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Government Procurement the Old "New Issue" at WTO Nairobi Ministerial: What is at Stake for Developing Countries?

by Ranja Sengupta

The 10th WTO Ministerial being held in Nairobi, Kenya has become the platform for yet another battle of wills between the WTO's developed and developing members. For the developing countries it is a battle for essential development tools such the continuation of subsidies for poor farmers to support public food programmes, or for a safeguard mechanism to protect their farmers from sudden surges in imports. For the LDCs in particular it is an attempt to get a binding and effective LDC package including on cotton trade, unlike the best endeavour deal they got in the Bali Ministerial.

For the developed countries however, it is a battle to extract more market control across the developing world and pursuing parallel strategies to do so. First,, by pushing out development concessions by relegating the current Doha Development Round and its underpinning development mandate to the dustbin. Second, by launching wth renewed vigour an old demand for negotiations on a set of of "new issues" that include the "Singapore Issues" which were earlier rejected by developing countries for inclusion in the Doha Round.

The Singapore Issues currently include investment, government procurement (GP) and competition policy as multilateral agreements under the WTO. It is important to remember that Trade Facilitation, the fourth of the Singapore Issues, was already brought in as a permanent agreement through the Bali Agreement. Some of the ones being discussed now currently exist in the WTO in a limited form, e.g. the Trade Related Investment Measures (TRIMS) which has limited scope or the Government Procurement Agreement (GPA) which has limited number of members. However if multilateralised, these agreements will create a much larger impact, not only in terms of their scope and size but also in terms of the linkages and complexities they will bring to the area of liberalisation.

What is Government Procurement?

Government procurement (GP) or public procurement refers to purchases by government department/ agencies of goods and supplies, services and construction & public works. The GP market represents a lucrative share of roughly 15-30% (apprx) of the total market. Apart from the sheer economic size it represents policy choices and tools in the hands of governments as they exert full control over this market.

What is the Current WTO Agreement on Government Procurement?

The developed countries have so far failed to get GP in a multilateral form. However, there is already a plurilateral agreement called the Government Procurement Agreement (GPA) under the WTO. The GPA currently includes only 42 members, including the 27 members of the European Union. Most of them are developed countries. In addition some countries have an observer status who do not have to commit to terms of the binding agreement.

Earlier discussions on GP in the WTO had mainly included transparency issues. However the GPA represents the aspiration of the developed countries to access this lucrative market and includes both market access as well as transparency related issues. Liberalisation of the GP market under this agreement involves granting national treatment and Most-Favoured-Nation (MFN) thereby granting the foreign company the right to be treated the same as any domestic company or any other company based in other partner countries.

Even after 19 years of existence (since 1996), the poor membership of the GPA indicates the hesitancy on the part of developing countries to join. Some for example China have been forced into it under the terms of its accession to the WTO though China is still negotiating the terms of its joining this agreement. The rather static membership has forced the developed countries, in particular the EU and the USA, to push for a chapter on market access in GP through their Free Trade Agreements. For EU it apparently is a core mandate in its FTA negotiations. On the other hand, they have become desperate to push a multilateral agreement through the WTO.

Why are Developing Countries wary of the GPA?

Apart from the sheer size of the GP market in developing countries, the market represents key development tools to serve crucial development objectives.

"Government procurement and policies related to it have very important economic, social and even political roles: (a) The level of expenditure, and the attempt to direct the expenditure to locally produced materials, is a major macroeconomic instrument, especially during recessionary periods, to counter economic downturn. (b) There are national policies to give preference to local firms, suppliers and contractors, in order to boost the domestic economy and participation of locals in economic development and benefits. (c) There is specification that certain groups or communities, especially those that are under-represented in economic standing, be given preference (d) For procurement or concessions where foreign firms are invited to bid, there could be a preference to give the award to firms from particular countries (e.g., other developing countries, or particular developed countries, with which there is a special commercial or political relationship)" (Khor, Martin " The WTO "Singapore Issues": What's at Stake and Why it Matters", TWN Briefing Paper 16, October 2003)

For example, India has used the GP market to give preferences to domestic companies, SMEs, its village enterprises, women producers and backward castes and religious minorities. South Africa uses it for "Black Economic Empowerment" by giving preferential treatment to producers adversely affected by Apartheid policies in the past.

Should government procurement be opened up through the national treatment and MFN principles, all the above instruments will be compromised. The policy space available at the disposal of developing country governments, for designing appropriate economic, social and environmental policies will be lost.

Why will a multilateral agreement on GP matter especially for developing countries?

The developing countries will have to give up control over this market and open it up at par to foreign companies. This would represent significant liberalisation of the domestic market even if tariffs are untouched and impact all sectors including agriculture, industry and services.

Further, developed countries have more advantages in the GP market as due to the high standards set for products and services procured in developed countries, which countries are free to set themselves, as these act as barriers for companies in developing countries. The developing countries on the other hand cannot set high standards as these will block off their own producers. In fact there is already a great push by the rich countries to set in high standards in the name of sustainability. There are also a host of other forms of barriers for entry into developed country markets, including access to information, language specificity, etc. For example only 1.2% of the GP market in EU is supplied by foreign (non-EU) companies (Sengupta Ranja "Government Procurement in the EU-India FTA", Economic and Political Weekly, 2012).

The likely strategies to be deployed around the multilateralisation of GP is also something to be cautious about. It is clear that given the resistance of developing countries to a multilateral agreement on GP, the proposals from the developed countries will first include just including discussions in a work programme, or by suggesting a multilateral agreement simply on transparency, or to include "non-binding" commitments. However from the negotiating positions of countries such as the USA and the EU, it is clear that a binding agreement including market access on MFN and national treatment, is their ultimate goal. This will be a heavy cost to pay for developing countries in the medium to long run.

Given the importance of government procurement policy as a crucial development tool required for meeting national economic, social and environmental objectives, including those outlined in the recently adopted 2030 Agenda for Sustainable Development and the SDGs, it is absolutely necessary for developing countries to resist all efforts at Nairobi to introduce GP under WTO multilateral talks as a post-Nairobi deliverable.