

Articles

THE WTO AGREEMENT ON GOVERNMENT PROCUREMENT AND THE UNCITRAL MODEL PROCUREMENT LAW: A VIEW FROM OUTSIDE THE REGION

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ABSTRACT

Two of the most significant efforts to bring municipal procurement institutions up to international standards are the WTO Agreement on Government Procurement (GPA) and the UNCITRAL Model Law on Procurement of Goods, Construction and Services. Though the Model Law has had limited adoptions, it enjoys global influence as a source of norms and practices for good public procurement. The GPA, also reflective of international standards, seems to be on the rise, as more WTO members elect to become GPA contracting parties. This article explores two aspects of these instruments. First, the article explores how the Model Law promotes efficient public procurement. It explains how the ongoing

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revisions of the Model Law, in particular in the area of electronic reverse auctions, continues to promote efficiency in procurement systems. Second, the article explores how the GPA promotes efficiency in its non-market access provisions, but that its market access provisions permit governments to take the fairness of procurement policies into account, through socio-economic programs. Only efficiency is a value at the transnational level, and fairness is a concern only of municipal governments at this time. The GPA thus imperfectly facilitates a mix of efficiency and fairness policies in the procurement systems of the GPA contracting parties. Only GPA contracting parties with significant market leverage, who can open up substantial procurement markets while still maintaining protected socio-economic procurements, can effectively promote both fairness and efficiency in their procurement systems. Of course, what one country might characterize as fairness, another might characterize as rent-seeking protection, and it is well accepted that while trade restrictive policies often seem laudable in theory, they can be difficult to implement and harmful in practice.

KEYWORDS: *public procurement; world trade; law and development; relation of economics to social values; new institutional economics; distributive justice*

I. INTRODUCTION

Public procurement law and policy exists in a nether world in terms of inquiry about its relationship to international trade and the economic growth of states. Much of the activity in procurement law reform in countries working to improve their procurement systems is undertaken at the level of the practitioner's art. The focus is on action and on the immediate practicalities of procurement reform. It is reminiscent of the substantial legislative activity in the 1980s and 1990s to combat "fraud, waste and abuse" in the United States federal procurement system. How could any U.S. congressman be against fighting fraud, waste and abuse?