

Seminar On Trade and Government Procurement

Introduction

Participants:

Prof. Raymond Saner, Co-Founder and Director of CSEND's Diplomacy Dialogue Branch, Professor at Basel University in the Department of Economics and Management

Mr. Nicholas Niggli, Deputy Head of the WTO Division, Permanent Mission of Switzerland to WTO & EFTA, Chairman of the Pension Plan management Board of the WTO since 2007, Acting Chairman of the WTO Committee on Government Procurement (GPA) since February 2007

Mr. Junior Lodge, Technical Coordinator, WTO Negotiations, CARICOM Office of Trade Negotiations (OTN), formerly the Caribbean Regional Negotiating Machinery (CRNM)

Mr. Robert Anderson, Counsellor and head of the Government Procurement and Competition Policy Unit in the Secretariat of the World Trade Organization

60 students from the International Business Management Programme at the University of Applied Sciences in Basle, Switzerland

Preamble

This seminar was designed for the students at the University of Applied Sciences, in order to give them an interactive view of the general framework and challenges involved in trade and the government procurement process. Specifically, the focus was on the Agreement on Government Procurement¹, a WTO agreement, and what effect being a part of this agreement has on individual states, with special attention to developing countries and LDCs.

Mr. Nicholas Niggli, Deputy Head of the WTO Division, Permanent Mission of Switzerland to WTO & EFTA

Overview of negotiations of the GPA from the perspective of the Chairman of the WTO Committee on Government Procurement

Mr. Niggli provided information on the GPA, as well as statistics that highlight the significance of money lost due to inefficiencies. He stressed the point that by joining

¹ A description of the agreement can be found here
http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

the GPA, less money would be lost to inefficiencies which could be used for other economic and social policy areas vital for LDCs and developing countries. Mr Niggli also suggested that countries should join the agreement sooner, rather than later, to allow for more flexibility in their accession negotiations.

Mr. Niggli provided figures that highlighted the significance of government procurement rates, especially in relation to GDP:

- Money lost to inefficiencies sometimes accounts for 50% of public procurement; this money could be used elsewhere such as building infrastructure, contributing to social policies, etc.
- On average, Government Procurement accounts for 15% to 25% of GDP per country, which equates to about \$3 trillion in procurement per year worldwide. Covered by the 1994 GPA out of these \$3 trillion: \$1.6 trillion per year is for procurement.
- Currently 42 countries are members of the GPA, mostly OECD Countries (Organization for Economic Co-operation and Development). But this is about to change significantly.

History of the Development of the GPA

- GATT refers to the General Agreement on Tariffs and Trade, and covers issues related to the international trade in goods.²
- GATT: in the beginning, public procurement was not included in GATT articles.
- GATT based GP negotiations started during the Tokyo Round (1976- 1979) and were based on previously adopted OECD disciplines; the second round of negotiations took place during the Uruguay Round (1987-1994) in which the GPA was established.
- A further round of negotiations started in 1999, with the aim to further work on the Agreement itself and to expand its coverage through MA negotiations amongst its parties.

GPA is a:

- Plurilateral agreement: not all of the WTO Members are part of it .
- Article 24.7 of the agreement sums up the basis:
 - B³: improve agreement among all parties (the most important part of the entire agreement)

² http://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm

³ "Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries."- Article 24.7 Part B (http://www.wto.org/english/docs_e/legal_e/gpr-94_02_e.htm#articleXXIV7)

- C⁴: intention to avoid discriminatory measures against other member of GPA
- The point of WTO negotiations, is to get every party to agree to the package. This means nobody can be completely happy since this would mean others are unhappy. Hence goal is to have everybody be “equally unhappy” or “partially happy”.

Rules or Pillars of the negotiations

- Need to improve the agreement, make it more reader friendly for companies entrusted in entering procurement, as well as revise some of the conditions that have changed since 1994, such as the new use of E-procurement
- No one size fits all; therefore it is necessary to make the agreement fit developing countries as well as by accounting for transition mechanisms, etc.
- Additionally, the need for fighting corruption was recognized, as previously there were no rules of how to create transparency for those parties involved.

Good governance is a key factor in the success of the negotiations. This can be achieved if the following practices are observed and upheld:

- Preamble- recognize transparent matters and avoid corrupt practices
- Article 4.4: the procuring entity shall conduct procurement in a transparent and impartial manner
- Helping the population and those who need the government the most
- Article 18: independent domestic review procedures (of companies who are not a part of these contracts)
- Ultimate stage if there is disagreement on the interpretation of the Rules: dispute settlement- through the DSB mechanism of the WTO

The Market Access Pillar

- Some parties are very offensive in regard to GPA, others are constrained due to political/economic reasons
- Make sure there will be no free riders (benefitting from GP liberalization but not offering access in own country’s GP market), everyone should participate in coming up with the negotiations and framework
- Convincing countries to make short term sacrifices in order to achieve long term benefits
- Must create accountability and transparency, for all parties to the GPA

The Results:

- Created hundreds of billions more dollars of business opportunities.

⁴ “Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.”

(http://www.wto.org/english/docs_e/legal_e/gpr-94_02_e.htm#articleXXIV7)

- Solidified/modernized agreements
- Helped create circumstances which enable states to make better use of their resources and further open their markets
- Increases states commitment to fight against corruption, due to their responsibility in being part of the agreement, which requires them to do so.

What is Ahead?

- 42 strong WTO members part of GPA, 115 members outside the agreement
- Countries not party to the GPA have tremendous infrastructure needs

Why Join the GPA?

- To avoid money lost to inefficiencies
- To limit protectionism/closing borders as a dangerous trend
- To be protected under rights agreements in the USA against “buy American” policy
- To attract foreign [direct] investment
- Agreement gives importance to the WTO .
- Governments are becoming more exposed/transparent through social media; they should join to exercise better governance which leads to political stability which in return results in economic growth
- Question of exclusions within the treaty: Exclusions solely on the basis of national security and can exclude ministries as a result of agreements with partners.

Other important messages:

- Need to include domestic decision makers directly, up to the highest level to move such a negotiation forward. Talking and operating in Geneva, through the technical discussions and the Ambassador’s process alone is not sufficient.
- Need for as many “pillars” as possible in the negotiation, to balance concessions creatively and to create a win-win solution amongst parties

Mr. Junior Lodge, Technical Coordinator, WTO Negotiations, CARICOM Office of Trade Negotiations (OTN)

Links between trade and government procurement

Mr. Lodge provided additional information between trade and government procurement, as well as voicing the potential issues that developing countries face when deciding to become or becoming members of such agreements. In addition, he questioned the effectiveness of some countries joining the agreement as well as the

presence of corruption regardless of GPA influence. Throughout his presentation, special attention was paid to the Caribbean.

Mr Lodge pointed out that some countries do not consider joining the GPA a necessity for the following reasons:

- CARICOM countries' concerns about the GPA are related to the sequencing and institutional characteristics of the GPA. More specifically, GPA membership for the Caribbean is currently not an issue as the Region is developing its own GP regime, including provisions to support local suppliers. Furthermore, the GPA embodies a type of plurilateral agreement that is in effect a club. Privileges are reserved solely to signatories.
- In the Caribbean: government procurement accounts for 22-25% of the total GDP, and therefore constitutes a tool for industrial developmental policy and employment generation. Caribbean countries are wary of voluntarily circumscribing the use of such a powerful policy instrument
- GP trade measures are not coterminous with the fight against corruption. According to the Global Transparency Index: some members of the GPA enjoy rankings below that of non-members; therefore being a member of the GPA does not necessarily indicate the absence or diminution of corruption
 - Example: Barbados, not a member of the GPA ranks 16 in the Transparency International Index, while the U.S., UK, France, and Italy rank lower (meaning they have more problems with corruption)

The GPA is not a foolproof agreement

- The fundamental problem with the nature of the GPA is that this plurilateral agreement is a club. In light of the current impasse in DDA negotiations, plurilaterals are being proffered as an avenue out of the current impasse. However, such approaches will trigger a two-stream WTO, whereby trade openings are reserved only to GPA members while smaller economies such as those in the Caribbean remain starved of investment and trade opportunities.
- Proponents of Singapore Issues tend to harbour defensive interests in Agriculture and intend to "use" these additional WTO disciplines as a trade off.
- CARICOM membership in the GPA is not about adherence to good government or failure to adhere to high standards but instead is due to:
 - Being a developing region and the cost of compliance to such a plurilateral agreement
 - The GPA as a plurilateral framework infringes the most cherished principle of the WTO, namely, GATT Article I 's MFN clause
 - Motivations for small economies to join multilateral agreements is use market access concessions to trigger increased investment inflows and eventually bolster economic performance. The GPA constitutes a departure from this multilateral framework
 - About priority and location (all opposing are defensive of agriculture)

- Priority is economic loss/benefits, rather than potential with the agreement
- Small economies tend to accede to the GPA s.The accent remains fixated on market access as opposed to enhancing the productive capacity of small economies' firms to effectively contest GP markets in industrialized countries.

Getting down the real issues

- Non-interest in GPA membership does not signal that the Caribbean is disinterested in GP. To the contrary, CARICOM is developing its own GP regime and Transparency in GP constituted one of the disciplines of the EU-CARIFORUM EPA⁵
- Real problem is stalling of DDA
- Real problem is no agreement in Agriculture

Mr. Robert Anderson Counsellor, WTO Secretariat.

The current status of the GPA

Mr. Anderson focused on the benefits of joining the GPA, while still recognizing the shortcomings of the agreement. One important factor he pointed out was that the Caribbean is already following practices, similar to those required under the GPA, therefore not much would change for them to become a member. Additionally, he recognized that while being a part of this agreement does not necessarily dismiss corrupt practices in Government Procurement, it does allow for a counter to this corruption which he claims is a justifiable benefit.

- Procurement chapter of the Caribbean is similar in its values to those of the GPA
- GPA acts as a tool to reduce the scale of corruption
- Many countries agree to join the GPA when joining the WTO, however it is the country's decision, it cannot be forced. Largely up to them as far as timeline, etc.
- Countries seeking GPA accession include China, Ukraine, Georgia, Jordan. Commitments from Saudi Arabia (recently renewed). None for India, however it has recently become an observer and is currently researching the benefits of being a member, et.
- Enhanced importance of procedure
 - Economic crisis and response has lead to increased infrastructure spending
 - Growing awareness of significance of government's role and involvement for sustainable development of a country

⁵ See http://dgcg.gov.do/documentos/conferencia_ricg/Presentaciones_Expositores/CARICOM_Sharlene_Shillingford.pdf

- More developed economies: procurement is 15-20% of GDP; in India, it accounts for a possible 30-35%
- Greater awareness of government as a tool of development, “care of developmental process”
- Regional level
 - In most of the regional agreements in the world that incorporate chapters on government procurement, the chapters are modeled relatively closely on the GPA, even in the case of non -GPA Parties such as some countries in South America and Morocco
 - Commitment to CPA style disciplines makes it easier for them to later enter into the GPA
 - Right to participate in other governments procurement markets is a huge benefit of the GPA
 - Non-members experience domestic benefits by following a similar model, however they would gain involvement in the international market through joining
 - Europe is considering a "Reciprocity initiative" which is in some respects similar to the Buy American requirements of the US stimulus legislation
- The GPA protects the suppliers of GPA Parties from being adversely affected by such measures.
- Governance is now recognized as an important aspect of development
 - General transparency provisions (advanced notice of major new provisions) protect against cronyism
 - Domestic review creates culture of transparency in the business environment
- Competition law helps to regulate the market and supports the GPA
- GPA’s main elements: rules on nondiscrimination, coverage schedules (appendix 1, annexes), procedural rules, enforcement provisions (tools), provisions on special treatment for developing countries who join agreement
- Way to avoid discrimination from outside is to join agreement
- Keys are nondiscrimination, transparency, and fair procedures

Question and Answer Session

Junior Lodge

- Acceding to the GPA means that countries who join late have to suffer as acceding States would have to assume pre-established obligations
- Idea of cognitive dissonance in developing and least developed countries
- Real issue is about sequencing and conditions
 - How do we empower small firms in developing countries to contest large markets in powerful countries?
 - What kind of interventions are necessary?

Nicholas Niggli

- Still 115 members of WTO are not included in the GPA which is due to different sequencing of becoming member
- GPA is progressive and expanding, not just plurilateral, but a form of gradual multilateralization
- GPA possesses the ability to welcome newcomers in a way that is diversified, no one size fits all, open to adaptation for new members, flexible basis that allows for diversity
- Local suppliers: SME's don't get enough of the big market
 - GPA developed future work programme that recognizes SME's need for larger market access
 - When foreign companies get to do big projects, they team up with local companies to create jobs and opportunity
- Corruption element: to be member of the GPA does not mean good governance. It just creates tool to address and deal with corruption, making it more difficult

Robert Anderson

- Possibility of developmental impact of the GPA needs more attention.
- Price flexibilities exist for local suppliers through for instance off sets availability for developing countries; for instance a project with an outside supplier can be linked to an off-set agreement whereby a certain percentage (30%, etc.) of the contract would be attributed to local workers, distributors, etc.
- RTA's are a stepping stone in the direction towards the GPA