

WTO WORK ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Presentation by the WTO Secretariat

For the last two and a half years the WTO has actively pursued a work programme on the subject of transparency in government procurement. This has been based on a mandate adopted by Ministers at the WTO Singapore Ministerial Conference held in December 1996 to:

”establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement”.

With the upcoming Ministerial Conference of the WTO to be held in Seattle, 30 November —3 December 1999, this work is now entering a critical phase. A number of WTO Members have tabled draft agreements and are engaged in intensive consultations with their WTO partners, with a view to having an agreement ready for adoption by Ministers at Seattle.

Background

The Singapore mandate reflects the heavy emphasis placed throughout the WTO system of rules and practices on transparency. Transparency is often referred to as one of the three fundamental principles of the WTO, the others being most-favoured-nation and national treatment. Within the WTO system, transparency plays a number of vital functions. The WTO aims to ensure the rule of law in international trade, both at the multilateral level in relations between governments and at the national level in the trade regimes facing individual traders. Transparency in the laws, regulations and procedures affecting trade is necessary for any rules-based approach to trade policy. Not only does it help provide stability and predictability but also ensures that information is available to enable maximum advantage to be taken of the trading opportunities created by WTO rules and commitments. Transparency also, of course, plays a key role in enabling the WTO to monitor compliance with its rules and thus ensure that the negotiated balance of rights and obligations is respected.

The role of transparency is perhaps of greatest importance in situations where the extent to which rules of general application determine trading conditions is limited and the scope for discretionary decision-making is greatest. Government procurement is a notable example. The GATT and now the WTO have for long had a plurilateral Agreement, presently with 26 Parties out of the 134 WTO Members, with detailed requirements in respect of transparency in government procurement. The object of the transparency provisions in this Agreement is not only to ensure that adequate information on procurement opportunities is made available and that decisions are fairly taken, but also to facilitate monitoring of the commitments made under that Agreement not to discriminate against suppliers and supplies from other Parties.

The focus of the multilateral work presently under way on transparency in government procurement is somewhat different. First, as indicated, this work is multilateral in nature and aimed at drawing up an agreement to which all 134 WTO Members will be parties. Second, the focus is on transparency as such, rather than on transparency as a vehicle for monitoring market-access commitments. It is understood among WTO Members that the work presently under way on transparency in government procurement does not seek to regulate the extent to which governments provide preferences to domestic supplies or suppliers, provided of course that such preferences are transparent.

While the work on transparency in government procurement in the WTO is being approached from the angle of the role that transparency plays in the multilateral trading system, as described above, the relevance of all this to the subject of this important Workshop is evident.

The Work of the Working Group¹

The WTO Working Group on Transparency in Government Procurement, which has been carrying out the work programme decided at Singapore, is open to all Members of the WTO. Since it held its first meeting in May 1997, it has met nine times.

The Working Group initiated its work by hearing presentations from other intergovernmental organisations which have international instruments and activities relevant to transparency in government procurement, notably the United Nations Commission for International Trade Law (UNCITRAL) and the World Bank. It then considered a WTO comparative study of the transparency-related provisions in existing international instruments on government procurement procedures as well as in national practices. This covered the procedures under the plurilateral WTO Agreement on Government Procurement, the UNCITRAL Model Law and the World Bank Guidelines, as well as available material on national practices.

The next stage in the work of the Working Group was the systematic study of 12 issues that were identified as important in relation to transparency in government procurement. These are as follows:

- definition and scope of government procurement methods
- publication of information on national legislation and procedures information on procurement opportunities, tendering and qualification procedures time-periods
- transparency of decisions on qualification transparency of decisions on contract awards
- domestic review procedures
- other matters related to transparency:
- maintenance of record of proceedings
- information technology
- language
- fight against bribery and corruption
- information to be provided to other governments (notification)
- WTO dispute settlement procedures
- technical co-operation and special and differential treatment for developing countries

Written contributions on national practices, on issues meriting study and setting out ideas for action have been presented by many WTO Members to the Working Group.

The work has shown a high degree of common thinking on many of the issues referred to above. The main questions on which further work is required include the scope of the transactions that would be covered by a transparency agreement, the treatment of single tendering practices, which are inherently less transparent, domestic review or challenge procedures and the applicability of WTO procedures for settling disputes between governments concerning allegations of non-compliance with the rules of a transparency agreement.

Present Situation

At the end of July this year, one proposal for the draft text of a transparency agreement was tabled by Hungary, Korea and the United States and another broadly similar proposal by the European Communities. In September Japan and Australia also submitted proposals for the

¹ See also WTO Home page address: <http://www.wto.org/wto/govt/govt.htm>.

text of a transparency agreement. These proposals cover most of the issues referred to above. Each of them is relatively short, in the range of four to six pages, and aims to set out core principles and rules that would ensure transparency in government procurement procedures, while at the same time avoiding an overly inflexible and prescriptive approach. The aim of these WTO Members to have a transparency agreement ready for adoption at the Seattle WTO Ministerial Conference at the end of this year is supported by many other WTO Members and received a notable boost from the agreement reached by APEC Ministers at their meeting in Auckland in September to support efforts to reach an agreement on transparency in government procurement at Seattle. However, there are Members of the WTO who consider that it may be premature to seek to conclude an agreement at this stage and that instead further study should be undertaken. It seems likely that intensive consultations and negotiations will take place between now and the Seattle Ministerial Conference with a view to seeing whether a multilateral WTO agreement on transparency in government procurement can be ready for adoption by Ministers at that time.