Realizing the Synergies: The WTO GPA & RTAs

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Overview

- Appetite for further liberalisation of international procurement markets both in the WTO GPA and in RTAs

- Government procurement market access agreements
  - strict reciprocity and conditional MFN

- Most synergies in good governance principles
  - transparency, integrity and corruption control

- Corruption control in WTO GPA and RTAs produces beneficial accumulation of “global public goods” rather than system damaging fragmentation

- Confirms that government procurement agreements have a developmental significance that transcends their significance as an economic activity
Expansion of procurement agreements

- WTO GPA expanded several times since Procurement Code 1979, most recently 2012
  - Estimates of value of coverage now $1.7 trillion
  - Number of signatory parties increasing
    - 1995: 22 parties => 2015: 45 governments

- RTAs with public procurement provisions
  - Expanded to over 88 agreements

- Government procurement negotiations bilateral
  - strict reciprocity and conditional MFN

⇒ harmful system fragmentation or positive synergies?
  ⇒ Multilateralising regionalism debate
Plurilateral & Regional Synergies: Corruption Control

- Corruption: economic, political and social costs
  - Irrational policy making
  - Distorts dynamic of market competition
  - Prevents value for money / loss of social welfare

- RTAs with corruption provisions
  - Over 47 RTAs referencing corruption control

- Canada – EU FTA
  - Chapter 21, Article IV.4 - WTO template
Preamble recital

Recognizing the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption

Article IV General Principles

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
   (a) is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering;
   (b) avoids conflicts of interest; and
   (c) prevents corrupt practices.
WTO GPA Corruption Control

- Direct enforcement of the revised WTO GPA provisions entail

Violation Claim:
- Interpretation of governmental action under WTO not limited to laws and regulations enacted by the government
- Could governmental co-ordination or blessing of corruption in any form be construed to bring it within the ambit of WTO GPA disciplines?

Non-violation claim:
- Theoretically corrupt practices tolerated by government could be seen as violations of WTO NVNI obligations

- ILC work on State responsibility
  - conduct of public officials acting in their official capacity attributable to State
  - even if exceeds legal competence concerning its activity
Article XX Dispute Settlement

Where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of:

(a) the failure of another Party or Parties to carry out its obligations under this Agreement; or

(b) the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement,

- WTO GPA parties have recourse to WTO DSU
- Corruption control in a WTO GPA moves beyond a good faith obligation
Corruption Control: a Global Public Good

- Prevention of corruption is non-excludable and non-rivalrous
  - Contributing to corruption control
    - does not exclude non-contributors
    - does not exhaust to exclude rivals

- Unlikely that relationship between RTAs and WTO GPA with good governance provisions cause fragmentation

- More potential to produce beneficial accumulation of regulatory enhancements – or global public goods

- Therefore: government procurement agreements increasingly impact a developmental significance that transcends its importance as an economic activity

- WTO GPA a pioneer in international corruption control
  - WTO GPA – more parties and more enforceable legal provisions