

Transparency in Government Procurement

National governments and government-controlled agencies can influence national and international trade flows through the purchase of goods and services. Governments' motivation behind these procurement arrangements can be driven by nationalistic demands to favour domestic industries and service providers, thus leading to protectionist policies (Evenett, 2002). The rationale behind a multilateral agreement in government procurement argues that by reducing discrimination against foreign suppliers in procurement arrangements, competition can be stimulated in the national market. Positive side effects, although not specifically mentioned, would be a reduction of corruption, nepotism, and cronyism.

Work on government procurement at the WTO takes three forms:

1. *A Working Group set up to study transparency in government procurement practices and to develop elements for inclusion in a future agreement: the Working Group on Transparency in Government Procurement Practices (WGTGP). The objective of this Group is to conduct research on Members' government procurement practices. The outcomes should contribute to the development of an appropriate understanding.*
2. *A working party established, among other purposes, for negotiations on government procurement of services as required under the General Agreement on Trade in Services: the Working Party on GATS Rules (WPGR).*
3. *A plurilateral Government Procurement Agreement (GPA), signed by 13 WTO Members. Significantly, the developing country signatories are all newly industrialised economies. The aims of this Agreement are to introduce competition into the government procurement markets and to ensure greater transparency in procurement arrangements.*

Market access in the context of government procurement was refuted by developing countries from the beginning. However, developing countries finally allowed the issue of transparency to be discussed at the WTO and the Working Group on Transparency in Government Procurement Practices was set up. The work of the Working Group is focused on the transparency aspects of a possible multilateral agreement. Transparency requirements may reduce the scope of both officials and firms rent-seeking behaviour. Although according to the Working Group "[the] balance in a transparency agreement [is] to be found in obligations with respect to transparency and not in those with respect to market access", there is a general perception among developing countries' governments that developed countries will use a multilateral GPA to gain access to developing countries' markets. As a result, the alleged gains from such an accord would mostly accrue to developed countries.

I. Work of the Working Group on Transparency in Government Procurement Practices

Since its establishment, the Working Group has debated whether, and on what terms, negotiations for a potential WTO multilateral GPA are to be launched. The 1996 Singapore Ministerial established that the Working Group "[would] not look at preferential treatment for local suppliers, so long as the preferences are not hidden" (WTO, 1996). The Working Group proceeded to identify key elements of a possible agreement on the basis of the relevant provisions of the existing plurilateral GPA, the World Bank Guidelines on government procurement, the UNCITRAL Model Law on Procurement of Goods, Construction and Services, and national laws.

The 2001 Doha Ministerial Declaration stated that negotiations would start after the Fifth Ministerial Conference. The Declaration also mentioned the importance and requirement of taking participants' development priorities, especially those of least developed countries, into consideration. However, negotiations on the modalities were subject to a decision to be taken by explicit consensus. Since the Cancún Ministerial did not produce a consensus on the issue, nor on any other issue for that matter, negotiations did not start.

Following the Doha mandate, the Working Group studied transparency-related provisions in existing international instruments and in national procedures and practices. Discussions and consultations (in the form of conferences and seminars) related to technical assistance and capacity building have taken place.

II. Conflicting Views

An analysis of the country submissions made to the Working Group and the minutes of the meetings held since the Doha Ministerial, reveals the division of WTO Members over the issue of transparency in government procurement. One basic

contention has been the very interpretation of the Doha Ministerial Declaration's paragraph on government procurement and its implications for discussions in the WGTGP.

The Fifth Ministerial Conference was inconclusive. Some delegates blamed the Singapore Issues – including Government Procurement – for the failure to arrive at an agreement. Although the WTO system is democratic to a fault, developing countries have for long felt ostracised. Moreover, the imposition of topics such as the Singapore Issues, when no real progress is taking place with regard to several Uruguay Round agreements appears to be counterproductive. The fact is that different levels of economic development also imply different financial and human capabilities to deal with WTO agreements. As a result, requests have been put forward to deal with the accumulation of agreements before burdening the WTO and its Members further with other arrangements.

Large developing countries like India and Malaysia have expressed their scepticism towards negotiations on a multilateral GPA prior to, during and after the Cancún Ministerial. India and Malaysia have also argued that some of the government practices examined in the WGTGP are not transparency-related issues and have implications for market access (Evenett, 2003). Some Members also question how a multilateral agreement will assist in combating corrupt practices. In response, it has been noted that the rationale underlying a future agreement on transparency in government procurement would not be to reduce corruption. Nor would a future multilateral agreement contain specific provisions on corruption. Rather, the reduction of corruption would be a side effect of the agreement.

Arguments put forward in favour of a multilateral Agreement on Transparency in Government Procurement in the 2003 Report of the WGTGP (WTO, 2003) include the following:

- Transparency would result in enhanced efficiency and increased innovation;

- A multilateral agreement would result in better value-for-money;
- Transparency rules would encourage domestic and foreign investment and partnerships between local and foreign suppliers;
- A transparency agreement would have the effect of reducing corruption;
- Ensuring transparency in government procurement [is] a core element of good governance and [...] this, in turn, [is] essential to economic development;
- An agreement on government procurement would result in the establishment of a minimum set of applicable rule.

However, the means to achieve this have not been set out. Moreover, there is a lack of conclusive studies on the matter. In fact, and as a research paper by Hoekman and Evenett (2004) demonstrates, remarkably little is known of actual procurement systems in developing countries. Little is also known or has been written about how to achieve a transparent and efficient government procurement system. Indeed, some studies have given examples of possible benefits and cost-savings of transparent procurement systems. Conversely, these studies “do not provide sufficient data to demonstrate the claims made” (Hoekman and Evenett, 2004).

A much-quoted argument made by proponents of a multilateral GPA at the WTO is that such an agreement would be one of the keys to development. Two major issues appear not to have taken into consideration when stating this:

1. Resources for the successful implementation of the rules as elaborated in a multilateral GPA may be scarce or even nonexistent.
2. Even if resources exist and may be utilised to its correct implementation, in many developing countries they may be better employed in other development programmes.

According to the 2003 report of the WGTGP several developing countries have expressed reservations regarding binding obligations since, “despite the theoretical and actual benefits associated with transparency in government procurement, this [is] not necessarily a sufficient basis upon which to create multilateral rules in the area” (WTO, 2003, WT/WGTGP/7). Further, some voiced that “while the benefits of transparency could not be denied by any Member, it [is] necessary to demonstrate and understand how an agreement on transparency in government procurement would enhance relations among WTO Members ...” (WTO, 2003, WT/WGTGP/7). In other words, how will the promotion of transparency in India help the EU? Moreover the costs implied by such an implementation may be quite high.

It has been recognised that it may be difficult for developing countries, and especially least developed countries to implement a potential multilateral GPA. It was therefore suggested to create a straightforward agreement and to focus primarily on transparency aspects of government procurement as well as on the twelve issues as identified by the Working Group (JOB 99) 6782 of November 1999 (see Box). However, sceptics have repeatedly pointed out that the topics of discussion in the WGTGP have not necessarily related exclusively to the issue of transparency. Even with respect to those elements that were purely related to transparency, clarification is needed as to whether they pertained to procurement procedures or, rather, to procurement activity in general.

III. Dispute Settlement Aspects

The role of the Dispute Settlement Understanding (DSU) within the WTO would be largely that of a “judicial body that can at best

review if all information requirements of transparency have been complied with”. Within the current plurilateral GPA it is already mandatory for Members to submit procurement-related statistics (Shingal, 2004). However, in the event of a multilateral GPA, where no commitments on market access would have been made, would the DSU’s compensatory or the retaliatory measures be applicable? And, how would it be made operational?

IV. Conclusions

Legally, the mandate of the WGTGP ended after the Fifth Ministerial Conference. Whilst an efficient and universally applicable Agreement on Transparency in Government Procurement may be largely beneficial, negotiation at the WTO has met with firm resistance. The implementation of such an agreement may be difficult and too costly for developing countries. Questions that arise are:

1. Should the negotiation of a multilateral Agreement on Transparency in Government Procurement be given priority?
2. How well prepared are developing countries and LDCs to discuss such an agreement, let alone implement such an agreement?

Further research on the issue in the developing world is needed, as well as more capacity building before the issue can be taken up for negotiation in the WTO.

Box: Issues identified by the WGTGP

1. Definition and scope of government procurement;
2. Procurement methods;
3. Publication of information on national legislation and procedures;
4. Information on procurement opportunities, tendering and qualification procedures;
5. Time-periods;
6. Transparency of decisions on qualification;
7. Transparency of decisions on contract awards;
8. Domestic review procedures;
9. Other matters related to transparency;
10. Information to be provided to other governments (notification);
11. WTO dispute settlement procedures;
12. Technical cooperation and special and differential treatment for developing countries.

Several WTO Members have made submissions to the WTO on elements of this list. The detailed submissions can be found at <http://docsonline.wto.org/underWT/WGTGP/>.

References:

Evenett, S.J. (2002) “Multilateral Disciplines and Government Procurement,” in P. English, B. Hoekman, and A. Mattoo (Eds.) *Development, Trade and the WTO*, The World Bank, Washington DC

Evenett, S.J. (2003) “Is there a case for new multilateral rules on transparency in government procurement?” in SECO and S.J. Evenett (Eds.) *The Singapore Issues and the World Trading System: The Road to Cancun and Beyond*, World Trade Institute, Berne

Evenett, S.J. and B. Hoekman (2004) “International Cooperation and the Reform of Public Procurement Policies” Unpublished Paper

Shingal, A. (2004) “Transparency in Government Procurement: Dispute Settlement Aspects of a Possible Multilateral Agreement” Unpublished Paper

WTO (1996) *Mandate: The Singapore Ministerial Declaration*, available online at: http://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm

WTO (1999) *Report to the General Council, WT/WGTGP/3*, 12 October 1999

WTO (2001) *Transparency in Government Procurement*, available online at: http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm#transparency_in_govt_procurement

WTO (2003) *Report of the Working Group on Transparency in Government Procurement to the General Council, WT/WGTGP/7*, 15 July 2003

CUTS-CITEE Issue Papers

No. 1..... Implementation Issues	No. 7..... Investment
No. 2..... Special & Differential Treatment	No. 8..... Trade Facilitation
No. 3..... Movement of Natural Persons	No. 9..... Transparency in Government Procurement
No. 4..... Trade Remedial Measures	
No. 5..... Trade and Environment	No. 10..... Non-agricultural Market Access
No. 6..... Competition Policy	No. 11..... Trade, Debt and Finance