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](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

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

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?