



CHAPTER 15

TRANSPARENCY IN GOVERNMENT PROCUREMENT

All economic activities undertaken by national, provincial or municipal governments— whether providing physical infrastructure, purchasing and maintaining defence equipment or providing public goods such as education and health care— require procuring intermediate goods and services. The procurement of goods and services by different tiers of government accounts for 10–20 per cent of GDP, a significant share of national public finance. Globally, non-defence-related procurement amounts to an estimated US\$1.5 trillion (Hoekman, 1998). Among developing countries, procurement is estimated to account for 9–13 per cent of GDP (Choi, 1999). How procurement is undertaken is therefore crucial for the implementation of development policy.

GOVERNMENT PROCUREMENT UNDER THE MULTILATERAL TRADE REGIME

Government procurement is exempted from the basic rules of national treatment in article III of the General Agreement on Tariffs and Trade (GATT). The idea of negotiating a multilateral agreement to establish transparency in government procurement was broached during preparations for the first ministerial meeting of the World Trade Organization (WTO), soon after its creation. But there is a widespread perception that negotiations on transparency in government procurement will inevitably extend to market access issues. Indeed, several countries have expressed a hope that this will occur as a natural second step following the discussions of transparency. As former US Trade Representative Charlene Barshefsky said,

‘The study on procurement [by the WTO working group established as a result of the first WTO ministerial meeting in Singapore in 1996] is intended to be the first step toward an agreement on transparency practices in government procurement. . . . [T]his initiative will, as we continue to push it, help create an environment where businesses can expect a fair share in competing for contracts with foreign governments’ (quoted in Khor, 1996, p. 4).

Box 15.1 GOVERNMENT PROCUREMENT AND THE WORLD TRADE REGIME:**A BRIEF HISTORY**

A code providing a mechanism for bringing purchases by government agencies under fundamental disciplines of national treatment and transparency was negotiated during the Tokyo Round, and modifications to this code were negotiated during the Uruguay Round. Unlike most Tokyo Round codes, the Government Procurement Agreement (GPA) remained plurilateral (meaning that countries were not obligated to become signatories). The GPA was not incorporated into the 'single undertaking' despite the ministerial decision setting out procedures for accession to the agreement in Marrakesh, and it was based on a 'positive list' approach. Today the GPA has 27 signatories, but despite its positive list approach, none of them is a developing country.

After the 1996 WTO ministerial meeting in Singapore, WTO member countries identified transparency in government procurement as one of the four areas that required further study before a decision could be made on whether they should be taken up in multilateral trade negotiations. A working group was formed to undertake 'analytical and exploratory' tasks. The group was not to negotiate new rules or commitments, and it was to look only at transparency in procurement (not national treatment).

How transparency was to be defined remained ambiguous, however. The GPA uses a broad definition of transparency, covering technical specifications (article VI), tendering procedures (article VII), qualification of suppliers (article VIII), invitation to tender (article IX), selection procedures (article X), time limits (article XI), documentation requirements (article XV) and publication of awards and of reasons why tenders have failed (article XVIII). All these come into operation only above a certain threshold of procurement value.

Many industrial economies, such as Canada, Japan, the US and the European Union, were keen to begin negotiations on a new agreement on government procurement despite the continuing resistance from developing countries. These tensions surfaced at the 2001 WTO ministerial meeting in Doha. Paragraph 26 of the Doha ministerial declaration was thus drafted to clarify the agenda on procurement, making it clear that:

- Negotiations will begin after the fifth ministerial meeting in 2003 only if there is explicit consensus at that session on modalities of negotiation.
- The negotiations will be limited to transparency and will not include market access issues.
- A multilateral agreement on transparency in government procurement would lead to a requirement for technical assistance and capacity building in poorer countries.

Source: WTO, 2001; Srivastava, 1999.

Similarly, the European Commission, in a paper presented during the Geneva preparations process for the first WTO ministerial meeting in Singapore in 1996, stated that it 'fully supports Ministers taking decisions . . . which lead to define ways and means . . . to reduce or eliminate trade distortive effects of domestic government procurement measures of all WTO members' (quoted in Khor, 1996, p. 7).

But any extension of the government procurement negotiations into market access issues would be troublesome from a development perspective. The current negotiation agenda is limited to transparency, but there is a widespread perception

that this will be a first step towards ‘multilateralizing’ the Government Procurement Agreement (GPA)—that is, making accession to the agreement obligatory rather than voluntary (box 15.1). While transparency requires only that governments disclose information, purchasing norms and contractual terms, proponents of an agreement aim to use it to make the domestic procurement business more accessible to foreign firms. A natural corollary of the transparency principle would be a move to the principle of national treatment of suppliers regardless of ownership, affiliation and origin of products or services. For these reasons an analysis of government procurement cannot be restricted to the advantages and disadvantages of transparency alone. The implications of these negotiations, as well as those of future potential discussions on market access, need to be evaluated from a human development perspective.

THE DEVELOPMENT DILEMMA

Transparency brings several important benefits for development and democracy. First, it can enhance welfare. Fair and clear procedures of procurement increase its efficiency, freeing scarce development resources for other public programs. Srivastava (1999) estimates the potential savings on purchases in India at up to US\$7.8 billion a year. Second, transparency and openness in procurement procedures can check overt corruption and reduce opportunities for covert rent seeking and nepotism, again saving public resources and enhancing the quality of resource allocation. Third, in principle the GPA allows countries to secure export opportunities offered by government procurement of other signatory members.¹ Finally, transparency is among the cornerstones of good governance; it increases accountability and introduces checks and balances in the day-to-day activities of governments.

But how transparency is defined is important. It will bring these benefits as long as its scope is restricted to the availability of information on rules and procedures rather than extended to the harmonization or overhauling of procurement practices. But if transparency is defined very broadly, it could encroach on domestic policy space and lead to higher administrative and logistical costs.

The possible extension of a government procurement agreement into market access issues has more ambiguous implications for development.

Policy space in the context of small and medium-size enterprises

By increasing the number of policy constraints on governments, accession to a new procurement agreement could restrict their policy choices in developing and supporting small and medium-size enterprises, making it more difficult to optimize the implementation of development policy.

The strongest argument that countries have put forward against the national treatment principle is the need to protect their small-scale industries from

competition. The reasons for protecting these industries often transcend economic logic to embrace equity, social cohesion, employment and political considerations. Small-scale cottage industries and indigenous and women's organizations are often protected from competition because they are seen as facing an uneven playing field and thus expected to need early support and nurturing to grow and thrive.

Government departments are often required to offer price as well as purchase preferences to these industries, giving them an assured market. The expectation is that these protected industries will generate employment and spur local innovation. In India, for example, procurement rules stipulating that certain products must be purchased exclusively from the small-scale sector, even if the prices charged are up to 15 per cent higher than those offered by the closest competition, are clearly intended to promote artisans and small-scale firms (Srivastava, 1999). Small firms are also often exempted from paying tender fees and benefit from other concessions.

Thus the government procurement market can offer small businesses a secure base to launch their products. And during economic downturns, governments opting for fiscal stimulus packages can use procurement from small and medium-size enterprises to generate employment and stimulate economic recovery.

Implementation costs

Implementing the GPA, or its future variant, will involve significant costs associated with changing from one procurement regime to another. There will also be substantial costs involved in harmonizing government procurement regimes in federal government systems, especially if the rules cover not only central but also state and municipal governments and state-owned procurement entities. Choi (1999) argues that the immediate economic costs of accession to a government procurement agreement might be smaller domestic supply, higher unemployment and a greater bureaucratic burden resulting from the need to comply with detailed transparency and procurement guidelines and reporting requirements. Given competing development priorities and limited resources, these measures could have substantial opportunity costs for developing countries.

A DIRECTION FOR THE FUTURE

Transparency in government procurement procedures is likely to enhance efficiency, clarity and the ease of supply of goods and services for government use. But placing government procurement under the WTO framework would imply a move towards opening this sector to international competition. Thus before agreeing to negotiate a multilateral agreement that goes beyond transparency, or negotiating accession to the GPA, developing countries need to carefully assess the implications for human development—for employment, for income distribution and for the growth and sustainability of small-scale industry.

NOTE

1. However, even in the European Union, a regional market bloc with harmonized policies and procedures, suppliers from outside a country rarely win government contracts. The Economic Commission green paper on procurement issued in 1996 reported that among all eligible transactions, only 3 per cent of awards were made to firms located outside the buying country (EC, 2002 as cited in ITC, 2002).

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