



THE GEORGE WASHINGTON UNIVERSITY
GOVERNMENT PROCUREMENT LAW PROGRAM

WEBINAR – OPENING BORDERS: ACCESS2PROCUREMENT

TUESDAY, SEPTEMBER 12, 2023
9 AM ET | 15:00 CET

A world map with a dark background and a light gray grid. The map is covered with 49 yellow location pins, each with a circular head and a pointed tail. The pins are distributed across all major continents: North America, South America, Europe, Africa, and Asia. There is a high concentration of pins in Europe, particularly in Western and Central Europe. A few pins are also located in North America, South America, Africa, and Asia. The map is set against a dark, textured background.

Registrants from
49 countries

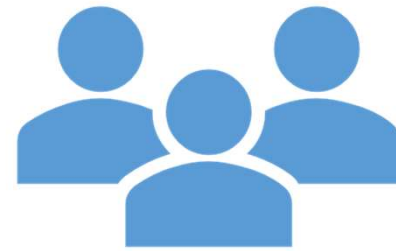


Welcome

Professor Christopher Yukins
GW Law School

- Recording and materials at www.publicprocurementinternational.com and recording at **GW Law Government Procurement Law YouTube** page
- Questions & Answers (Q&A)
- Speakers' statements are in their personal capacities
- Access2Procurement marks a first intersection between international trade in procurement and sharing contractor qualification information internationally

Panelists





Lucian Cernat, Head of Global Regulatory Cooperation and International Procurement Negotiation



TRADE POLICY 2.0 AND
ALGORITHMS: TOWARDS
THE "EASIFICATION" OF
FTA IMPLEMENTATION

LUCIAN CERNAT



Yvonne Bendinger-Rothschild, Executive Director of the European American Chamber of Commerce's New York chapter



European American
Chamber of Commerce

New York

#Access2Procurement

From rocket science to a simple “click and go” online tool

Lucian Cernat
Head of Global RegCo and Procurement Negotiations
DG TRADE, European Commission

“Houston, we have a problem”



A typical trade agreement

The EU is the trading bloc with the most extensive network of trade agreements. These trade agreements offer tremendous market access opportunities for EU companies.

But trade deals are very complex and, if you do not speak "legalese", making sense of them may be as hard as rocket science!

Therefore, a critical question emerges: how to “easify” these provisions and ensure firms take advantage of trade agreements?

“Houston, we also have a procurement problem”

Do you want to be a contractor for the US government?

The screenshot shows the SAM.GOV search interface. The search bar contains the text 'e.g. 1606N020Q02'. The results are filtered to show 1-25 of 484 results. The first result is a notice titled 'Geostationary Extended Observations (GeoXO) Atmospheric Composition (ACX) Instrument Implementation' with Notice ID: 80G5FC23R0012. The second result is a notice titled 'XGtd Package Renewal FY23' with Notice ID: 80NSSC23848094Q. Both notices are from NASA/NSSC.

Winning contracts abroad is hard and procurement provisions in trade agreements are not simple either.

The WTO GPA agreement is also complex.

The US schedule has 7 annexes.

There are different thresholds (minimum values) for federal, sub-federal, and other entities.

Different notes and exceptions. Thousands of FSC codes, some excluded or included.

The combination of different types of procurement entities, thresholds, notes and exceptions, and specific FSC codes leads to **over 2,000,000 possibilities** of “yes, GPA covered” vs “not GPA covered”

Access2Procurement simplifies process both for bidders and procurement officials

Without an intuitive tool a simple question -- “Will my offer be considered on the same basis as the offer from a US company?” -- becomes rocket science!



Launching Access2Procurement : using algorithms to “easify” the GPA rules

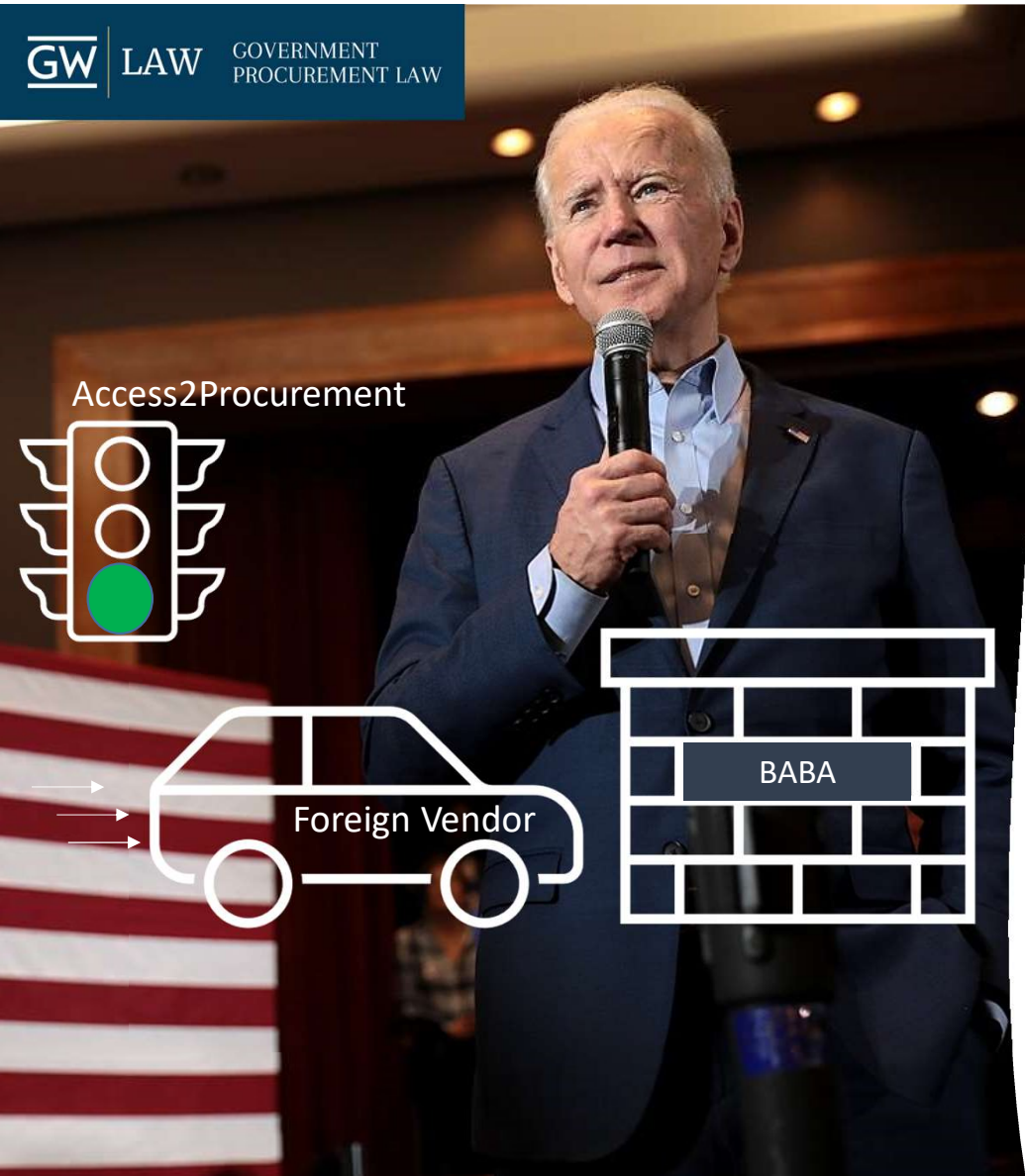
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    h(6, "span", 14)(7, "button", 15),  
    O("click", function() {  
      ie(e);  
      const i = I(2);  
      return se(i.editStep(i.StepEnum.US_ENTITY_SELECTION)  
    })),  
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  }  
  if (2 & n) {  
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    xe(" ", e.getProcurementContext().entity.name, "")  
  }  
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- In **Access2Procurement** we codified in a detailed algorithm that captures **all possible procurement combinations** covered under the US GPA schedule
- Based on **"if then, else"** logic, **Access2Procurement** gives a straight answer (yes/no) needed by EU companies interested in bidding for public contracts in the US

Online demonstration of the [#Access2Procurement](#) tool

<https://webgate.ec.europa.eu/procurement/#/country>

Build America – Buy America Act (BABA):
The BABA Barrier . . .



- **Build America – Buy America Act (BABA)** says materials used in federally funded infrastructure shall be made in the United States
- **But:** BABA Section 70901 says that BABA “**shall be applied in a manner consistent with United States obligations under international agreements**”
- **OMB BABA Guidance** (2 CFR part 184) (which will frame federal agency regulations): **Silent**
- **OMB Memorandum M-22-11:**
 - Public Interest Waivers:** A waiver in the public interest may be appropriate . . . Such waivers shall be **used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States. . . .**
 - International Trade Obligations:** If a recipient is a **State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver [by the head of the federal grant-making agency]** of a Made in America condition to ensure compliance with such obligations **may be in the public interest**

Access2Procurement

Intuitive online tool assessing (1) vendor's "national" qualification and (2) whether target government has opened procurement market per trade agreements

Immediate Issues

Qualification
Is tool more precise than existing regulatory structure?
Should nations share other qualification information?

Trade Agreements
Vendor "false positives":
e.g., BABA adds trade barrier

Assessing Trade Flows
Tool highlights importance of suppliers – not just prime contractors – in public procurement trade

Future Questions

How to exchange other qualification information?
What forum to discuss?
Where to start – debarment?

Will tool trigger intergovernmental trade disputes – or sanctions e.g., EU International Procurement Instrument (IPI)?
Will tool prompt excluded vendors to bring state-level bid protests?
Will tool drive push to add sub-central entities (more states and cities) to trade agreements?

Does this support the European Commission's insistence that trade analyses of procurement trade flows consider both prime contractors and suppliers?



Discussion/Questions

Please use Q&A

Next Webinar



ACQUISITION INNOVATION
RESEARCH CENTER

Training Webinar:
AIRC Report on U.S. Labor Law Violations and
Mandatory Debarment
12 September 2023 – 11 am Eastern US

Information/registration:

<https://www.dau.edu/event/Assessing-Contractor-Labor-Law-Violations-Responsibility-and-Debarment-Part-1-12-Sep-2023>

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