

*This paper is one in a series of briefing papers by the International Institute for Sustainable Development. Each of the papers focuses on an issue of particular importance for sustainable development in the South in the WTO's current round of negotiations—the so-called Doha Development Agenda. The aim of the series is to set out, in brief and uncomplicated style, what is at stake in those negotiations for those concerned with international development and the environment. The full set of papers, and more information about IISD's work on trade and sustainable development, can be accessed on IISD's Web site at <http://www.iisd.org/trade>.*

*Prepared by IISD for the Swiss Agency for Development and Cooperation (SDC)*

## Government Procurement in the World Trade Organization

### 1. What is the issue?

The Agreement on Government Procurement (1994) (GPA) is the third in a series of agreements in the GATT/WTO that deal with government procurement. Over 20 years, these agreements have developed some ground rules, based on three essential characteristics:

1. Like the General Agreement on Tariffs and Trade (GATT), the core principle of the GPA is non-discrimination, achieved by most favoured nation treatment, national treatment, transparency and dispute settlement, though there are some differences in how the two agreements operationalize these elements.
2. Like the General Agreement on Services (GATS), but unlike the GATT, the GPA is only binding on jurisdictions and products explicitly listed by each country in a series of Annexes. Countries can also specify thresholds below which the GPA does not apply.
3. Unlike almost all other WTO agreements, the GPA is a “plurilateral” agreement. That is, the GPA does not automatically bind Members of the WTO; it only binds those who sign on.

As of late 2002, there were 28 Members of the GPA,<sup>1</sup> with another seven in the process of accession. There were also 23 observers<sup>2</sup>—a category that imposes certain basic obligations concerning transparency of procurement (Art. XVII). A Committee on Government Procurement, which reports annually to the WTO General Council, oversees the GPA.

The GPA essentially outlines a desirable system of government procurement. It contains extensive provisions governing tendering procedures, selection procedures, submission, receipt and opening of tenders and awarding of contracts, as well as negotiating procedures.

The GPA provides for negotiations to commence not later than three years after its entry into force (1995), and periodically thereafter, “with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all parties....” This process was initiated in 1997.

Government procurement is one of four “Singapore Issues” that were considered for further negotiations at the WTO's First Ministerial Conference in 1996 without a clear decision being taken. A Working Group was established to “conduct a study on transparency in government procurement practices...” and “to develop elements for inclusion in an appropriate agreement.” The effect of this decision was to create a discussion forum that included the entire WTO membership (rather than the fraction of that membership that were GPA Parties and observers).

The WTO's Doha Declaration, which kicked off the current round of negotiations, uses identical language when considering whether to open negotiations on the four “Singapore Issues.” In the case of the GPA, the mandate for negotiations is strictly limited to transparency in government procurement, and “will not restrict the scope for countries to give preferences to domestic supplies and suppliers.”

### 2. Why is it hard to obtain an Agreement on Government Procurement?

Governments face deep conflicts of interest when dealing with government procurement. The aim of governments in the WTO is to agree to rules on how they will treat industry and commerce. In government procurement, these roles are collapsed: governments are both rule-makers and rule-followers, as they are the purchasers of goods and services. Moreover those who negotiate WTO agreements are not those within the government that will actually purchase goods and services, so that an intra-governmental lobbying process will certainly accompany these negotiations.

As “consumers” of goods and services, governments face further conflict. On the one hand, as purchasers they strive for the best price possible, given a certain level of quality. On the other hand, when negotiating in the WTO they view themselves as defenders of the interests of domestic producers and service providers. In practice it is hard to imagine the Canadian government purchasing uniforms for the armed forces from foreign providers if the domestic textile industry is struggling against foreign competition. Nor is a German Chancellor likely to be seen using a U.S.-made car.

### 3. What are the issues for environment and sustainable development in GPA?

There is a clear case to be made for governments to articulate strong environmental requirements when purchasing goods and services. The government procurement market is sufficiently large to impact the overall market for certain goods and services. Yet governments have not traditionally been environmentally-conscious consumers. Even while public entities typically represent 10–15 per cent of the domestic markets of most countries, there are actually very few instances where government agencies have been path-breaking purchasers of environmentally sound goods and services. This has been the case in particular where there are no domestic suppliers or where foreign suppliers of environmentally-friendly goods compete with less environmentally-friendly domestic goods. Governments have largely avoided using environmental characteristics to distinguish between suppliers, precisely because this represents an effective screen and entails the risk of a challenge from suppliers who have been implicitly excluded. Moreover the articulation of environmental criteria will sometimes entail the “risk” of favouring non-domestic suppliers over domestic ones.

Governments are not likely to develop their own environmental standards for procurement—it is a far simpler prospect to use standards that are already available. Ideally, internationally-agreed standards would be used, since there are obvious chances that voluntary standards developed by domestic suppliers will contain protectionist elements. Even international standards may face questions over legitimacy, given the lack of developing country input in their development.

An incidental result of opening up government procurement markets to foreign suppliers may be increased use of environmental and sustainability criteria, at least for goods and services in which domestic suppliers have a competitive advantage. This advantage may only express itself in terms of greater ease of meeting certain certification criteria. In other words, there is potential for environmental criteria in government procurement to favour domestic suppliers, just as they may prove to represent an indirect selection criterion between competing domestic suppliers.

The GPA provides for exceptions, based on the list of exceptions in GATT Art. XX, including for measures “necessary to protect public morals, order or safety, human, animal or plant life or health,” but not including the GATT exception for measures “relating to conservation of exhaustible natural resources.” Since public authorities are both rule makers and

purchasers of goods and services, the rules are likely to end up structured such that there are a significant number of instances where environmental distinctions can be introduced that are non-discriminatory—that is, do not require an exception. This would be subject to the strictures of GPA’s Art. VI, which specifies that technical specifications “shall, where appropriate, be in terms of performance rather than design or descriptive characteristics.” This text stops short of prohibiting the use of technical specifications based on processing and production methods—a prohibition that would rule out a large number of environmental criteria.

### 4. What are the implications for developing countries?

There are two key questions facing developing countries in relation to the GPA: first, should they accede to the agreement; and second, are there elements of an agreement, or policies at the national level, for which they should be pushing even if they do not choose to accede?

On the first question: given that the GPA is a plurilateral, the question whether to accede must be answered in large measure by a mercantilist assessment of national interest: will accession benefit domestic producers more than foreign ones? It is likely that the answer for most developing countries is “no,” but the final answer in each case will have to await a careful assessment. Like many elements of the Doha agenda, the GPA is not obvious in its distribution of benefits and costs for any particular country. Realistically, though, a thorough assessment may be beyond the reach of least developed countries and many economies in transition.

Whether signatories to the agreement or not, developing countries’ exports will be affected by it to the extent that they are competing for sales to signatory governments. So they have a palpable stake in ensuring that the rules push for specification of standards that are non-discriminatory. International environmental standards tend to be less suspect on this score than those—such as domestic eco-label schemes—developed at the national level. In the area of domestic policy, the ability and increasing inclination of OECD governments to include environmental criteria when purchasing gives exporting governments more reason to pursue an industrial strategy that facilitates the export of “greener” products.

#### Endnotes

- 1 Note that this counts both the European Communities as one Member, as well as counting several of its constituent Member States.
- 2 This number includes most of the states currently in the process of accession.

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