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ACCESS TO INTERNATIONAL PROCUREMENT MARKETS: BUSINESS RECOMMENDATIONS

EXECUTIVE SUMMARY

The value of public procurement potentially open to international trade is estimated to be equivalent to 30.1% of world exports. Public procurement expenditure can therefore be a significant driver of international trade. However, although EU public procurement markets are among the most open in the world, many non-EU markets operate restrictive public procurement practices, resulting in lost business opportunities for European companies.

BUSINESSEUROPE appreciates the efforts undertaken by the European Union in promoting further opening of public procurement markets. However, we are concerned about the limited progress made to date. In view of the persistent imbalance in openness of public procurement markets between the EU and its main trading partners, BUSINESSEUROPE recommends a proactive market access policy based upon open trade and investment and reducing discriminatory measures in third countries. At the same time, it should be considered to which extent EU public procurement markets can sustainably remain open whilst third countries maintain an unlevel playing field.

In particular, the European Union should

- Raise the profile of GPA accession negotiations and seek a balanced position for effective and improved market access.
- Negotiate ambitious government procurement chapters in bilateral agreements and address access to procurement markets in bilateral dialogues.
- Reflect on an improved Trade Barriers Regulation and carefully targeted restrictions on access to part of the EU procurement market to encourage partners to offer reciprocal market opening.

INTRODUCTION

Governments at central and sub-central levels are significant purchasers of goods and services, which in turn can be important drivers of international trade. The value of public procurement potentially open to international trade is estimated at \$2083 billion, equivalent to 7.1% of world GDP or 30.1% of world exports¹.

¹ Recent data on the size of public procurement markets is not available. The latest data dates from a 2001 OECD publication based on 1998 data.



In addition, government stimulus packages that have been drawn up in response to the global economic crisis are vastly increasing public procurement expenditure. Although OECD countries still account for nearly 90% of government procurement by value, emerging countries such as China, India, Russia or Brazil are expected to substantially increase investment over the next few years, for example in public infrastructure.

Whereas EU public procurement markets are among the most open in the world, many non-EU markets operate restrictive public procurement practices in which European companies are either disqualified outright from tendering, or can only tender on less favourable terms than their local competitors. These barriers to participation of European suppliers and products lead to a significant loss of export and investment opportunities for European companies. This problem is exacerbated by recent Buy National/Local provisions introduced in stimulus plans in the US and China.

In the *Global Europe* Communication of 2006, the European Commission acknowledged that '*public procurement is an area of significant untapped potential for EU exporters*'. Although *Global Europe* advocated a sharper focus on market opening and stronger rules in public procurement, limited progress has been made to date.

The purpose of this paper is to highlight the main challenges that European companies are encountering in third country procurement markets. Several recommendations are put forward to make the European Commission's ongoing and future negotiations and initiatives in this area more effective.

CHALLENGES IN ACCESSING PROCUREMENT MARKETS

European companies rely on new market opportunities abroad to increase economic growth and jobs at home. It is therefore imperative for these companies to be able to compete fairly in those markets.

Currently, the EU supports the liberalisation of public procurement markets in its bilateral trade agreements² with third countries and through the WTO Agreement on Government Procurement (GPA)³. Furthermore, the WTO General Agreement on Trade in Services (GATS) provides for multilateral negotiations on government procurement in services under its framework. In addition, other diplomatic means are used to assert the importance of removing barriers in public procurement markets, for instance through regulatory dialogues and other commercial agreements.

² The EU has included public procurement in its bilateral agreements with Mexico, Chile and Cariforum

³ The GPA currently has 14 members: the EU, Canada, the US, South Korea, Japan, Taiwan, Norway, Iceland, Liechtenstein, Switzerland, Singapore, The Netherlands with respect to Aruba, Israel and Hong Kong.



Whilst some progress has been made using these means, European companies continue to face significant challenges in accessing the public procurement markets of third countries. These include:

- Slow progress of WTO Government Procurement Agreement accession and revision negotiations
- Excessive use of derogations – exemptions and limitations – by GPA members leading to unsatisfactory coverage over-all
- Lack of transparency and timely information in the publication of calls for tender and lack of transparency in the process of awarding contracts
- Complex procedures to award procurement contracts, including local references requirements for work already carried out in the local market
- Absence, ineffectiveness or non-application of legal instruments to overcome obstacles to procurement markets; lack of information on such instruments available to European companies

OPPORTUNITIES FOR COMPETITIVE EUROPEAN COMPANIES

The current economic downturn has only accentuated the need for well-functioning and efficient public procurement, as the financial leeway of states and regions decreases and public deficits rise. It is therefore imperative that public authorities aim to do business with the best providers of goods and services. This can only be achieved through public procurement procedures that promote strong and fair competition. Open procurement markets will provide an important impetus to boost competitiveness, economic growth and employment, as well as contribute to better public governance.

Public Private Partnerships (PPP) are another important tool for achieving these objectives. Barriers restricting partnership between the public and private sectors need to be removed, both within Europe and in an international framework. In this context, the European Commission should seek to enhance transparency and obtain market access commitments for PPPs when dealing with government procurement in free trade and other bilateral agreements.

Key areas of public procurement where European companies are highly competitive include:

- Energy infrastructure and efficiency
- Water treatment
- Healthcare
- Transport
- Engineering
- Construction
- Information and Communication Technologies



RECOMMENDATIONS

BUSINESSEUROPE appreciates the efforts undertaken by the European Union in promoting further opening of public procurement markets. However, we are concerned about the limited progress made to date, for example in GPA negotiations, and uncertainty surrounding future progress.

In view of the persistent imbalance in openness of public procurement markets between the EU and its main trading partners, BUSINESSEUROPE recommends a proactive market access policy based upon open trade and investment and reducing discriminatory measures in third countries. At the same time, it should be considered to which extent EU public procurement markets can sustainably remain open whilst third countries maintain an unlevel playing field.

The European Union should:

Regarding the WTO Government Procurement Agreement

- Improve information on: (1) the contents of existing GPA rules and commitments, (2) the status of its revision in terms of the procedural rules and coverage and (3) GPA accession negotiations. Better awareness and understanding of the GPA by business can contribute to a stronger EU position in external negotiations.
- Raise the profile of GPA accession negotiations with important trading partners, in particular China, but also New Zealand, Australia and India. China's accession to GPA should be fast-tracked, as this was part of the balance of concessions that enabled China to accede to the WTO. Further unreasonable delays should be treated as a violation of its accession commitments
- Seek a balanced position in the ongoing negotiations of the GPA for an effective and improved market access
- Press for the suppression of unjustified exemptions and derogations of GPA rules, such as Canada's derogation on contracts signed by its provinces in urban transport and shipbuilding and Japan's "safety clause" in railway procurement, in the current GPA revision by major trading partners

At bilateral level

- Negotiate ambitious government procurement chapters in all bilateral agreements and commercial partnerships with third countries advocating: (1) transparency in the tendering process, (2) the use of international standards, (3) a single point of entry for access to relevant procurement opportunities in a given jurisdiction and (4) effective administrative and legal review mechanisms
- Address access to procurement markets in bilateral dialogues and high level discussions with important trading partners such as the US, Canada, Japan and China.



- Further promote the effective use of other tools (e.g. the Commission's market access strategy, and high-level WTO seminars) to increase political pressure for open public procurement markets.
- Prepare annual progress reports on developments at multilateral and bilateral level regarding the legal rules for access to third country procurement markets, as was foreseen in Article 58/5 of the 2004 Directive on Procurement (2004/17/EC)
- Ensure a stable intellectual property regime, include adequate enforcement of IPR, when intellectual property is required to access public procurement

At international level

- With regards to public procurement from international organisations. (1) Increase efforts to improve transparency, (2) endorse simplification of complex procedures for becoming registered as a 'qualified supplier' and (3) promote equal treatment and fair competition.

On enforcement

- Display firm diplomatic opposition and pursue legal action against the current surge in national and/or local preferences schemes.
- Consider the possibility to address public procurement issues through an improved Trade Barriers Regulation (TBR) for market access problems to better enable companies to seek redress in cases of unfair exclusion
- Reflect whether introducing carefully targeted restrictions on access to parts of the EU procurement market might be useful in cases where important trading partners profit from the general openness of the EU, but have no intention to move towards reciprocity, to encourage these partners to offer reciprocal market opening.
