

Introductory bibliography on public procurement regulation within the WTO

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1. Introduction

The following is a short introductory bibliography listing key readings in the English language on public procurement regulation within the WTO, which has been produced by the Asia Inter University Network for Teaching and Research in Public Procurement Regulation. The bibliography is not intended to be comprehensive, but merely introductory. It is not intended to cover the law of individual Member States of the WTO.

Separate bibliographies have also been produced on: i) Regulating public procurement: general issues and regulation under the UNCITRAL Model Law on procurement; ii) EC public procurement law. The Network consortium is in the process of producing a more comprehensive bibliography on these and other subjects in public procurement (including the laws of certain individual countries), which it is hoped will be published later in 2009 and continuously updated.

The list has been compiled based on materials used for teaching modules on public procurement in some of the partner institutions of the Asia Link project. It should be emphasized that the selection of materials for inclusion is in part influenced by the focus of these particular modules and by the availability of materials at the partner institutions.

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2. General books

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003)

Cameron May, *Business Opportunities and the GPA: a handbook for EU Companies* (London: Cameron May 1998)

S. Evenett and B. Hoekman (eds.), *The WTO and Government Procurement* (Northampton: Edward Elgar, 2006) (a collection of previously published papers, many of which are listed separately below)

B. Hoekman and P. Mavroidis (eds.), *Law and Policy in Public Purchasing: the WTO Agreement on Government Procurement* (Ann Arbor: University of Michigan Press 1997)

A. Reich, *International Public Procurement Law* (1999) (The Hague: Kluwer Law International 1999)

3. Reasons for regulating public procurement in trade agreements/organisations

(Note that this section does not include detailed economic literature but merely literature explaining some of the economic theories that is accessible to "lay" readers)

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), chapter 1

S. Arrowsmith, *The Law of Public and Utilities Procurement* (2nd ed) (London: Sweet & Maxwell 2005), ch. 3

S. Arrowsmith, "The National and International Perspectives on the Regulation of Public Procurement: Harmony or Conflict?", pp. 9-36 in H. Olszewskiego and B. Popowskiej (eds.) *Gospodarka Administracja Samorząd* (Poznań: Wyd. Printer 1997); also published as chapter 1 in S. Arrowsmith and A. Davies (eds.), *Public Procurement: Global Revolution* (The Hague: Kluwer Law International 1999)

Cecchini, *The European Challenge: the Benefits of a Single Market*, section 3, 16-21 (1988) (also extracted in S. Arrowsmith, J. Linarelli and D. Wallace, *Regulating Public Procurement: National and International Perspectives* (London: Kluwer Law International 2000))

S. Evenett and B. Hoekman, "Government Procurement of Services and Multilateral Disciplines", ch.6 in P. Sauvé and R. Stern (eds.), *GATS 2000: New Directions in Services Trade Liberalization* (Washington: Brookings Institution Press 2000)

J.M. Fernandez Martin, *The EC Public Procurement Rules: A Critical Analysis* (Oxford: Clarendon Press 1996), chs.1-3

A. Mattoo, "The Government Procurement Agreement: Implications of Economic Theory" (1996) 19 *World Economy* 695

F. Ssenoga, "Examining Discriminatory Procurement Practices in Developing Countries" (2006) 6 *Journal of Public Procurement* 218

F. Trionfetti, "Home biased government procurement and international trade", ch.12 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2002)

F. Weiss, *Public Procurement in European Community Law* (London: Athlone Press 1993), ch. 2

4. Public procurement under the WTO's multilateral agreements (including GATT and GATS)

4.1. General

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), ch. 3

M. Dischendorfer, "The Existence and Development of Multilateral Rules on Government Procurement under the Framework of the WTO" (2000) 9 *Public Procurement Law Review* 1

S. Evenett and B. Hoekman, "Government Procurement of Services and Multilateral Disciplines", ch.6 in P. Sauvé and R. Stern (eds.), *GATS 2000: New Directions in Services Trade Liberalization* (Washington: Brookings Institution Press 2000)

4.2. Application to state enterprises

W. Davey, "Article XVII GATT: an Overview", ch.1 in T. Cottier and P. Mavroidis, *State Trading in the Twenty-first century* (Ann Arbor: University of Michigan Press 1998)

B. Hoekman and P. Low, "State Trading: Rule Making Alternatives for Entities with Exclusive Rights", ch.17 in T. Cottier and P. Mavroidis, *State Trading in the Twenty-first century* (Ann Arbor: University of Michigan Press 1998)

P. MacKenzie, "China's Application to the GATT: State Trading and the Problem of Market Access" (1990) 24 *Journal of World Trade* 133

A. Mattoo, "Dealing with Monopolies and State Enterprises: WTO Rules for Goods and Services", ch.2 in T. Cottier and P. Mavroidis, *State Trading in the Twenty-first century* (Ann Arbor: University of Michigan Press 1998)

E-U. Petersmann, "GATT Law on State Trading Enterprises: Critical Evaluation of Article XVII and Proposals for Reform", ch.3 in T. Cottier and P. Mavroidis, *State Trading in the Twenty-first century* (Ann Arbor: University of Michigan Press 1998)

5. The Government Procurement Agreement

5.1. General articles

- A. Blank and G. Marceau, "The History of the Government Procurement Negotiations Since 1945" (1996) 5 *Public Procurement Law Review* 77
- A. Brown and C. Pouncey, "Expanding the International Market for Public Procurement: the WTO's Agreement on Government Procurement" (1995) 1 *International Trade Law and Regulation* 69
- P. Carrier, "Domestic Price Preferences in Public Procurement: an Overview and Proposal of the Amendment to the Agreement on Government Procurement" (1997) 10 *New York International Law Review* 59
- C. Corr and K. Zisis, "Convergence and Opportunity: The WTO Government Procurement Agreement and US Procurement Reform" (1999) 18 *New York Law School Journal of International and Comparative Law* 306
- G. de Graaf and M. King, "Towards a More Global Government Procurement Market: The Expansion of the GATT Government Procurement Agreement in the Context of the Uruguay Round" (1995) 29 *International Lawyer* 435
- J. Hird, "Government Procurement", ch. 10 in K. Anderson (ed.) *Strengthening the Global Trading System: from GATT to WTO* (Adelaide: University of Adelaide 1996)
- B. Hoekman and P. Mavroidis, "The WTO's Agreement on Government Procurement: Expanding Disciplines, Declining Membership" (1995) 4 *Public Procurement Law Review* 63
- P. Low, A. Mattoo and A. Subramaniam, "Government Procurement in Services" (1996) 20 *World Competition* 1
- A. Reich, "The New GATT Agreement on Government Procurement: the Pitfalls of Plurilateralism and Strict Reciprocity" (1997) 31 *Journal of World Trade* 125
- C. Tiefer, "The GATT Agreement on Government Procurement in Theory and Practice" (1997) 26 *University of Baltimore Law Review* 31.
- D. Wallace and S. Sahayadachny, "Opening Government Procurement Markets", ch. 19 in M. Mendoza, P. Low and B. Kotschwar (eds.), *Trade Rules in the Making* (Washington: Brookings Institute Press 1999)

5.2. Review of the Government Procurement Agreement

R. Anderson, "Renewing the WTO Agreement on Government Procurement: Progress to Date and Ongoing Negotiations" (2007) 16 *Public Procurement Law Review* 255

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), ch. 15

S. Arrowsmith, "Reviewing the GPA: The Role and Development of the Plurilateral Agreement After Doha" (2003) 5 *Journal of International Economic Law* 761

V. de Lima e Silva, "The Revision of the WTO Agreement on Government Procurement: to what Extent Might it Contribute to the Expansion of Current Membership?" (2008) 17 *Public Procurement Law Review* 61

5.3. Accession to the Government Procurement Agreement

R. Anderson, "China's accession to the WTO Agreement on Government Procurement: Procedural Considerations, Potential Benefits and Challenges, and Implications of the On-going Negotiation of the Agreement" (2008) 17 *Public Procurement Law Review* 161

I. Choi, *Long and Winding Road to the Government Procurement Agreement: Korea's Accession Experience* (July 1999); available at www.worldbank.org

A. Bayyat, "A comparative study of Iran's public procurement regime and the GPA: non-discrimination rules and procurement methods" (2008) 17 *Public Procurement Law Review* 201

Q. Kong, "Chinese Law and Practice on Government Procurement in the Context of China's WTO Accession" (2002) 11 *Public Procurement Law Review* 201

V. Srivastava, *India's Accession to the GPA: Identifying Costs and Benefits* (1999), available at www.worldbank.org (also available as ch. 10 in A. Mattoo and R. Stern (ed), *India and the WTO* (Oxford: OUP 2003))

X. Tong, "Chinese Procurement Law: Current Legal Framework and a Transition to the WTO's Agreement on Government Procurement" (2003) 17 *Temple International and Comparative Law* 139

P. Wang, "Coverage of the WTO's Agreement on Government Procurement: Challenges of Integrating China and other Countries with a Large State Sector into the Global Trading System" (2007) 10 *Journal of International Economic Law* 887

Ping Wang, "China's Government Procurement Policy at a Crossroad", December 2008 (Policy Paper), available at www.nottingham.ac.uk/law/pprg

5.4. Coverage of the Government Procurement Agreement

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), ch. 5

M. Bronckers, "The Position of Privatized Utilities under WTO and EU Procurement Rules" 1996/1 *Legal Issues in European Integration* 145

D. Collins, "Canada's sub-central coverage under the WTO Agreement on Government Procurement" (2008) 17 *Public Procurement Law Review* 21

A. Davies, "Korea – Measures Affecting Government Procurement: Some Critical Observations" (2001) 10 *Public Procurement Law Review* 229

D-H. Kim, "Political institutions and the Government Procurement Agreement of the WTO" (2009) 18 *Public Procurement Law Review* 1

P. Olivera, "Defining the Scope of Covered Entities under the WTO Agreement on Government Procurement" (1997) 6 *Public Procurement Law Review* 1

H-J. Priess and C. Pitschas, "Recent Developments within the WTO: Korea – Measures Affecting Government Procurement" (2000) 9 *Public Procurement Law Review* NA91

P. Wang, "Coverage of the WTO's Agreement on Government Procurement: Challenges of Integrating China and other Countries with a Large State Sector into the Global Trading System" (2007) 10 *Journal of International Economic Law* 887

5.5. Principles and award procedures under the Government Procurement Agreement

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), chs. 6-12

5.6. Remedies and enforcement

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), ch. 15 (also published as S. Arrowsmith, "The Character and Role of National Challenge Procedures under the Government Procurement Agreement" (2002) 11 *Public Procurement Law Review* 235)

A. Davies, "Remedies for Enforcing the WTO Agreement on Government Procurement from the Perspective of the European Community: a Critical Analysis" (1997) 20 *World Competition* 113

M. Footer, "Remedies under the New GATT Agreement on Government Procurement" (1995) 4 *Public Procurement Law Review* 80

C. Schede, "The "Trondheim" Provision in the World Trade Organisation Agreement on Government Procurement" (1996) 5 *Public Procurement Law Review* 161

F. Weiss, "Dispute Settlement under the "Plurilateral Trade Agreements": The Case of the Agreement on Government Procurement", ch. 15 in E-U. Petersmann (ed.), *International Trade Law and the GATT/WTO Dispute Settlement System* (London: Kluwer Law International 1997)

5.7. Social and environmental objectives (horizontal objectives) under the Government Procurement Agreement

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), ch. 13

S. Arrowsmith, "Public Procurement as a Tool of Policy and the Impact of Market Liberalisation" (1995) 111 *Law Quarterly Review* 235

P. Kunzlik, "Environmental Issues in International Procurement", ch. 11 in S. Arrowsmith and A. Davies (eds.), *Public Procurement: Global Revolution* (The Hague: Kluwer Law International 1999)

P. Kunzlik (ed.), *The Environmental Performance of Public Procurement* (2003); (OECD publication)

C. McCrudden, *Buying Social Justice: Equality, Government Procurement, & Legal Change* (Oxford: OUP 2007)

C. McCrudden, "International Economic Law and the Pursuit of Human Rights: a Framework for Discussion of the Legality of "Selective Purchasing" Laws under the WTO Procurement Agreement" (1999) 2 *Journal of International Economic Law* 3

C. McCrudden, "Social Policy Issues in Public Procurement: a Legal Overview", ch. 12 in S. Arrowsmith and A. Davies (eds.), *Public Procurement: Global Revolution* (The Hague: Kluwer Law International 1999)

C. McCrudden and S. Gross, "WTO Government Procurement Rules and the Local Dynamics of Procurement Policies: a Malaysian Case Study" (2006) 17 *European Journal of International Law* 151.

H-J. Priess and C. Pitschas, "Secondary Criteria and Their Compatibility with EC and WTO Procurement – The Case of the German Scientology Declaration" (2000) 9 *Public Procurement Law Review* 196

5.8. Developing countries in the GPA

B. Debroy and G. Pursell, "Government Procurement Policies in India", ch. 10 in B. Hoekman and P. Mavroidis (eds.), *Law and Policy in Public Purchasing: the WTO Agreement on Government Procurement* (Ann Arbor: University of Michigan Press 1997)

V. de Lima e Silva, "The Revision of the WTO Agreement on Government Procurement: to what Extent Might it Contribute to the Expansion of Current Membership?" (2008) 17 *Public Procurement Law Review* 61

B. Hoekman and P. Mavroidis, "The WTO's Agreement on Government Procurement: Expanding Disciplines, Declining Membership" (1995) 4 *Public Procurement Law Review* 63

V. Srivastava, *India's Accession to the GPA: Identifying Costs and Benefits* (1999), available at www.worldbank.org (also available as ch. 10 in A. Mattoo and R. Stern (ed), *India and the WTO* (Oxford: OUP 2003))

6. An Agreement on Transparency in Government Procurement?

K. Abbott, "Rule-making in the WTO: Lessons from the Case of Bribery and Corruption" (2001) 4 *Journal of International Economic Law* 275

S. Arrowsmith, *Government Procurement in the WTO* (London: Kluwer Law International 2003), ch. 13

S. Arrowsmith, "Towards a Multilateral Agreement on Transparency in Government Procurement" (1998) 47 *International and Comparative Law Quarterly* 793

S. Arrowsmith, "Transparency in Government Procurement: the Objectives of Regulation and the Boundaries of the World Trade Organization" (2003) 37 *Journal of World Trade* 283

CUTS (Centre for International Trade, Economic & Environment), *Unpacking Transparency in Government Procurement* (2004), ch. 3 and 4

S. Evenett, "Is there a case for new multilateral rules on transparency in government procurement", ch. 3 in the Swiss State Secretariat of Economic Affairs and S. Evenett (ed.), *The Singapore Issues and the World Trading System: the Road to Cancun and Beyond* (2003), available at <http://www.wti.org>

G. Fenster, "Multilateral Talks on Transparency in Government Procurement: Concerns for Developing Countries" (2003) 34(2) *IDS Bulletin* 65

M. Khor, "Government Procurement: the real aim of the majors", available at <http://www.twinside.org.sg>

M. Kinsey, "Transparency in Government Procurement: an International Consensus" (2004) 34 *Public Contract Law Journal* 155

J. Linarelli, "The WTO Transparency Agenda: Law, Economics and International Relations Theory", ch.13 in S. Arrowsmith and M. Trybus (eds.), *Public Procurement: the Continuing Revolution* (London: Kluwer Law International 2003)

V. Mosoti, "The WTO Agreement on Government Procurement: A Necessary Evil in the Legal Strategy for Development in the Poor World?" (2004) 25 *University of Pennsylvania Journal of International Economic Law* 593

V. Rege, "Transparency in Government Procurement – Issues of Concern and Interest to Developing Countries" (2001) 35 *Journal of World Trade* 489

7. Procurement and competition law in the context of the WTO

R. Anderson and W. Kovacic, "Competition policy and international trade liberalisation: essential complements to ensure good performance in public procurement markets" (2009) 18 *Public Procurement Law Review* 67

A. Davies, "Tackling Private Anti-competitive Behaviour in Public Contract Awards under the WTO's Agreement on Government Procurement" (1998) 21 *World Competition* 55