

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



WTO GPA Provisions

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

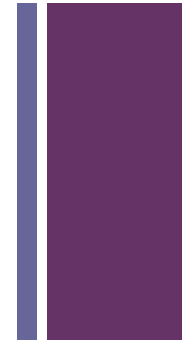
- Direct enforcement of the revised WTO GPA provisions entail

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

