Government Procurement in the GATS

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Article XIII
Government Procurement

"1. Article II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years form the date of entry into force of the WTO."

The Context: Key Elements of the GATS

- Scope: all measures affecting trade in services, with some exceptions
- Four modes of supply
- Positive list approach: market access and national treatment are negotiable
- MFN: exemptions are possible, but cannot undermine specific commitments
- Some obligations apply to all services and others only where commitments are taken

Rules in the HK Declaration

- "Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines”

- “On government procurement, Members should engage in more focused discussions and in this context put greater emphasis on proposals by Members, in accordance with Article XIII of the GATS.”

Economic Importance

- Services trade is growing more rapidly than goods trade.
- Growth of cross-border trade presents opportunities for developing country exports
- Sub-central governments = 2/3 of total procurement
- Restrictions on outsourcing by firms receiving procurement contracts.
- Sectoral focus in services

Relevance of GP for services

- Sectors of focus in the GPA:
  - 1.A.a.: Accounting, auditing and bookeeping services (CPC 862)
  - 1.A.b.: Architectural services (CPC 8671)
  - 1.A.d.: Engineering services (CPC 8672)
  - 1.A.e.: Integrated engineering services (CPC 8672)
  - 1.A.f.: Urban planning and landscape architectural services (CPC 8674)
  - 1.B.: Computer related services (CPC 84)
  - 1.F.a.: Advertising services (CPC 871)
  - 1.F.b.: Market research and public opinion polling services (CPC 864)
  - 1.F.c.: Management consulting services (CPC 865)
  - 1.F.d.: Services related to management consulting (CPC 866)
  - 3.: Construction services (CPC 51)
  - 6.: Environmental services (CPC 94)

Current situation in the WTO

The Agreement on Government Procurement

- Plurilateral Agreement
- National Treatment, MFN
- Procedural and enforcement rules

The Singapore Ministerial Mandate on Transparency in Procurement

- July Package: “no work towards negotiations on any of these issues will take place within the WTO during the Doha Round”.

Current situation in the WTO

Understanding on Commitments in Financial Services

- "... each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded MFN treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory"
- 31 Members: essentially developed countries (exceptions: Nigeria, Sri Lanka, Turkey)

Features of the EC's proposal

- Opening of GP to international competition
  - Take GP commitments per sector, per mode.
  - Articulation between GP commitment and MA-NT commitment.
- MFN
  - Possibility to take exemptions; exception for GPA treatment; Article V.
- Procedural rules
  - Only apply for sectors with GP commitments

Features of the EC's proposal

- Thresholds and entities listed in schedule, per sector if needed.
- Procurement of goods incidental to the supply of services are covered "if the value does not exceed that of the services themselves".
- Issue of tenders relating to various sectors, including some with no GP commitments.

Features of the EC's proposal

- S&D:
  - Price preference or offset permitted during a transitional period
  - Implementation period
- Procedural Rules, e.g.,
  - Publication
  - No offsets
  - Time limits (e.g., information available with sufficient time to assess interest and provide responsive bid)
  - Methods of procurement specified in advance (conditions for use of "non-open" methods)

Features of the EC's proposal

- Procedural Rules, e.g.,
  - Award of contracts:
    - Taken on basis of criteria and conditions known in advance
    - Contract shall be awarded to lowest price or most advantageous
    - Obligation to inform tenderers of decisions and to promptly publish notice of award. On request, provide information on reasons for rejection.
  - Domestic review/Challenge procedures
    - Independent domestic tribunal or review body to allow for review of decisions of procuring entities.
    - Maintain procedures providing for interim measures and for compensation.

Some Issues Raised

- Link with GPA (e.g., reciprocity conditions)
- MFN issues
  - Relationship between commitments and MFN derogations
- Scheduling approach: relevance of modal distinctions, types of limitations, additional commitments?
- Scope of the negotiating mandate
- ...and issues not raised: alternative approaches?

QUESTIONS?

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