

Issues concerning accession and the future evolution of the Agreement

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Resources

- Arrowsmith and Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform* (forthcoming, CUP)
 - http://www.cambridge.org/uk/browse/browse_highlights.asp?subjectid=1011243
- www.planpublicprocurement.org
- Conference *Public Procurement: Global Revolution*, Nottingham, April 19th-20th 2010 (under EU Asia-Link programme)

Tied Aid

= Aid granted on condition that the goods or services acquired with the aid funds are purchased from the donor

➤ 2007: 10 812 million US dollars (OECD Development Assistance Committee)

Tied aid

- Distorts trade
- Reduces value to recipient by 30% (OECD)
 - Cannot purchase best-value goods and services
 - Does not focus on priorities of recipient

Tied aid: impact of WTO rules?

➤ Legally complex:

- Setting up of tied aid condition by donor
- Implementation of tied aid condition in procurement
 - By donor
 - By recipient

Tied aid: impact of WTO rules?

- WTO's multilateral rules do not much affect tied aid, in part because of government procurement exception in GATT
 - A. La Chimia and S. Arrowsmith, "Addressing Tied-aid: Towards a More Development Oriented WTO?" (2009) 12 J.I.E.L. 707-747

Tied aid: GPA

- GPA also does not address the issue:
 - Procurement in furtherance of tied aid excluded by endnote to Article 1
 - Does this exclude procurement by recipients – including for aid given by non-Parties?
 - Exclusions in Annexes for aid-funded procurement by some Parties only

Tied aid: GPA

- Repeal of end-note briefly considered in current review
- Not sufficient to address the issue

Tied aid: GPA

- Arguments for addressing tied aid within GPA:
 - Plurilateral so easier agreement, but covering major donors
 - Effective enforcement
 - May promote developing country accessions and concessions

Accessions by countries with a large state sector

- P. Wang, “Coverage of the WTO’s Agreement on Government Procurement: Challenges of Integrating China and other Countries with a Large State Sector into the Global Trading System” (2007) 10 JIEL 887

Accessions by countries with a large state sector

- Concept of reciprocal concessions for Annex III entities

Accessions by countries with a large state sector

- How workable is positive list approach for initial coverage and updating coverage?
 - Large number of state enterprises
 - Use of new state enterprises for specific major projects
 - *Korea Airport panel*

Accessions by countries with a large state sector

- Withdrawal procedure for entities no longer subject to governmental control or influence:
 - GPA 1994 Article XXIV: 6
 - GPA 2007 Article XIX

Procurement from other government entities

➤ Procurement from:

- Subsidiary companies
- Centralised purchasing bodies
- Service-providing entities jointly operated by several public sector bodies
- Joint ventures with the private sector
- Unconnected state enterprises

Procurement from other government entities

- No general definition of whether such transactions are “procurement”
- Some explicit provisions in Annexes:
 - E.g. Canada excludes ‘procurements . . . made by one entity or enterprise from another entity or enterprise of Canada’

Procurement from other government entities

- Possible imbalance if left to general definition?

A “soft-law” approach?

- E.g. derogation from supplier challenge and use of DSU
 - GPA Article IV: 4

Concessions across different WTO Agreements

- Is this a feasible way forward?

Framework agreements

- On-going arrangements for purchasing regular requirements
 - Do Parties comply with current GPA rules in using arrangements with more than one supplier?
 - Should GPA also embrace more of these arrangements to cover repeat low-value purchases?