>Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconcomies/malaysia/2018</p>
M58: Other	Bidders cannot ask questions for clarifications to procuring entity (either through regular channels of communication or during a clarification meeting with bidders organized by the procuring entity)		Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconcomies/malaysia/2018
M81: Challenge of bidding process or award	No second-tier review (i.e. no appeal)		Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconcomies/malaysia/2019#bpp_fc
M82: Choice of complaint forum	The review mechanism and any choice on whom to bring a complaint to will likely be provided for in the request for proposal, bid documents or PPP contract. However, the procuring authority typically has discretion on the decision it makes and whether to waive any non-compliance of the bid documents. There is no specific complaints mechanism in the current framework in Malaysia. The request for proposal or bid documents would typically provide for a right of the procuring authority to exercise discretion on how the PPP process is undertaken leaving bidding parties will little room or grounds to make a complaint.		Benchmarking Public Procurement http://bpp.worldbank.org/data/exploreconcomies/malaysia/2019#bpp_fc

Sub-Chapter	Text quotation	VIET NAM	Date of implementation	Regulation	Source
M11: To national supplier	Tenderers shall be enjoyed preferential treatment when participating in domestic or international bidding to supply goods of which costs for domestic production occupy 25% or more. (2) Entities entitled to preferential treatment in international bidding to supply the advisory services, non-advisory services, construction and instalment include: a) Domestic tenderers bidding with independent or partnership status; b) Foreign tenderers in partnership with domestic tenderers in which the domestic tenderers take over from 25% or more of work value of bidding package.		2013	Law on Public Procurement No.43/2013/QH13 dated 26 November 2013	http://vietnamlawenglish.blogspot.ca/2013/11/vietnam-bidding-law-2013-law-no.html
	Under Prime Minister's Directive No. 494/2010/CT-TTg of 20 April 2010, Viet Nam should only use international bidding if domestic goods, materials, and equipment do not meet the specifications of the tender package, or cannot be provided locally.		2010		WTO Trade Policy Review 2013
	In May 2010, the Ministry of Industry and Trade issued a list of machinery, equipment, and materials that can be produced domestically. ²²² The procurement of such imported goods is thus discouraged in projects involving the use of state funds, and Ministries and People's Committees are to instruct tendering bodies under their authority to apply this list in the evaluation of bids.				
M13: To joint ventures with national supplier	It must have a partnership with domestic contractors or use sub-contractors if it is foreign tenderer when participating in international bid in Viet Nam, unless domestic contractors have not full capability to participate in any part of bidding package		2013	Law on Public Procurement No.43/2013/QH13 dated 26 November 2013	http://vietnamlawenglish.blogspot.ca/2013/11/vietnam-bidding-law-2013-law-no.html
M31: Inputs and data storage	Tenderers shall be enjoyed preferential treatment when participating in domestic or international bidding to supply goods of which costs for domestic production occupy 25% or more.		2013	Law on Public Procurement No.43/2013/QH13 dated 26 November 2013	http://vietnamlawenglish.blogspot.ca/2013/11/vietnam-bidding-law-2013-law-no.html
	In international tendering, the Law on Tendering (Article 14) stipulates that preferential treatment shall be accorded to contractors participating in bids when the domestic production costs represent 30% or more of the procurement.		2009		WTO Trade Policy Review 2013
	Decree No. 85/2009/ND-CP (Article 4) establishes that when bids of foreign contractors are ranked equal, a higher rank will be given to the bid proposing higher domestic content.				
M32: Services	Decree No. 85/2009/ND-CP (Article 4) establishes that when bids of foreign contractors are ranked equal, a higher rank will be given to the bid proposing higher domestic content.		2009		WTO Trade Policy Review 2013
M33: Staff	Decree No. 85/2009/ND-CP (Article 4) outlines the specific preferences, which are aimed to encourage the use of local labour and to enhance the capability of domestic contractors to compete for international tenders		2009		WTO Trade Policy Review 2013
M42: Barriers to FDI	Some foreign investments require a decision from the Prime Minister: Foreign investment into sea transport, provision of telecommunication services, afforestation, journalism, publishing and the establishment wholly foreign-owned science and technology companies		2015		http://www.vietnam-briefing.com/news/restrictions-foreign-direct-investment-vietnam.html/
M56: Securities	For selection of tenderer, value of bidding guarantee is stipulated in bidding dossiers, dossier of requirements under a defined amount of between 1% and 3% of the bidding package price basing on the scale and nature of each particular tender package		2013	Law on Public Procurement No.43/2013/QH13 dated 26 November 2013	http://vietnamlawenglish.blogspot.ca/2013/11/vietnam-bidding-law-2013-law-no.html

	Based on scale, nature of bidding package, the value of a contract performance guarantee shall be stipulated in the bid invitation documents, dossiers of requirements at a definite level of between 2% and 10% of the bid-winning price."	2013	Law on Public Procurement No.43/2013/QH13 dated 26 November 2013	http://vietnamlawenglish.blogspot.ca/2013/11/vietnam-bidding-law-2013-law-no.html
M62: Set asides for specific groups (SMEs, minorities...)	If a construction contract is worth less than VND 05 billion, only small and ultra-small enterprises are allowed to bid.			
	Entities entitled to preferential treatment in domestic bidding to supply the advisory services, non-advisory services, construction and instalment include: a) Tenderers employing female labourers of 25 % or more of labourer quantity; b) Tenderers employing labourers being invalids, disable people of 25 % or more of labourer quantity; c) Tenderers being small-size enterprises.	2013	Law on Public Procurement No.43/2013/QH13 dated 26 November 2013	http://vietnamlawenglish.blogspot.ca/2013/11/vietnam-bidding-law-2013-law-no.html
M85: Suspension of bidding process	No suspension of procurement process during first-tier. Suspension however during second-tier if required by complaint.		Benchmarking Public Procurement	Benchmarking Public Procurement http://bpp.worldbank.org/data/explore/economies/vietnam/2018#bpp_fc
M92: Accessible e-procurement	No online signature of contract awarded No online payment			

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SubChapter	Text quotation PHILIPPINES	Date of implementation	Regulation	Source
M11: To national supplier (incl. flag carriers)	Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens		Republic Act No. 9184, in consonance with Republic Act No. 5183, adopts as general principle the preference for Filipino nationals in the award of Government's procurement contracts	http://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184.pdf
M13: To joint ventures with national supplier	Eligible Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines; corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines or Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA	2016	The 2016 Revised Implementing Rules and Regulations	http://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184.pdf
	Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): Provided, further, That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: Provided, finally, That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA	2016	The 2016 Revised Implementing Rules and Regulations	http://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184.pdf
M14: Access based on reciprocity	"When the foreign supplier is a citizen, corporation or association of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;"	2016	The 2016 Revised Implementing Rules and Regulations	http://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184.pdf
M15: Thresholds	Foreigner to have access only for procurements above a certain threshold or for certain contracts 1 million Pesos			
M31: Inputs and data storage	Cooperatives registered under this Code, notwithstanding the provisions of any law to the contrary, be also accorded the following privileges (...) (4) in areas where appropriate cooperatives exist, the preferential right to supply government institutions and agencies rice, corn and other grains, fish and other marine products, meat, eggs, milk, vegetables, tobacco and other agricultural commodities produced by their members shall be granted to the cooperatives concerned; "(5) Preferential treatment in the allocation of fertilizers, including seeds and other agricultural inputs and implements, and in rice distribution shall be granted to cooperatives by the appropriate government agencies;	2009	An act amending the cooperative code of the Philippines to be known as the "Philippine cooperative code of 2008"	http://www.cda.gov.ph/resources/issuances/philippine-cooperative-code-of-2008/republic-act-9520

M42: Barriers to FDI	Some sectors have restrictions with regards to foreign ownership: 20% foreign equity for private radio network; 25% for recruitment of staff and the construction and repair of public buildings; 30% foreign shareholding for advertisement; 40 % for operating public utilities and educational institutions, and supplying goods and materials to local government or state-owned enterprises			
M56: Securities	The bidder shall submit a Bid Securing Declaration, or any form of Bid Security, in an amount not less than the required percentage of the ABC in accordance with the following schedule	2016	The 2016 Revised Implementing Rules and Regulations. Manual	http://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184.pdf
	To guarantee the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents, it shall post a performance security prior to the signing of the contract	2016	The 2016 Revised Implementing Rules and Regulations	http://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184.pdf
M62: Set asides for specific groups (SMEs, minorities,...)	Under the General Appropriations Act, the Government to procure at least ten percent (10%) of its total purchases from duly registered cooperatives and another ten per cent (10%) from SMEs		Manual of Procedures for the Procurement of Goods and Services	http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf
M64: Prior experience	The experience of having satisfactorily completed a single contract similar to that to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices available at the PhilGEPS website, is at least fifty percent (50%) of the ABC of value of contract of bid	2016		
M82: Choice of complaint forum	Complaint has no choice of the judicial entity before which to file a claim - Philippines has 3-tier system. Three-tier review mechanism: the first-tier is conducted by the Bids and Awards Committee (BAC) [BAC is composed of the same people whose action is being challenged.] The second-tier review conducted by the Head of the Procuring Entity (which in this case, may be the local chief executive), provided, however, that a prior request for reconsideration should have been filed by the party concerned in accordance with the preceding Section, and the same has been resolved. The third-tier review is conducted by the Regional Trial Court.		BPP Benchmarking Public Procurement	http://bpp.worldbank.org/data/exploreeconomies/philippines/2018#bpp_fc
M84: Cost	Section 55.3 on Protests on Decisions of the BAC of the Revised Implementing Rules and Regulations of Republic Act (IRR) 9184 states: "The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. A protest may be made by filing a verified position paper with the Head of the Procuring Entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be as follows: ABC RANGE PROTEST FEE 50 million pesos and below 0.75% of the ABC More than 50 million pesos to 100 million pesos PhP 500 000			http://www.dotr.gov.ph/images/front/ARTA/ProtestMechanismonBACDecision.pdf