



RESEARCH NOTE

Number 34, 28 November 1995
ISSN 1323-5664

The WTO Agreement on Government Procurement (AGP)

Government procurement refers to the purchase of goods and services by all levels of government.

Despite governments being among the largest purchasers of goods and services in individual countries, this market, nevertheless, has been one of the most protected in respect of international trade. Virtually all nations enforce some level of control over government procurement practices that discriminates against foreign suppliers in favour of domestic entities. There are a number of justifications offered for the development and maintenance of these practices.

- Because industries and individuals within a particular country provide the majority of government funding, many believe that these funds should then be reinvested within that country whenever possible.
- Governments often allocate their resources in a manner to benefit selected sectors or regions of their economies.
- The decision to open up government procurement to foreign competition could have severe impact on certain segments or regions of an economy via the loss of jobs to foreign competition.
- Practices also exist to accord special treatment to purchases from selected foreign nations.

Discriminatory practices related to government procurement can take the form of percentage price preferences¹ or may be accomplished through other means which include, but are not limited to :

- selective tender procedures, in which invitations to bid are sent only to suppliers on pre-established lists;
- single tender procedures, in which the procuring authority contacts only one supplier;
- substitution of negotiated contracts for public tenders;
- limited publicity on public offers;
- requirements that bidders have branch establishments within the country; and
- the vesting of discretion in procurement officers to ignore foreign bids.

GATT's Historical Involvement in Government Procurement.

Prior to the negotiation of the Government Procurement Code during the Tokyo Round, no international guidelines on procurement existed. In fact, government purchases were expressly excluded from the General Agreement on Tariffs and Trade (GATT) via Article III, section 8(a), which states that 'the provisions [regarding national treatment for imported products] shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes.'

Because of both this exception and the extensive size of the government procurement market, some contracting parties to the GATT negotiated a government procurement code during the Tokyo Round which was applicable only to those who signed it.

The Code went into effect on January 1, 1980, and was signed by Austria, Canada, EC, Israel, Finland, Hong Kong, Japan, Norway, Singapore, Sweden, Switzerland, and the US.

The Code contained two primary principles: (1) equal treatment and (2) transparency. The equal treatment obligation, however, applied only to those government bodies and organisations specified in the Agreement, and during the original negotiations governments bargained over which entities were to be included. The Code also permitted exclusions of certain products provided they were specifically identified at the time of coverage negotiations. This practice of delineating specific entities and products covered has continued under the AGP. The basic premise of the Code was that procurement should be conducted in an open and transparent way.

The Tokyo Round agreement was perceived to be flawed in several ways. The Code:

- did not produce the calculated gains for suppliers of government goods and services as initially foreseen;
- only covered services procurement when it was incidental to the procurement of supplies and equipment;
- did not extend to purchases that were below the minimum 'threshold' value or to purchases made by state and local governments.

The dissatisfaction of the US and other nations with the coverage levels led to increased pressure to re-negotiate the Code.

The WTO Agreement on Government Procurement (AGP)

The AGP constitutes a plurilateral agreement under the WTO and therefore, is applicable only to signatories. It will come into force on 1 January, 1996.

Current members to the revised AGP are:

Canada, European Union, Israel, Japan, Norway, Republic of Korea, Switzerland and the United States.

Australia currently is considering entering into negotiations to join the AGP.

The principal outcomes of the revised AGP resulted in greater coverage of both government entities and products. It established 'threshold' values for new products covered and tightened provisions regulating procedural and technical requirements imposed by entities on service and goods providers.

Australia and the AGP

Australia did not join the Tokyo Round Code on Government Procurement in 1979 for two main reasons:

- At that time Australia operated a preference scheme for domestic suppliers which was inconsistent with the provisions of the Code.
- There was a lack of identifiable commercial benefit for Australian suppliers.

Despite non-membership in the AGP, Australia operates a more liberal government procurement system than most members of the Agreement. In 1988, Australia's preference system for domestic suppliers was replaced by a policy that merely encouraged support for Australian and New Zealand industry.ⁱⁱ

It is arguable that, despite Australia's liberal practices, Australia's accession to an agreement that undermines the government's ability to favour Australian industry would be highly unpopular in the wider community.

Should Australia accede to the AGP the potential commercial gains are greater, in theory, than those provided by the Tokyo Round Code, as a result of the increased scope of covered entities, goods and services. Currently, Australian companies do have access to some of the markets covered by the AGP, however, this access cannot be guaranteed without Australia acceding to the AGP. Other benefits from membership include increased transparency and access to forms of dispute resolution. An additional benefit would be the strategic value of negotiating accession to the AGP and potential reciprocal gains Australia might be able to draw out of the negotiations from trade areas of greater importance to us such as agriculture.

Costs would include the administrative and procedural costs of compliance with the AGP and limited government ability to use

purchasing policy to achieve specific ends, such as sectoral or regional development.

While Canada, the European Union, Japan and, in particular, the US have encouraged Australia to accede to the AGP, only the US has brought significant commercial pressure to bear over this issue by denying some Australian companies access to US government contracts. The potential for other members of the AGP to apply additional commercial pressure is real. While gains from accession to the AGP would depend largely on the actions of individual companies, Australia's current government procurement practices would be little changed should accession occur.

Pru Gordon Foreign Affairs, Defence and Trade Group Parliamentary Research Service

Phone: 06 2772623
Fax: 06 2772475

Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvas all of the key issues.

© Commonwealth of Australia

ⁱ Percentage price preferences allows bids from domestic suppliers to be more expensive than foreign suppliers by a specified amount and still be considered competitive.

ⁱⁱ Article 11 of the Australian and New Zealand Closer Economic Relations Trade Agreement states:

In government purchasing the maintenance of preferences for domestic suppliers over suppliers from the other Member State is inconsistent with the objectives of this Agreement, and the Member States shall actively and on a reciprocal basis work towards the elimination of such preferences.

Provisions in this article effectively eliminate discrimination between Australian and New Zealand contracts for government purchases.