

ALERT

Brazil Seeks to Join WTO's Government Procurement Agreement as U.S. Mulls Withdrawal

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Brazil recently submitted an application to join the World Trade Organization's (WTO) Government Procurement Agreement (GPA), which would allow the country to gain access to \$1.7 trillion in government contracting opportunities. Brazil already has observer status and is the first South American country to seek formal accession as a party.

The GPA seeks to open government procurement markets to foreign competition, as well as improve transparency and good governance among signatories. The agreement defines obligations such as procurement procedures open to foreign bidders, identifies the goods and services that are open to foreign competition, and identifies minimum values required to open bids to foreign competition.

To date, 48 WTO members, including the United States, all European Union countries, Japan, Korea, and Ukraine have signed on to the agreement. However, the Trump Administration is reportedly considering withdrawing the United States from the agreement. In February, several news outlets reported that Trump Administration officials were circulating a draft executive order pulling the United States out of the WTO GPA, in an effort to secure reforms to the agreement that are in line with U.S. interests. Shortly after President Trump took office, he asked the Commerce Department and the United States Trade Representative (USTR) to consider the impact of the WTO GPA and other free trade agreements on the operation of "Buy American" laws to determine if the United States is a "net loser" from the agreement, in which case the agreements may be renegotiated or revoked.

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U.S. withdrawal from the GPA would be significant from a government procurement standpoint. The Buy American Act (BAA), among several other domestic preference laws, creates a preference for domestic products over foreign products in federal government procurement. However, the Trade Agreements Act (TAA) waives such provisions for countries that have signed free trade agreements with the United States, including the WTO GPA. Accordingly, U.S. withdrawal would effectively result in most WTO GPA signatories losing preferential access to covered U.S. government procurements, except for those signatories that have negotiated bilateral trade agreements directly with the U.S. Given the size of the U.S. government procurement market, which is approximately twice as large as the next five WTO GPA parties combined, U.S. withdrawal from the WTO GPA could potentially deprive companies from other member countries from accessing a significant market for their goods and services.

Likewise, the impact of withdrawing from the WTO GPA could have a significant impact on U.S. companies. Although not as large as the U.S. government marketplace, U.S.-based companies would nevertheless lose preferential access to the nearly \$900 billion procurement markets of the other WTO GPA members. In addition, many U.S. government contractors rely on global supply chains to support their U.S. government contracts, including networks of suppliers and manufacturing facilities in WTO GPA countries, based on the TAA and current rules that allow U.S. government contractors to deliver products and services from WTO GPA countries. Therefore, U.S. withdrawal from the WTO GPA could require contractors to restructure their supply chains—including, for example, changing suppliers or relocating manufacturing facilities—to comply with whatever rules and restrictions are put in place following withdrawal from the WTO GPA. Such results would be consistent with ongoing efforts by the Trump Administration to encourage supply chain localization and bring manufacturing back to the United States.

It is important to note that at this point, the Administration has not formally taken any action to withdraw from the WTO GPA. However, if the U.S. did in fact withdraw from the WTO GPA, this would likely require wide-ranging changes to existing U.S. government procurement rules, including the rules implementing the TAA and BAA. Therefore, we will continue to monitor developments and provide additional updates on this topic as events continue to unfold.

Nicole Hager, a Law Clerk in Wiley's International Trade Practice, contributed to this alert.