

Transparency in Government Procurement

National governments and government-controlled agencies, through their purchases of goods and services, can significantly influence domestic and international trade flows. Government rationales (behind these procurement arrangements) are often driven by claims that 'our money' should be spent on 'our goods' to secure 'jobs at home', thus encouraging national 'protectionist' policies (Evennett, 2002, p.417). The case for international rules on national procurement practices is derived from the rationale that by reducing discrimination against foreign suppliers in procurement arrangements, competition can be stimulated in the national market, thus reducing non-welfare spending by the government.

Work on government procurement in the WTO has three strands. Firstly, there is already a plurilateral agreement on Government Procurement at the WTO. Secondly, there is a GATS Working Party in the WTO dealing with government procurement in services. Thirdly, a multilateral working group was set up as an outcome of the 1996 WTO Ministerial Meeting in Singapore, with a mandate to "conduct a study on transparency in members' government procurement practices, taking into account national policies, and, based on this study, to develop elements, for inclusion in an appropriate agreement (WTO, 1996).

The existing government procurement agreement (GPA) at the WTO aims at introducing competition in the market for government procurement and ensuring greater transparency in procurement arrangements. None of the developing countries are signatories to the existent GPA. There is a general perception that the alleged gains from greater market access (through greater purchase by governments of other member country goods and services) accrue mostly to developed countries, which are using GPA as a tool to gain access to developing country markets.

The transparency element, has however, been more appealing to developing countries. In order to reduce the scope of both officials and firms to resort to rent-seeking behaviour, which is quite rampant in developing countries, transparency requirements can be an important feature of a government procurement agreement. The work of the Working Group is, thus, riveted on transparency in government procurement.

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

Since the establishment of the Working Group, the question before policymakers has been whether, and on what terms, negotiations for a potential WTO agreement on transparency in government procurement are to be launched. It was decided at the Singapore Ministerial that the Working Group "will not look at preferential treatment for local suppliers, so long as the preferences are not hidden" (WTO, 1996). In 1997-1998, the Working Group on Transparency in Government Procurement (WGTGP) identified key elements of a potential agreement on the basis of the relevant provisions of the existing agreement on government procurement, the World Bank Guidelines on government procurement, UNCITRAL Model Law on Procurement of Goods, Construction and Services, and national laws. (www.jurisint.org/pub/06/en/doc/C24.pdf).

Ministers at the 2001 Doha Ministerial further clarified the mandate of the WGTGP by reinforcing that "negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers" (WTO, 2001). As per the Doha Declaration, Para. 26, "Negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations [i.e. how the negotiations are to be conducted]" (WTO, 2001).

The 2001 Doha mandate also emphasised that future negotiations will "build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants" (WTO, 2001). In accordance with the mandate, the Working Group has continued to study the transparency-related provisions in the existing international instruments and in national procedures and practices, and continued discussions related to technical assistance and capacity building. Based on these provisions, twelve sub-items under

transparency requirements have been discussed in the WGTGP. The Group has identified the following twelve topics that have been examined to differing degrees in the WGTGP: Definition and Scope of government procurement; Procurement methods; Publication of information on national legislation and procedures; Information on procurement opportunities, tending and qualification procedures; Time-periods; Transparency of decisions on qualification; Transparency of decisions on contract awards; Domestic review procedures; Other matters related to transparency; Information to be provided to other governments (notification); WTO dispute settlement procedures; Technical cooperation and special and differential treatment for developing countries (contained in Job (99) 6782, November 1999). Several WTO members have made submissions to the WTO on elements of this list. (For a summary of these contributions see Evennett, 2003, Appendix 3. The detailed submissions can be found at <http://docsonline.wto.org/> under WT/WGTGP/*). The following section provides the key arguments stated by the proponents and opponents of a potential multilateral agreement.

II. Conflicting Views

An analysis of the several member country submissions made to the WGTGP and the minutes of the meetings of the WGTGP held since the Doha Ministerial, reveals that WTO members have been deeply divided on the issue of transparency in government procurement. The 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. For example, in a recent communication to the WGTGP, Korea expressed the view that it is clear from the text of the Doha Ministerial Declaration that we should start the negotiations after the Cancun Ministerial. "Paragraph 26 of the Doha Declaration states that "we agree that negotiations will take place after the Fifth Session of the Ministerial Conference [...]" (WTO, 2003, WT/WGTGP/W/

40). Thus, accordingly, the process upto the Cancun Ministerial will be characterised as a preparation for negotiation” (WTO, 2003, WT/WGTGP/W/40). The EC has recently reiterated, “Members are on the verge of a decision on modalities for these negotiations” (WTO, 2003, WT/WGTGP/W/41). However developing countries like India and Malaysia have been taking “a consistently sceptical – if not critical - view of the proponents’ proposals” (Evenett, 2003). As per the report (2002) of the WGTGP, the representative of India said, “....Any Member would have the right to take a position that would prevent a decision to launching negotiations in this area at the Fifth Ministerial Conference”. In agreement with India’s position, the representative of Malaysia said, “the Group was still at the study phase” (WTO 2002c, pg.1 in Evenett, 2003, pg. 203).

In recent meetings of 7th February and 18th June’03, the WGTGP discussed transparency-related provisions in existing international instruments on government procurement and national procedures and practices, and matters related to technical assistance and capacity building. Written contributions were made by EU, Korea and the United States. The representatives of Australia; Brazil; Canada; Chile; China; Chinese Taipei; Colombia; Cuba; Dominican Republic; Egypt; European Communities; Hong Kong, China; Hungary; India; Japan; Korea; Malaysia; Morocco; Pakistan; Peru; Philippines; Poland; Nigeria; Sri Lanka; Switzerland; Thailand; United States; and Venezuela made oral statements or posed questions. Disagreement emerged not only on the general issues related to the efficacy of new multilateral rules, but also on the specific elements of the Chairman’s “List of issues raised and points made (JOB (99) 6782 of November 1999)”. In a recent submission to the WGTGP, the EU stated that (WTO, 2003, WT/WGTGP/W/41):

- A transparent environment would result in enhanced efficiency and increased innovation.
- A multilateral agreement would result in better value-for-money. Effective competition amongst bidders, including foreign bidders, would reduce the level of bids and further reduce the amount of public expenditure.
- Transparency rules would encourage domestic and foreign investment and partnerships between local and foreign suppliers, this benefit being particularly important for developing countries.
- A transparency agreement would have the effect of reducing corruption – a “welcome side effect for all countries”. As per the 2003 report of the WGTGP (WTO, 2003, WT/WGTGP/7) proponents also said that:
- “Ensuring transparency in government procurement was a core element of good governance and that this, in turn, was essential to economic development”.
- “An agreement on transparency in government procurement would result in the establishment of a minimum set of rules applicable world-wide that would have the effect of introducing legal certainty to existing procurement procedures”
- “Transparency in government procurement should not be perceived as politically controversial given the numerous benefits that flowed from transparency in government procurement and given that the issue of market access did not arise”.

According to the 2003 report of the WGTGP several developing countries expressed reservations regarding binding obligations by saying that “despite the theoretical and actual benefits associated with transparency in government procurement, this was not necessarily a sufficient basis upon which to create multilateral rules in the area” (WTO, 2003, WT/WGTGP/7). Further, it was voiced

by some that “while the benefits of transparency could not be denied by any Member, it was necessary to demonstrate and understand how an agreement on transparency in government procurement would enhance relations among WTO Members and how one Member applying enhanced transparency in government procurement affected and benefited its trading partners in the WTO” ((WTO, 2003, WT/WGTGP/7).

“Recognising difficulties for developing countries to implement a future agreement on transparency in government procurement, it was suggested that such an agreement be simple, focusing on core principles such as transparency in procurement opportunities and other elements as illustrated in the items in the Chairman’s “List of Issues Raised and Points Made” (JOB (99) 6782 of November 1999)”. However, sceptics questioned whether the elements that were the subject of discussion within the context of the WGTGP related exclusively to issue of transparency. The point was made that even with respect to those elements that were purely related to issues of transparency, clarification was needed as to whether they pertained to procurement procedures or, rather, to procurement activity in general.

Some developing countries fear that the agreement on government procurement will be expanded beyond the transparency element once negotiations start. 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, pg. 203).

Some developing countries also questioned how a multilateral agreement could assist Members in combating corrupt practices. In response, it was 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.

III. Conclusions

The 5th WTO Ministerial to be held at Cancun on the 10-14th of Sept. 2003 aims to take stock of progress made towards carrying out the Doha Work Programme. The Draft Cancun Ministerial Text states, [“Taking note of the work done by the Working Group on Transparency in Government Procurement under the mandate in paragraph 26 of the Doha Ministerial Declaration, we decide to commence negotiations on the basis of the modalities set out in Annex F to this document”]

[We take note of the discussions that have taken place in the Working Group on Transparency in Government Procurement since the Fourth Ministerial Conference. The situation does not provide a basis for commencement of negotiations in this area. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group] (WTO, 2003, JOB (03)/150, Rev.1).

Which of these options is chosen, remains to be seen.

References:

Evenett, Simon J. (2002), “Multilateral Disciplines and Government Procurement,” in English, Philip, Bernard M. Hoekman, and Aaditya Matto (Eds.), “Development, Trade and the WTO”, Geneva: World Trade Organisation, 2002, p. 423.

Evenett, Simon J. (2003), “Is there a case for new multilateral rules on Transparency in Government Procurement”, in SECO and Simon J. Evenett (eds.), *The Singapore Issues and the World Trading System: The Road to Cancun and Beyond*, World Trade Institute, Berne.

WTO, 1996, World Trade Organisation. “Mandate: The Singapore Ministerial Declaration”, available online at:

http://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm

WTO, 2001, World Trade Organisation. “Transparency in Government Procurement (par 26)”, available online at:

http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm#transparency_in_govt_procurement

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 |