

# WTO Government Procurement Agreement (GPA) and EU directives on public procurement – a paradigm change?

Judge Marc Steiner,  
Swiss Federal Administrative Court

# Testimonial on legal history from a Swiss perspective I (3 archaeological layers)



# Testimonial on legal history from a Swiss perspective II (3 layers or mindsets)

- Layer 1: Swiss internal market not really stimulated, market opening not the main focus, political environment favouring protectionism and collusion of bidders (cf. “Buy American”)
- Layer 2: Swiss Internal Market Law, Cartel Act, GPA 1994, Swiss Public Procurement Regulation 1994; open markets, competition (based de facto rather on price); bidders can challenge award decisions
- Layer 3: GPA 2012 / EU directives 2014 / new Swiss regulation on public procurement 2019: Governance/preventing corruption, competition based on quality, sustainability and innovation (completing the goals according to layer 2)

# The revised GPA is more than a market access tool I

“While benefits of the GPA are often seen in terms of providing market access rights for national suppliers in the other GPA parties’ markets, the Agreement can also be seen as a powerful tool for improving governance and promoting development.”

(Nicholas C. Niggli, former Chairman of the WTO Committee on Government Procurement)

# The revised GPA is more than a market access tool II

“The Workshop will be concerned both with trade as well as with the relevance of trade instruments to good governance, value for money, sustainable development and shared prosperity. With increasing overlap with trade objectives in the government procurement sphere, and the evolving policy developments including those occasioned by the UN Sustainable Development Goals (SDGs), there is, at a minimum, a need for these interrelated policy areas to be considered in a holistic and coordinated manner.” (Official WTO Programme Information for the Workshop on WTO GPA May 2019)

# Sustainable (Public) Procurement: WTO Symposium 2017



GOVERNMENT PROCUREMENT: SYMPOSIUM – GENEVA 22 FEBRUARY 2017

## Symposium on sustainable procurement

Work programme on sustainable procurement of the committee on government procurement<sup>(1)</sup>

Centre William Rappard (WTO Headquarters), Room W

Geneva, 22 February 2017

# Strategic use of public procurement as purpose of the EU directive 2014/24/EU

Public procurement plays a key role in the Europe 2020 strategy [...] for smart, sustainable and inclusive growth' ('Europe 2020'), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds (Recital 2 of the Directive 2014/24/EU). + competition based on quality instead of competition based on price (only)

## A paradigm change?

Treaties and legislation of the nineties of the last century on government procurement were dominated by the philosophy “market access, competition, money (and nothing else)” (layer 2). Old school economists were in power. This has changed considerably when looking at the GPA 2012 (WTO), the EU and international development banks. It is not said to much that we are facing a paradigm change. It’s all about building a coherent system (layer 3). Good news from a climate policy perspective!