

FOREWORD

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Government procurement is gaining ground as part of world trade, and as part of the work of the World Trade Organization (WTO). During, and in the aftermath of, the world economic crisis, much attention has focused on public infrastructure investment and on government policies that potentially limit the rights of foreign suppliers to bid on related contracts. Such policies were a key focus of my 2009 end-of-year Overview of Developments in the International Trading Environment. In that overview, I noted that ‘buy national’ and other restrictive government procurement measures

raise concerns for trade and the international trading system in three main ways. First, they can exclude foreign suppliers from markets in which they could otherwise hope to compete, either by reserving the market completely for domestic suppliers or by introducing administrative complexities that make procurement procedures less easily accessible for foreign suppliers. Second, paradoxically, in some cases they may even raise the costs or impede the operations of domestic companies in the countries implementing the relevant measures, if such companies experience difficulties in sourcing domestically and cannot easily obtain waivers for purchases abroad. Third, as in other economic sectors, the implementation of discriminatory government procurement measures in one country may engender pressures for the adoption of similar measures by other countries.¹

Fortunately, while restrictive government policies relating to public procurement remain a concern for the global trading system and continuing vigilance is warranted, the world has so far avoided a rush to the wholesale adoption of such measures. This is no doubt due, in substantial measure, to the guarantees of non-discrimination and related commitments embodied in the (plurilateral) WTO Agreement on Government Procurement (GPA) in addition to the assurances incorporated

¹ *Overview of Developments in the International Trading Environment: Annual Report by the Director-General* (WT/TPR/OV/12 of 18 November 2009), paragraph 140.

in the pledges of the G-20 Leaders and the good sense of governments worldwide that have sought to avoid a repeat of the mutually destructive proliferation of trade barriers that unnecessarily prolonged and deepened the depression of the 1930s.

In the future, public procurement and related international trade disciplines are likely to be even more important for global economic growth and development than they are at present. Past estimates have indicated that overall government procurement spending accounts for as much as 15–20 per cent of GDP, on average, worldwide, though much of this is not yet covered by current international disciplines. Moreover, infrastructure investment and other public procurement in emerging market economies in Africa, Asia and Latin America is likely to be a major driving force of economic growth in the years to come.

This situation calls for a deepening and broadening of international trade disciplines to ensure that, as far as possible, public infrastructure investment and other aspects of government procurement are carried out in a transparent and non-discriminatory manner that maximizes value for money for governments and taxpayers. Equally important, the disciplines themselves need to be continually updated to reflect developments in procurement methodologies and to ensure the maximum degree of flexibility for Parties consistent with an open international trading regime. Most of all, the membership of the GPA needs to be broadened to encompass emerging actors in this field.

As detailed in this informative book, efforts are under way to address each of these challenges. Ongoing negotiations between the Parties aim to extend coverage and eliminate remaining discriminatory measures. Provisional agreement has been reached on a revised and improved GPA text.² With regard to the membership of the Agreement, as detailed in relevant chapters of the book, work on the accessions of several developing countries is intensifying. Crucially, work on the accession of China is proceeding well, with strong, positive engagement by both China itself and the existing Parties. These developments presage a significant expansion of the membership of the Agreement in the years to come.

On a number of occasions in the recent past I have referred to the concept of *governance*. The idea of governance recognizes that the mere opening of markets – however desirable – is not, by itself, enough to ensure good economic performance. Rather, appropriate laws and institutions

2 GPA/W/297 of 11 December 2006, available at <http://docsonline.wto.org/DDFDocuments/t/PLURI/GPA/W297.doc>.

are also needed, for example to enforce competition, address spillovers such as environmental degradation and ensure the availability of accurate information for consumers.

The GPA is a paradigm example of a trade opening instrument that recognizes the need for governance mechanisms – in this case, the procedural rules of the Agreement that ensure fair and transparent contracting practices and the domestic review or appeal mechanisms that the Agreement requires Parties to put in place. In addition, the revised GPA text contains a new and explicit requirement that procurement be carried out in a manner that avoids conflicts of interest and prevents corrupt practices. This is a significant innovation in WTO rules. Perhaps the treatment of this issue in the revised GPA text will inform broader debates on the role and future of the multilateral trading system.

The foregoing are but some of the aspects of procurement policy and its treatment in the WTO that are addressed in this book. It is clear, from this ambitious survey of developments and emerging challenges, that the WTO Agreement on Government Procurement is in the process of taking on substantially increased importance within the multilateral trading system and as an underpinning of good policy in this sector. Policy issues in this area merit in-depth consideration in the international community not only by responsible government officials but also by businesses, non-governmental organizations and their respective advisers. This book is a serious contribution to such discussion. Academics and students will also welcome it. I congratulate both the editors of this volume and the authors responsible for the individual chapters, and look forward to the enriched debate that the essays in the volume are likely to spawn.