

24 June 2003

**Doha Development Agenda  
Negotiations on Transparency in Public Procurement**

**I. Introduction**

UNICE supports negotiations in the WTO that aim to liberalise public procurement including:

- The revision of the Government Procurement Agreement (GPA).
- Negotiations on public procurement under GATS.
- The launch of negotiations on Transparency in Public Procurement at the 5<sup>th</sup> WTO Ministerial Conference as agreed in the Doha Development Agenda (DDA).

This paper provides UNICE's position on paragraph 26 of the DDA which calls for negotiations on transparency in public procurement.<sup>1</sup>

The general objective of EU business is to obtain increased market access in non-EU countries through the Doha negotiations. In this regard, it is indisputable that public procurement forms an important element. In 2002, the OECD estimated that spending on public procurement at all levels amounted to USD 5,550 billion (1998) or the equivalent of 82% of total world exports. The global figure for public procurement alone was estimated at USD 2,083 billion (excluding public procurement for defence). OECD countries accounted for 86% of this amount while non-OECD members accounted for 14%.<sup>2</sup> In this field, UNICE would like:

- The progressive elimination of the preferences granted to national supplies and suppliers. Although this has been explicitly ruled out for the current round of negotiations, it is important that non-discrimination and national treatment be included in a future WTO agreement on the transparency of public procurement procedures.
- The progressive elimination of the remaining exemptions and exceptions to public procurement markets thereby assuring the inclusion in GPA of provisions on thresholds and simplification of the annexes.
- The incorporation of any future general rules on procurement by GATS and future rules on transparency in public procurement into an improved GPA as an ultimate

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<sup>1</sup> DDA Para. 26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

<sup>2</sup> For further information on public procurement markets see OECD (March 2002) *The Size of Government Procurement Markets* Offprint from *OECD Journal on Budgeting*, Vol 1, No. 4.

objective. On this point, UNICE would like to emphasise that future agreements on procurement in the GATS and on transparency should encourage the development of more open and transparent procurement rules in order to ease incorporation of these into the GPA. With this objective in mind, neither GATS nor future rules on transparency in public procurement should include provisions on public procurement that could undermine the improvement or expansion of the GPA.

Against this background, UNICE believes that the WTO should take advantage of the opportunity provided by the Doha Development Agenda to negotiate an ambitious agreement on transparency, predictability and integrity in the field of public procurement in order to:

- Significantly improve the capacity of companies in the European Union to obtain public contracts in non-EU countries.
- Lay the foundations for wider negotiations in the future on improvement, deepening and widening of disciplines for public procurement and thereby reduce “national and/or local preferences” which remain at the present time. To that end, developing countries should be encouraged to subscribe in due course to the existing plurilateral agreement (GPA) which should also incorporate the provisions of the future DDA agreement on transparency to prepare the ground for future multilateralization of the GPA.
- Contribute to economic growth in developing countries in two ways:
  - By allowing them to reduce costs and spending in this area through stronger competition and by contributing to the fight against corruption.
  - By giving them more transparent access to public procurement contracts in developed countries.

The quest for an ambitious agreement in this area presupposes that the negotiators reach agreement on solutions likely to satisfy the expectations of companies on the following points:

- The widest possible definition and scope of the future WTO/DDA agreement
- Highly active and pro-active information on:
  - laws, rules and practices applicable in WTO member countries, and
  - opportunities to compete for these contracts (on the basis of good and timely information)
- Equitable and non-discriminatory rules on qualification procedures and decisions regarding these same contracts
- Submission of this new system to a dispute settlement system providing:
  - A swift procedure with short timeframes that is adapted to the specificities of public procurement markets (i.e. short delays for procurement contracts).
  - A longer procedure based on WTO law for substantive violations of the agreement.

## **II. An ambitious definition of the scope of the future WTO Agreement on Transparency in Public procurement**

UNICE believes that the future agreement should cover public contracts awarded not only by central authorities but also by local authorities and utilities. Similarly, concessions and Build Operate Transfer (BOT) transactions should also be covered by the future agreement. Against this, thresholds could be retained and modulated in accordance with tender techniques and/or the bodies and countries concerned.

## **III. Information that is as accurate and detailed as possible**

Companies should be in a position, at all stages, to enjoy equal treatment (procedural) with their foreign competitors, be they national or from third countries. In addition, economic operators would save time and resources if they knew in advance that a given tender is restricted or closed on sensible and reasonable grounds.

This presupposes that they are informed sufficiently far upstream:

- Via a single office which provides them with all relevant information (“tender documentation”) about the applicable laws, rules, practices or administrative decisions (“administrative guidelines” of bodies) and relevant court decisions.
- About the limited and/or preferential character of certain tenders with, if possible, ex-ante publication of tenders subject to such arrangements
- About elements designed to enable them to be placed on list of “registered” or “pre-qualified” suppliers, and about the technical specifications they will be required to meet
- About all the parameters and criteria which will be used to decide between competitors.

## **IV. Equitable and non-discriminatory rules for different economic operators**

As noted above, duly registered and pre-qualified competitors should be given the right to be informed on an equal footing. In UNICE’s view, this means among other things that the required technical specifications should not be designed and/or applied from a “protectionist” standpoint (creating unnecessary obstacles to international trade). This will be guaranteed by description of performance linked to international technical standards and rules.

In addition, the confidentiality of information submitted in tender applications should be fully guaranteed.

Moreover, deadlines should be set sufficiently in advance to avoid disadvantaging foreign economic operators, notably in the case of complex tenders.

Lastly, the circumstances under which national authorities can issue restricted tenders should be specifically enumerated and competitors should be notified sufficiently in advance of the tender.

## **V. Supervision of the system to be put in place**

A reporting system should be put in place at national level in such a way as to give assurances via notifications and return notifications (notably ex-post) to guarantee the full implementation of a WTO agreement on transparency. The Trade Policy Review Mechanism (TPRM) should specifically cover the functioning of the reporting system rather than the notification systems used for non-tariff barriers following the Tokyo and Uruguay Rounds, since the information provided under the latter is available only to national delegations.

National legal systems should provide mechanisms through which decisions can be contested before independent and impartial authorities. These procedures should allow rapid examination of complaints and lead to suspension or even a re-opening of the procedure (“rebid”) as and when appropriate.

Last, the WTO Dispute Settlement mechanism should allow member states to reach a decision on a dispute relating to interpretation of the agreement, sometimes using a simplified procedure as and when necessary. In case of disagreement, appeals may be referred to the standard procedure for WTO Dispute Settlement Mechanism.

## **VI. Cooperation and technical assistance for Developing Countries**

UNICE believes that least developed countries (LDCs) will have much to gain under a new WTO agreement on Transparency in Public procurement (see I above). Nevertheless, targeted technical and financial assistance for developing countries is essential to ensure that the future agreement is applied effectively at all levels. Assistance should promote:

- The constitution of a legal, regulatory, administrative and judicial corpus which points in the direction adopted in the future agreement, perhaps containing specific arrangements for developing countries/least developed countries.
- The training of officials responsible for the implementation of the agreement.

UNICE will closely monitor the evolution of the negotiations on Transparency in Public procurement in the framework of the DDA. It may complement and/or revise its views, as and when multilateral negotiations progress, and looks forward to pursuing dialogue with the parties involved.