TOWARDS AN INTERNATIONAL STANDARD ON GOVERNMENT PROCUREMENT IN THE WTO: ASSESSING THE ROLE OF RTA'S IN ENTRENCHING THE PRINCIPLES OF THE WTO'S AGREEMENT ON GOVERNMENT PROCUREMENT IN DEVELOPING COUNTRIES

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TITLE

Towards an International Standard on Government Procurement in the WTO: Assessing the Role Of RTA's in Entrenching the Principles of The WTO's Agreement on Government Procurement in Developing Countries

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World Trade Organisation (WTO)

DECLARATION

I declare that **'Towards an International Standard on Government Procurement in the WTO: Assessing the Role of RTAs in Entrenching the Principles of the WTO's Agreement on Government Procurement in Developing Countries'** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Susan Kayonde

May, 2007

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ACRONYMS

AMU	Arab Maghreb Union
APEC	Asia Pacific Economic Community
AU	African Union
COMESA	Common Market for Eastern and Southern Africa
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPA	Government Procurement Agreement
ITO	International Trade Organisation
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NT	National Treatment
OECD	Organisation for Economic Cooperation and Development
RTA	Regional Trade Agreement
UNCITRAL	United Nations Commission for International Trade Law
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organisation

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CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1. INTRODUCTION

Government procurement refers to the purchasing by government bodies from external providers of products and services that these bodies need in order to carry out their public service mission.[1] This covers a wide range of transactions; from the purchase of stationery, insurance services, to construction of roads, schools, hospitals and power stations.[2] Consequently, purchases made by a government constitute a large portion of government expenditure in any given country, for instance in 1998, this amounted to 7.57% and 5.10% of national income for industrialised and non-industrialised countries respectively.[3]

As a result of such status in the economy, government procurement is used to achieve a number of objectives and these vary from one country to another. The primary objective of procurement is to obtain value for money that is, to successfully acquire goods, works or services at the best valuable terms.[4] Other objectives closely related to the procurement process include; enhancing efficiency in procurement and promoting integrity by eliminating corrupt practices. Countries also use procurement to achieve industrial, social and environmental objectives.[5] Industrial objectives can be met by supporting a particular industry, for instance the Small and Medium-sized Enterprises (SMEs). Through selective government procurement a country may seek to empower previously disadvantaged ethnic communities by giving them preferential

[1] Arrowsmith, 'Government Procurement in the WTO', (2000) Kluwer Law International at 3

[2] Arrowsmith, Linarelli and Wallace, 'Regulating Government Procurement: National and International Perspectives' (2000) Kluwer Law International at 1.

[3] OECD (2001), 'The Size of Government Procurement Markets', available at http://www.oecd.org/dataoecd/34/14/1845927.pdf last accessed on 5th April 2007

[4] Arrowsmith *et al Op cit* note 2, at 15

[5] See McCruden, 'International Economic Law and The Pursuit Of Human Rights: A Framework for Discussion of The Legality Of 'Selective Purchasing' Laws Under The WTO Government Procurement Agreement' (1999) 2 Journal of International Economic Law at 3

treatment in government business.[6] Procurement may also be used to promote environmental protection, as well as the promotion of human rights through selective purchasing. In order to achieve these objectives, a country will put in place a particular domestic regulatory system. As a result of varied objectives to be achieved, the nature of domestic laws on government procurement differs between countries. Such regulatory systems will reflect the economic, political and legal context within which it is adopted.[7]

The international regulation of government procurement has developed to reflect the above mentioned objectives which exist in countries where each particular instrument operates. As such the existing international instruments seek to regulate procurement by establishing common rules among countries. These vary from regional procurement systems which apply to a particular group of countries seeking to achieve the stated goals of the regional grouping. Examples of these include the European Union, the non binding principles of the Asia Pacific Economic Cooperation (APEC), the rules contained in the North American Free Trade Agreement (NAFTA) and in Africa the most advanced is the procurement initiative for the Common Market for Eastern and Southern Africa (COMESA). Another important source of international procurement standards is the UNCITRAL Model Law on Government Procurement of Goods, Construction and Services (hereafter the Model Law) which many developing countries and economies in transition have adopted as a basis for their procurement laws. International lending agencies such as World Bank and other regional banks also influence procurement regulations particular in developing countries.

One of the most important objectives for regulating procurement is to promote the liberalisation of procurement markets. The Government Procurement Agreement (GPA) is the only agreement within the World Trade Organisation (WTO)

[6]For instance Section 217 of the South African Constitution, permits procuring entities to give preference to historically disadvantaged persons. For further discussion see Arrowsmith, 'Government Procurement in the WTO' (2003) Kluwer Law International.

[7] Trepte , 'Regulating Procurement: Understanding the Ends and Means of Public Procurement' (2004) Oxford University Press at 36.

framework that regulates government procurement but this is only a plurilateral Agreement and applies to only WTO members that accede to it. The Agreement sets minimum standards of a good procurement system that members must adopt based on the principles of non-discrimination and transparency. However, membership to this GPA has been limited to a few countries predominantly developed countries for instance to date no African country has acceded to the Agreement. Developing countries have shunned the Agreement on the premise that it is likely to curtail their ability to use the regulatory mechanism of government procurement to meet individual country needs and objectives.

Faced with limited success in the WTO, the proponents of further liberalisation of government procurement, mainly developed countries, are increasingly negotiating Regional and Bilateral Agreements (hereafter collectively referred to as Regional Trade Agreements) with similar or more binding provisions than those contained in the GPA. Furthermore, developing countries are also adopting similar principles within existing regional trading arrangements such as Common Market for East and Southern Africa (COMESA). It would therefore appear that efforts towards liberalisation of government procurement markets shifted from the multilateral forum of the WTO to the bilateral and regional spheres. This has resulted in the creation of parallel systems of procurement standards with overlapping membership. The regulation of government procurement in RTAs does certainly impact on the role of the GPA as a leading instrument of government procurement standards that the WTO seeks to entrench among its members.

1.2. STATEMENT OF THE PROBLEM

Government procurement is a very important aspect of international trade as it can either promote or inhibit trade depending on the laws and policies of a country. The current regulatory differences in government procurement between countries constitute a potential barrier to trade through discriminatory and non-transparent systems. Efforts to create an international standard on government procurement that would address such issues within the WTO have achieved limited success.

The GPA, the only Agreement that provides a set of principles on government procurement, is plurilateral and its membership is dominated by developed countries but has largely been ignored by developing countries. Instead countries are opting to regulate government procurement through Regional Trade Agreements. These are being signed between developed and developing countries, and between developing countries with extensive provisions on government procurement that to an extent resemble or are more binding than those in the GPA. The resultant effect has been the creation of a parallel system of procurement regulation independent of the WTO. Whereas in some instances RTAs have promoted the principles of the GPA even to non members, they have also lessened its relevance as an international standard on government procurement within the multilateral trading system.

1.3. SIGNIFICANCE OF THE STUDY

The significance of this study primarily rests on the importance of government procurement not only in a country's economic and social policies but also in international trade. This research is therefore important in as far as it will analyse the implications of negotiating government procurement provisions in RTAs as against the WTO. It is hoped that this will contribute towards better policy formulation on government procurement which is based on an understanding of the current developments at the regional and international level. The research is particularly important for developing countries' trade negotiators as they negotiate regional and multilateral trade agreements, as it seeks to determine the most suitable forum in which government procurement should be dealt with.

1.4. SCOPE OF THE STUDY

The research will be confined to issues pertaining to the role of RTAs in establishing government procurement standards that resemble or conform to those of the GPA in developing countries. For purposes of this research RTA will include Free Trade Agreements and Bilateral Agreements. The study will use Africa as a case study by evaluating selected RTAs that have been signed. This will in turn focus on a few RTAs such as the Procurement Initiative of the

Common Market for East and Southern Africa (COMESA) and the US-Morocco Free Trade Agreement.

1.5. OBJECTIVES OF THE STUDY

1. To examine the role of the existing international regulatory instruments towards the harmonization of global standards on government procurement.
2. To analyse the role of the WTO's GPA as a possible global standard for government procurement and to investigate reasons of limited membership by developing countries
3. To evaluate the provisions of government procurement in Regional Trade Agreements as they relate to principles established in the GPA and to assess their implications on the harmonization of government procurement standards within the WTO.
4. To give recommendations to policy makers on the most suitable forum for effective regulation of government procurement.

1.6. METHODOLOGY

This will be a qualitative research in which both primary and secondary sources will be used. Among the primary sources are international instruments such as the UNCITRAL Model Law on government procurement and the WTO Agreements as they pertain to government procurement. Other primary sources will include Regional Trade Agreements that deal with government procurement. Secondary sources such as text books, journal articles, and reports will be used to provide an analysis of the primary sources. The internet will be an important source of up-to-date information on the developments on the subject of government procurement not only at the multilateral and regional level but also in the domestic sphere of countries.

1.7. PROPOSED CHAPTER OUTLINE

This paper is comprised of four chapters. Chapter one provides the general context of the research by giving a background to the study while highlighting its significance. This chapter will also identify the objectives for conducting the research. Chapter two will examine in detail current international instruments in

government procurement. The chapter will evaluate the principles of government procurement as contained in the GPA and it will investigate the reluctance of developing countries to embrace such standards. Chapter three will analyse and compare the provisions on government procurement in selected Regional Trade Agreements in Africa in order to determine to what extent these conform or are based on the established GPA principles. This chapter will assess whether the RTA positively impact on international harmonisation of government procurement principles. Chapter five will contain a wrap up of the research giving the researcher's recommendations in view of the assessment made in previous chapters.

CHAPTER TWO

AN EXAMINATION OF INTERNATIONAL STANDARDS OF GOVERNMENT PROCUREMENT IN THE WTO AND BEYOND

2.1. INTRODUCTION

The regulation of government procurement has gained increased importance as the multilateral trading system tackles non-tariff trade barriers usually in the form of restrictive domestic laws that impede market access. To this end, the WTO, like its predecessor the General Agreement on Tariffs and Trade (GATT) has tried to put in place a regulatory mechanism that ensures non-discriminatory and transparent procurement systems in the territories of its members. This approach is premised on the belief that the effect of restrictive government procurement is to reduce both global and national economic welfare and that unilateral liberalisation in government procurement, as in markets in general, is good both for the world and the liberalising country.[8] The GPA seeks to realise these goals although it has been shunned by many developing countries which seek to keep procurement a preserve of national policy uninhibited by international obligations.[9] On the other hand, there are other international instruments such as the UNCITRAL Model Law which establish a set of similar principles albeit with different objectives. Whereas the GPA has not been adopted by many developing countries, these countries have embraced the UNCITRAL Model Law as basis for their procurement laws and policies.

This chapter will examine the justification of regulation of government procurement within the GATT and WTO system. This will include an analysis of

[8] Arrowsmith Op cit note 1 at p.19

[9] This is reflected in the membership of the Agreements which is dominated by developed countries. Members covered by the Agreement include: Canada; the European Communities, including its 25 member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States.

the developments of the current provisions dealing with procurement in the WTO. The Chapter will analyse the various principles contained in the GPA and also investigate the reasons for its limited acceptance among developing countries. This will be followed by an overview of other existing standards on government procurement specifically the UNCITRAL Model Law and the procurement standards of International Financial Institutions such as World Bank in order to asses how these relate to the GPA.

2.2. FROM 'NEGATIVE' TO 'POSITIVE' HARMONISATION: UNDERSTANDING THE DEVELOPMENTS

The quest for an international standard on government procurement under the WTO framework can be understood in what Heiskanen explains as a 'change in the regulatory philosophy in the multilateral trading system.'[10] He states that the underlying regulatory philosophy of the multilateral trading system at the signing of the GATT was the elimination of discrimination between domestic and foreign goods, and between products originating from third countries.[11] This allowed countries to pursue substantially divergent regulatory policies provided that these policies were not discriminatory in their letter or application therefore creating 'negative harmonisation.'[12] However, with the considerable reduction of tariff barriers through consecutive trade rounds, the focus shifted to barriers that existed within the border such as restrictive government procurement laws and practices, intellectual property laws, technical barriers to trade and Sanitary and Phytosanitary measures. The vast differences between various national regulatory regimes came to be seen as an impediment to international trade. This led to the change in focus from the elimination of discrimination (negative harmonisation) to the creation of a uniform global regulatory structure (positive harmonisation). The principal function of such agreements is to promote free trade by eliminating

[10] Heiskanen, 'The Regulatory Philosophy of International Trade Law', (2004) Journal of World Trade 38(1), 1
[11] Ibid at 14
[12] Ibid

discriminatory domestic regulations and establishing a global regulatory infrastructure by harmonizing the existing domestic regulation to an international standard.[13]

Such harmonisation of domestic regulation is driven by inter alia, the desire to have a level playing field between domestic and foreign traders. Furthermore, it is argued that harmonised laws improve transparency in international trade. Transaction costs are also reduced where laws are based on a common standard. Similar arguments have been forwarded by the proponents of multilateral disciplines on government procurement in the WTO. These efforts to achieve this within the WTO raises questions as to whether such positive harmonisation of government procurement standards is possible since countries are generally reluctant to accept complete harmonised rules covering policy goals.[14]

2.3. EVOLUTION OF GOVERNMENT PROCUREMENT IN THE WTO

The importance of government procurement in the international trading system dates back to 1947 during the US led efforts to establish an international economic system that would help dismantle existing trade barriers and prevent the erection of new barriers. During this post World War II period, trade barriers were blatantly protectionist in favour of the domestic industry, these included high tariffs, quotas, and import bans against foreign industry.[15] Consequently the Havana Charter of 1947 was drafted with the aim of creating the International Trade Organisation (ITO) to tackle such trade barriers. Although the Charter was never passed, it resulted in the creation of the General Agreement on Tariffs and Trade (GATT) in which states undertook to eliminate most trade barriers with notable exception of non tariff barriers such as subsidies to national industries and

[13] Ibid at 16

[14] This leads to the broader question as to whether the WTO is a suitable forum to achieve such harmonisation as this was not in its original mandate. Reich identifies issues such as the trade bias, democratic deficit and the politicized environment of the WTO to make it unsuitable to achieve harmonisation of laws. See further Reich , 'The WTO as a Law Harmonising Institution' (2004) 25 University of Pennsylvania Journal of International Economic Law 321

[15] Arrowsmith ,Op cit note 1 at 32

government procurement.[16] As a result Articles III.8 and XVII.2 of GATT explicitly exclude government procurement from the obligation of national treatment. This was contrary to the US Draft Proposal that suggested that the principle of national treatment and Most Favoured Nation principles should also apply to government procurement.[17]

This status quo was maintained until 1979 when the Tokyo Round Agreement on Government Procurement (also known as the Code on Government Procurement) was concluded and came into effect in 1981.[18] This was significant as the Tokyo Round of negotiations (1973-81) focused on the elimination of non tariff barriers and it resulted in many codes to deal with these issues.[19] However prior to this, efforts to liberalize government procurement markets were taking place at the regional level within Europe[20] and later within the Organisation for Economic Cooperation and Development (OECD). The work of the OECD was important as it provided a global forum for discussing government procurement and its work was used as a basis for the discussion for the GPA. [21]

The Government Procurement Code provided for rules on non-discrimination and transparency in award procedures. However it was limited in many aspects for instance it only pertained to central or federal governments, its coverage was limited to only supplies (goods) and it did not cover services. The limited membership of the Agreement was the biggest restriction on its application. Only a small number of countries signed the Agreement and these were mainly

[16] Ibid
[17] Articles 8 and 9 US Draft of the ITO Charter. See further Arrowsmith ibid note 1at. 32
[18] See further Arrowsmith Op cit note 1
[19] In addition to the Agreement on Government Procurement ,this round resulted in other Codes such as the Anti-dumping code, the Agreement on Technical Barriers to Trade, the Agreement on Subsidies and Countervailing measures, the Customs Valuation Code and the Agreement on Import Licensing Procedures.
[20] This was within the European Free trade Area (EFTA) and the European Economic Community now the European Community. For a detailed account of the development of government procurement see further Blank and Marceau , 'The History of Government Procurement Negotiations since 1945(1996) 5 Public Law Review 77
[21] See further Reich, 'International Public Procurement Law: The Evolution of International Regimes on Public Purchasing. (1999) 12 Kluwer Law International at 107

members of the OECD with notable absence of developing countries. This is mainly because the provisions of the Agreement were on the work that had been done within the OECD and it therefore made it easier for the European states to accept a global system of regulation.[22]

2.3.1. The 1994 Agreement on Government Procurement (GPA)

Due to its limitations on coverage, the Tokyo Round Code was revised during the Uruguay Round between 1988 and 1993. This resulted in the current Agreement on Government Procurement which was signed in 1994 and came into force under the auspices of the WTO. Although it is modelled on the Tokyo Code, it improved upon the old Agreement in a number of ways; it covers procurement for both goods(supplies) and services including construction, there has been a great extension of procuring entities covered, and the remedies for enforcing the Agreement have been improved. However, the Agreement is only a plurilateral Agreement and binds only members that accede to it. This in effect makes the Agreement optional unlike the other WTO Agreements (multilateral) whose provisions are binding on all members as a 'single undertaking.'[23] Due to its voluntary nature, the GPA suffers a similar problem of limited membership as its predecessor, with only 38 signatories out of the 150 WTO member states.[24] The limited number of signatories and the fact that these are mainly developed countries is indicative of the fact that the GPA is yet to be embraced as an international standard on government procurement.

2.3.2. Working Party on the General Agreement on Trade in Services (GATS) Rules

Another initiative for multilateral disciplines was operated under Art. XIII.2 of GATS which provides that multilateral negotiations on government procurement were to take place two years after the coming into force of the Agreement. To this end the Working Party on the GATS rules was established in 1995 with a mandate of conducting these negotiations. The purpose of the negotiations was to address

[22] Arrowsmith *Op Cit* at .33

[23] Article II.2 of the WTO Agreement provides that all the multilateral Agreements are an integral part of the of the WTO Agreement binding on all members

[24] This number is as per January 2007. See note 9

the exclusion of government procurement from the obligations of non-discrimination under the GATS Agreement under Article XIII: 1 which excludes government procurement of services from the most-favored nation requirement of the GATS (Art. II), specific commitments on market access (Art. XVI), and from obligations of national treatment (Art. XVII). There were however conflicting views on the scope of the negotiating mandate as contained in Art. XIII some members taking the view that this was limited to transparency, but did not include aspects of market access.[25] Negotiations in this respect have not yet yielded much and in the Hong Kong Ministerial Conference 2005, the Members were urged to engage in more focused discussions and to put greater emphasis on proposals by members.[26]

2.3.3. Initiative for a Multilateral Agreement on Transparency in Government Procurement

Transparency in government procurement was one of the four so-called "Singapore issues" which were sought to be brought within the ambit of the WTO's regulatory system[27]. At the Singapore Ministerial Conference, WTO members agreed to establish a Working Group on Transparency in Government Procurement 'to conduct a study in transparency in government procurement practices, taking into account national policies, and based on the study, to develop elements for inclusion in an appropriate agreement.[28] At the Fourth Ministerial Conference in Doha, members agreed that negotiations on government procurement would be launched at the Fifth Ministerial Conference subject to a consensus on the modalities.[29] Government procurement negotiations were to be limited to transparency aspects, and would not restrict the ability of countries to

[25] See Minutes of the Meetings of Working Party on GATS Rules. Report of the Meeting of 23 October 2002 S/WPGR/M/39 12 November 2002. available at www.wto.org
[26] See WT/MIN(05)/DEC of December 22, 2005, Annex C, "Services", para.4(b)
[27] The other new areas included trade facilitation, competition policy and trade and investment.
[28] WTO Ministerial Declaration, Ministerial Conference First Session, 13 December 1996, WT/MIN DEC Par. 21.
[29] WTO, Ministerial Declaration ,Ministerial Conference Fourth Session ,14 November 2001,WT MIN(01)/NOV/W/Doha Declaration par 20-26

give preferences to domestic supplies and suppliers that is; it excluded issues of market access.[30]

In spite of this limitation, developing countries were opposed to such a multilateral initiative, the major concern being that the negotiations on transparency were being used as a strategy for procurement market opening in developing countries.[31] According to Arrowsmith, the main problem was the difficulty in separating issues of transparency from market access and that the divide between these two aspects was blurred.[32] For developing countries, transparency is regarded as a means to an end rather than an end in itself and the intended objective of discussions in transparency is a way to increase access to markets for firms from developed countries.[33] According to Khor, '[the] transparency issue was only a first and tactical measure to draw developing countries step by step, into the large area of national treatment for foreign firms to obtain contracts for government procurement and projects.'[34] Following such strong opposition from developing countries, members failed to reach an agreement on negotiating modalities on government procurement and other issues at the Fifth Ministerial Conference in 2003 in Cancun. Subsequently, in the decision by the General Council on August 1, 2004, transparency in government procurement was struck off the work program for the current round of negotiations that is, the Doha Work Program.[35]

[30] ibid ,Par.26
[31] See Fenster, Multilateral Talks on Transparency in Government Procurement: Concerns for Developing countries.' (2003) 34(2) IDS Bulletin 65 at 70.
[32] Arrowsmith, : Transparency in Government Procurement: the Objectives of Regulation and the Boundaries of the World Trade Organisation , Journal of World Trade 37(2) P.283
[33] See Khor, 'The Real Aim of the Majors' available at http://www.twnside.org.sg/title/real-cn.htm
[34] *Ibid*
[35] Doha Work Programme, Decision Adopted by the General Council on August 1, 2004, WT/L/579, para.1(g).

2.4. MAIN PRINCIPLES IN THE GPA

2.4.1. Scope and Coverage

The Agreement establishes an agreed framework of rights and obligations among its Parties with respect to their national laws, regulations, procedures and practices in the area of government procurement.[36] It covers procurement of goods and services including construction services for both central and sub-central government entities. The precise coverage of government procurement of a member is determined through negotiations and the exchange of concessions on the basis of reciprocity. [37] This implies that members open up their markets in return for equivalent concessions by other members. However, the Agreement recognises the difficulties that developing countries may have in offering reciprocal concessions and requires members to put this into consideration in the course of negotiations.[38] The entities and services sectors covered by the GPA for each member country are clearly identified (positive listing) and any procurement not covered is excluded.[39] It is important to note that the GPA applies to procurement of a value not less than the specified threshold level contained in members' annexes.[40]

2.4.2. Non Discrimination

The cornerstone of the substantive provisions of the GPA is non discrimination in respect of covered government procurement. This means that member countries must adopt the principles of national treatment and the most favoured nation in the conduct of its procurement. The national treatment obligation requires members to accord treatment "no less favorable" than that they give to their domestic products, services and suppliers and not to discriminate among goods,

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[36] Article I of the Agreement on Government Procurement, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO GPA], Annex 4(b) available at http://www.wto.org/English/docs last accessed on 5th May 2007

[37] Ibid Article XXIV 7(b)

[38] Article XXIV (b) states that members must have regard to the Provisions of Art. V which gives special and differential treatment to developing countries

[39] Such covered procurement is listed in Appendix 1 in the different annexes. Annex1 contains covered entities at the central level and Annex2 deals with sub central level entities

[40] Ibid Article I.4

services and suppliers of other Parties[41] Furthermore, each Party is required to ensure that its entities do not treat a locally-established supplier less favorably than another locally-established supplier on the basis of degree of foreign affiliation or ownership or on the basis of country of production of the good or service being supplied.[42] Closely related to the above is the prohibition to procuring entities to impose, seek or consider off sets in the process of procurement.[43] Off sets are defined as measures used to improve local development or to improve the balance of trade of payments accounts by means of domestic content, licensing technology, investment requirements, counter trade or similar requirements.[44]

It is important to note that the Most Favored Nation (MFN) obligation, which forbids discrimination between different signatory states, does not generally apply to the GPA in as far as members' covered procurement.[45] This was done in order to encourage reciprocity and avoid free-riding where members would not offer concessions in return.[46] However, MFN applies during the procurement process and as such any advantage such as a price preference or concession given to one foreign supplier should be accorded to all parties of member countries involved.[47]

The effect of the non-discrimination obligations is to preclude a country from using procurement to achieve industrial or social policies by giving preference to its domestic suppliers or products. For instance, a country cannot use price preferences or set-asides for domestic suppliers only nor can it require foreign suppliers alone to give performance bonds.[48] However a country may apply such discriminatory measures if they conform to the general derogations as provided

[41] Ibid Article III.1 of the GPA
[42] Ibid Article III.2
[43] Ibid Article XVI
[44] See foot note 7 of the Agreement.
[45] This implies that if a gives a concession to one party, for instance the opening up of a particular entity, it is not obliged to offer the same advantage to all members.
[46] Arrowsmith,*Op cit* note 1 at 111.
[47]Ibid Article III.2
[48] Other types of discriminatory government procurement are indirect for instance product/ service specifications where these are set to target a particular group. See also Fenster G, *Op cit* at 72

under Article XXIII. These relate to the protection of security interests, public order or safety, human, animal or plant life or health or intellectual property. A country can also put into place measures relating to the products or services of handicapped persons, of philanthropic institutions or of prison labor but these measures must not constitute a disguised barrier to international trade.[49]

2.4.3. Procurement Methods and Award Procedures (Transparency)

In order to ensure that the basic principle of non-discrimination is followed and that access to procurement is available to foreign products, services and suppliers, the Agreement lays heavy emphasis on procedures for providing transparency of laws, regulations, procedures and practices.[50] Transparency helps to control discrimination, by making it difficult to conceal such discriminatory practices, to facilitate participation by suppliers unfamiliar with the system and to improve information for market access negotiations.[51]

The Agreement therefore sets up rules to be followed during the procurement process. This includes requiring the advertisement of procurement opportunities to be published in specified publications within reasonable time.[52] It also requires that procuring entities adopt competitive tendering procedures. These include open tendering where all interested parties can submit bids, or selective tendering where only a limited number of invited suppliers may bid.[53] Limited tendering, in which a contract is negotiated with one supplier without competition can only be used in exceptional circumstances.[54] The Agreement also outlines detailed rules to regulate the conduct of competitive award procedures. It sets minimum time

[49] Ibid
[50] Ibid Article VI to XVII. Many of the provisions concerning procedural matters are to be amended as agreed by the Committee on Government Procurement so as so simplify them. See Report of the Committee on Government Procurement (November 2005 – DECEMBER 2006 GPA/8911 December 2006, available at http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm last accessed on 20th April 2007
[51] Arrowsmith, Reviewing the GPA: The role and Development of the Plurilateral Agreement after Doha. 5(4) Journal of International Economic Law (JIEL) 761 at 765
[52] Article IX of the GPA
[53] *Ibid* Article VII.3
[54] *Ibid* Article XV

limits, the rules on technical specifications required[55] and the qualification of suppliers,[56] as well as time limits for tendering and delivery of documents.[57]

It should be noted that the GPA only sets minimum procedural standards, but provides an exhaustive regulatory system. Countries are therefore able to set up stricter or additional standards to suit the domestic needs and to promote their own objectives.[58]

2.4.4. Enforcement Mechanism

The Agreement in Article XX provides for an enforcement mechanism where aggrieved suppliers can seek redress against the procuring entity. Redress may be obtained in a court of law or before a review body established for that purpose.[59] Members are required to provide 'non-discriminatory, timely, transparent and effective procedures' enabling suppliers to challenge alleged breaches from the procurement process.[60] The Agreement therefore provides for minimum standards concerning the nature of the review body, the procedural requirements as well as the remedies that are available. However, each member is free to design its own challenge mechanism according to its own legal, constitutional and administrative traditions. Such challenge may result in an interim measure being issued to correct the breach and to preserve commercial presence. It may also result in a suspension of the process except where this would be prejudicial to public interest.[61] The enforcement mechanism created under Art. XX is unique as it permits private parties to invoke WTO-law in domestic courts.

Aggrieved Parties also have recourse to the WTO dispute settlement mechanism through their governments under Art. XXII. (2) which states that "the provisions of the Understanding on Rules and Procedures Governing the Settlement of

[55] *Ibid* Article VI
[56] *Ibid* Article VII
[57] *Ibid* Article XI
[58] Arrowsmith *et al*, *Op cit* note 2 at 197
[59] *Ibid* Article XX(6)
[60] *Ibid* Article XX(1).
[61] I*bid* Article XX (7)

Disputes under the WTO Agreement ... shall be applicable except as otherwise specifically provided."[62] Therefore a party to the Agreement may bring a legal complaint against another for the violation of the Agreement (violation complaint), for instance where a member maintains laws that are discriminatory.[63] A party may also bring a non-violation complaint where, notwithstanding the consistency of a particular measure with the Agreement, rights and benefits of signatories have been nullified.[64]

2.4.5. Special and Differential Treatment

Article V of the GPA provides for the needs of developing countries. It urges parties to take into account the 'development, financial and trade' needs of developing countries, particularly least developing countries. It recognizes that developing countries may need to safeguard their balance of payment positions, to promote the establishment of industry including small scale and infant industry and the development of regional and global trade arrangements.[65] Developed countries are urged to increase imports from developing countries by including procuring entities that procure goods that are of export interest to developing countries. Developing countries are permitted to negotiate mutually acceptable exclusions from rules on national treatment.[66] Article XVI of the GPA allows developing countries, at the time of accession, to negotiate conditions for the use of offsets for instance domestic content requirements, but this option is limited to certain entities, products and services. The value of the provisions in Article V is limited since the language is not binding and the obligations are not enforceable. The benefit of these provisions depends on the good will of other members[67]

[62] Annex 2 to the Agreement Establishing the WTO contains the Understanding on Rules and Procedures Governing the Settlement of Disputes which sets out general rules and procedures for the intergovernmental settlement of disputes that occur under the various Agreements of the WTO.
[63] Art.XXII.1 (a) of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994). [DSU]
[64] Ibid Art. XXIII.1(b)
[65] Article V.1 of the GPA.
[66] Article V.4 of the GPA.
[67] Arrowsmith *Op cit* note 1 at 350. See also Kessie, 'Enforceability of the Legal Provisions Relating to Special and Differential Treatment under the WTO Agreement' (2000) 3(6) The Journal of World Intellectual Property 955

Furthermore, the extent of benefits that developing countries can derive is limited by the relatively low negotiating capacity.[68]

2.5. UNDERSTANDING THE RELUCTANCE OF DEVELOPING COUNTRIES

As stated above, the GPA has received little support from the majority of developing countries in the WTO. This is amidst the debate over the benefits of membership put forward by the proponents for liberalisation of government procurement markets. Developing countries however argue that the benefits are negligible and it would be costly to adapt their laws to the standards of the GPA. The following sections seek to analyse this debate and assess reasons for non membership of developing countries in the GPA.

2.5.1. Perceived Benefits of Membership to the GPA

The Arguments made for countries to join the GPA primarily rest on the ideology of trade liberalisation and its benefits of increased global and national welfare through the operation of the principle of comparative advantage.[69] According to this argument, procurement liberalization leads to increased competition in the local market resulting in efficiency gains for the domestic market and in cost savings as prices are reduced between the competing suppliers.[70] Furthermore competition is said to lead to restructuring of business, innovation, investment and growth.[71]

Another argument for the GPA is that it enables countries to obtain access to the markets of other members.[72] Although this may be true for developed and advanced developing countries, there are several factors that impede the majority of developing countries particularly in Sub-Saharan Africa from gaining access to

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[68] Mavroidis and Hoekman, 'The WTO's Agreement on Government Procurement: Expanding Disciplines, Declining Membership. (1995) Public Procurement Law Review 63 at 73

[69] This theory asserts that if each country specializes in producing those goods and services that it produces relatively more efficiently than other states, then overall welfare will increase. For further discussion see Trepte, *Op cit* Note 7

[70] Arrowsmith et all Op cit note 2 at 166

[71] ibid

[72] Arrowsmith Op cit note 1 at note 50 at 104

these markets. One of the reasons is the nature of the industries in developing countries where firms are small and unable to compete favourably with larger firms that have the necessary resources and required expertise. This is worsened by the inability to access adequate information of the available market. Another factor is the restrictions on market access such as quotas and high tariffs for goods of interest to developing countries. In the services sector, the restrictions on movement of natural persons make it difficult for firms to operate in foreign markets. As such increased membership to the GPA would instead benefit larger firms from developed countries by opening up procurement markets in more countries.[73]

Another benefit of having multilateral rules on government procurement is that it can help countries that desire to reform their own systems to lock in reforms which may be impeded by political influence in the country.[74] Joining the GPA is therefore seen as away to entrench domestic reforms against internal opposition. Whereas it is true that many developing countries need reform in their procurement systems, it is questionable whether the WTO is the best forum to achieve this. So far such procurement reforms have taken place unilaterally or at a regional level with a good measure of success.

2.5.2. Reasons for Reluctance to Join the GPA

Since the GPA is premised on non-discrimination against foreign products or suppliers, countries that desire to retain the ability to discriminate find it difficult to join the GPA.[75] A country may want to favour local goods or suppliers in order to pursue 'non industrial secondary policies such as environment, human rights and social policies' through government procurement.[76] Many countries use procurement as a policy tool to achieve national objectives but the GPA does not specifically provide for secondary policies such as industrial development,

[73] Rege, 'Transparency in Government Procurement: Issues of Concern and Interest to Developing countries' (2001) 34 Kluwer Law 489 at 495.
[74] Arrowsmith, Op cit note I at 353
[75] Hoekman and Mavoroids posit that this is the obvious hypothesis for limited membership to the GPA, See Hoekman and Mavaroidis, *Op cit* at 73
[76] Arrowsmith, *Op cit* at 441

national employment concerns and social policies.[77] Although the Agreement provides for limited derogations it does not institutionalize the type of protection afforded the secondary concerns in developing and least developing countries.[78] However, it is also important to note that in some instances the desire to maintain discriminatory procurement is based on political interests where procurement is used to reward political supporters and to perpetuate corrupt practices.[79]

Another reason for non-membership is that the strict rules on transparency in the GPA meant to enhance value for money in the procurement process may hinder the same in some situations. This is especially so where the discretionary power of the procurement officer to make choices appropriate for a particular situation is limited. However, according to Arrowsmith, the GPA does not prevent procuring entities from pursuing best practice nor does it constrain the public sector from adopting the preferred purchasing strategy.[80] Developing countries also argue that the cost of implementing the provisions of the GPA will be high and burdensome considering the relatively weak and under resourced institutional framework.[81]

According to Rege, a country has to weigh the possible benefits its export trade would derive and the efficiency gains that would result from the opening up of its market to foreign competition against the administrative burden and the economic costs it has to make in bringing its laws into conformity with the Agreement.[82]

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[77] See further Carrier J, Sovereignty under the Agreement on Government Procurement 6.Minn.J Global Trade 67 at 69

[78] Ibid at 14

[79] 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 at 594

[80] Arrowsmith, Op Cit at 106

[81] For instance, a general over view of procurement systems in many African countries shows that they are characterized by a lack of professional staff, with a weak or absent regulatory institutions. See available Country Procurement Assessment Reports by the World Bank, available on www.worldbank.org. See also Wittig, 'Building Value through Public Procurement: A focus on Africa' (2003), a paper presented at the 9th International Anti corruption Conference,199,Durban South Africa, available at www.worldbank.org

[82] Rege, Op cit at 495

For the above reasons, the GPA is currently not an important instrument to developing countries in as far as they are not bound by its obligations. Although these countries may recognise the importance of a transparent and efficient system of procurement as promoted in the GPA, the binding nature of the Agreement coupled with its strict enforcement mechanism both locally and within the WTO renders membership undesirable.

2.6. OTHER SOURCES OF INTERNATIONAL STANDARDS ON GOVERNMENT PROCUREMENT

Where the WTO has failed, other institutions have succeeded in influencing government procurement standards in developing countries. The World Bank, like other International Financial Institutions has been instrumental in encouraging procurement reforms in developing countries as part of its efforts to improve good governance. This has primarily entailed the adoption of the UNCTIRAL Model Law on Procurement of Goods, Construction and Services (hereafter the UNCITRAL Model Law) as basis of procurement laws. Furthermore, the international lending agencies also set procurement guidelines to be applied in the awarding of contracts in donor funded projects. The following section will examine in detail the UNCITRAL Model Law and the different Procurement standards set by international lending agencies as they influence domestic regulation of procurement in developing countries.

2.6.1. The UNCITRAL[83] Model Law as a standard

The UNCITRAL Model Law is a template for establishing internationally accepted principles of government procurement. Adopted in 1993, the Model covers the procurement of goods and services, including construction.[84] It was designed with a view of helping particularly developing countries and states in transition to market economies to put in place procurement laws that could

[83] The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly in 1966 (Resolution 2205 (XXI) of 17 December 1966) with a mandate to further the progressive harmonization and unification of the law of international trade. In establishing the Commission, the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade, and it regarded the Commission as the vehicle by which the United Nations could play a more active role in reducing or removing these obstacles. See Further www.uncitral.org

[84] Originally it covered only goods but was expanded in 1994 to cover services.

promote efficiency, competition and transparency in a way that promotes international trade.[85] The Model Law was intended 'to provide all the essential procedures and principles for conducting procurement proceedings in the various circumstances encountered by procuring entities.'[86] It is a "framework" law providing only a skeleton of essential provisions on what is considered to be best practice of existing national laws. It contains provisions on the coverage, qualifications of suppliers, specifications, procurement methods and their operations as well as review procedures when a bidder is aggrieved.

The Model Law is similar in many respects to the WTO's Agreement on Government Procurement with common objectives of promoting international trade by eliminating discriminatory policies and to promote competition among bidders by enhancing transparency.[87] It is however important to note that the Model law has as its primary objective to maximize economy and efficiency in procurement, an objective not shared in equal importance by the GPA. In the spirit of trade liberalization, the Model law in Article 8 forbids discrimination of contractors or suppliers on the basis of nationality, a foundational principle of the GPA. Other areas of similarity include the use of open tendering as the most effective in promoting competition, economy and efficiency; transparency in procurement[88] and domestic review procedures.[89]

Although the Model Law generally prohibits discrimination against foreign suppliers as stated above, it provides for exceptions where a supplier may be excluded on the basis of nationality provided the grounds are set out in the record of proceedings.[90] It recognizes that a state may want to restrict foreign participation in order to protect 'vital economic sectors of their industry against

[85] See the Preamble to the Model law.
[86] Guide to enactment, Par. 12
[87] Preamble to the Model Law
[88] Article 5 and 11
[89] Articles 52-57
[90] Article 8(2)

deleterious effects of unbridled foreign competition'.[91] This is particularly true for developing and countries in transition, which seek to consider economic development objectives in addition to price in determining the successful tender. Article 34 (4) (C) (iii) lists such other considerations to include; effect on the balance of payment, the economic development potential offered by the tenders, transfer of technology, and employment. It is envisioned that countries may want to expand this criteria to meet other objectives. However, the Model law advises countries to take caution in expanding these objectives as their use is discretionary and less objective which could impair competition and economy in procurement.[92] It therefore requires that the use of such policies to be objective and quantifiable to the extent possible and that they be expressed in monetary terms, as this reduces the scope of discretion and arbitrary decisions.[93]

The Model Law seeks to strike a balance between international procurement and national industrial objectives by permitting the use of a 'margin of preference'.[94] Articles 34(4) (d) and 39(d) permit a procuring entity to grant a margin of preferences in favor of local suppliers and contractors, which must be calculated according to the procurement regulations.

The Model law provides a number of advantages over the GPA, one of which is that it offers a balance between trade and domestic objectives which may vary from one country to another. The Model law gives flexibility to countries to choose procurement methods that are appropriate in their circumstances to reflect differences in regulatory polices and traditions.[95]

[91] Guide to enactment Par. 24 .
[92] I*bid*..
[93] *Ibid*
[94] *Ibid* Par. 26. This permits the procuring entity to select the lowest priced tender when the difference in price between that tender and the over all lowest-priced tender falls within the range of margin of preference.
[95] Arrowsmith, 'Public Procurement , An Appraisal of the UNCITRAL Model Law as a Global Standard' (2004) 53 International Comparative Law Quarterly (ICLQ) 17 at p.20

Unlike the GPA, the Model law has been widely accepted and has been adopted as a basis for procurement reform in several developing countries and countries in transition.[96] This is partly because membership of UNCITRAL is open to all states of all levels of economic development. The wide acceptance has enabled the Model law to have a significant impact on reform in the area of government procurement. According to Hunja, "the wide participation in preparation has ensured that the Model law constitutes what is internationally recognized as the fundamental components of government procurement for most states, and sets the thresholds by which procurement legislation should be measured."[97]

2.6.2. World Bank and other Financial Institutions

The policies of different donor agencies in Africa have influenced the nature of procurement reforms that countries have undertaken. The World Bank is the leading supporter of government procurement reform in Africa, as part of its efforts towards good governance. Together with other donor agencies such as African Development Bank and donor country agencies such as the United States Agency of International Development (USAID), its interest is to curb wastage of funds that are given. Furthermore, in the procurement of donor funded projects the World Bank like other donors, requires that its guidelines prevail over the national procurement laws in all projects where it is involved.[98] This results in a proliferation of multiple procurement standards that procurement entities must master which causes confusion for procurement officers and suppliers, leads to lack of domestic 'ownership', and hinders long-term capacity development.[99] It must be noted that there are ongoing efforts to harmonize procurement policies and procedures of financing institutions under the auspices of the OECD

[96] African countries that have their procurement laws based on or inspired by the UNCITRAL Model Law include; Gambia, Kenya, Mauritius, Malawi, Tanzania and Uganda and others are in the process of adopting new laws or revise the old laws based on the model law. Other countries Albania, Azerbaijan, Croatia, Estonia, Kazakhstan, Kyrgyzstan, Mongolia, Poland, Moldova, Romania, Slovakia,, and Uzbekistan. See further, www.uncitral.org

[97] Hunja, 'The UNCITRAL Model law on Procurement of Goods, Construction and Services and its Impact on Procurement Reform ,ch.5 in Arrowsmith and Davies(eds)

[98] Par 1.5 of Guidelines: Procurement under IBRD Loans and IDA Credits, (2004) as revised available at www.worldbank.org last accessed on 5th April 2007.

[99] Nwogwugwu, 'Towards the Harmonization of Procurement Policies and Practices' (2005) 3 Public Procurement Law Review 131 at 134.

Development Assistance Committee (DAC) in a bid to make aid more effective in developing countries.[100]

2.7. CONCLUSION

The significance of government procurement in international trade cannot be underestimated therefore highlighting the need for predictable and transparent laws and policies. However, because of the vital role that government procurement plays as a tool for realizing different national objectives of each country, the harmonization of such procurement laws has proved to be difficult within the WTO. The GPA in its current form has failed to attract many developing countries which are skeptical of any benefits that will be derived from such membership. Not only are these countries concerned about the loss of their sovereignty to use procurement as a policy tool to achieve development oriented goals but they also perceive the strict provisions on transparency to be too burdensome. Nevertheless, the UNCITRAL Model law as promoted by the World Bank and other Financial Institutions among developing countries plays an important role in promoting harmonization of procurement standards. The UNCITRAL Model Law and to a lesser extent the procurement Guidelines of Financial Institutions and donor agencies help to foster GPA principles of non discrimination and transparency among non-members.

[100] See further DAC Guidelines and Reference Series: Harmonizing Donor Practices for Effective Aid Delivery and Paris Declaration on Aid Effectiveness 2005 , available on www.oecd.org .

CHAPTER THREE

GOVERNMENT PROCUREMENT IN REGIONAL TRADE AGREEMENTS: IMPLICATIONS FOR THE GPA

3.1. INTRODUCTION

In recent years there has been an increase in the number of regional trade agreements signed between countries of different levels of development.[101] These include Free Trade Areas and Customs Unions signed bilaterally between many countries. [102] These Agreements cover a wide area of trade issues, the majority of which are dealt with in the WTO, but in many instances they also cover topics still outside its ambit such as competition policy, labour and environmental standards. A number of these Agreements deal with government procurement as a trade barrier and therefore seek to establish fair, transparent and predictable laws between members. Increasingly Agreements are being signed between developed and developing countries where the former have sought to achieve through bilateral trade agreements what they failed to obtain in the WTO.[103] As a result there has been a proliferation of these agreements mainly between developed and developing countries with extensive coverage on government procurement that impose clear and binding obligations on the parties.[104] On the other hand developing countries are increasingly signing regional and bilateral

[101] As of October 2006, 366 regional trade agreements (RTAs) had been notified to the GATT/WTO, 214 of which are currently in force: See Report(2006) of the Committee on Regional Trade Agreements to the General Council WT/REG/17 24 November 2006 available at www.wto.org

[102] A customs union is defined in GATT Article XXIV:8(a) as the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce are eliminated on substantially all trade between the constituent members of the union and substantially the same duties and other regulations of commerce are applied by members of the union to nonmembers. A free trade area is defined in GATT Article XXIV:8(b) as a group of two or more customs territories where duties and other restrictive regulations of commerce are eliminated on substantially all trade between the constituent members of the free trade area.

[103] See for instance the reaction of the US Trade Representative after the failure of the Cancun Ministerial Meeting in 2003 stating that the US would instead pursue free trade agreements. see Robert Zoellick, 'America will not wait for the won't-do countries', 2003 The Financial Times, Sept. 22,

[104] See for instance EU-Mexico , US-Chile and US-Morocco Free Trade Agreements

trade agreements amongst themselves, in which harmonisation of government procurement among the member countries is a major objective.

This chapter will examine government procurement related provisions of selected RTAs. The US-Morocco FTA will be used as a case study to examine the provisions on government procurement in bilateral trade Agreements that have been signed between developed and developing countries.[105] The procurement initiative of the Common Market for East and Southern Africa (COMESA) will be examined as a case study of regional Agreements that deal with government procurement through which countries that are not members to the GPA have embraced its principles.[106] These RTAs will be examined to determine the extent to which they apply principles of the GPA. This will be followed by an assessment of the implications of RTAs on the development of the GPA as a global standard.

3.2. GOVERNMENT PROCUREMENT IN THE US-MOROCCO FTA

The FTA was signed in June 2004 and aims *inter alia*, to enhance the competitiveness the enterprises of the members, to eliminate trade barriers to international trade and to establish clear rules governing trade and investment between the parties.[107] The Agreement not only deals with trade issues as provided for in the WTO such as market access, agriculture and intellectual property rights, but it also covers areas that are still controversial within the WTO, such as government procurement, environment and labour.

Chapter 9 of the FTA deals with government procurement and as shall be discussed below, it seeks to liberalise government procurement in the member

[105] See also US-Chile Free Trade Agreement available at http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html last accessed on 26th May 2007

[106] See also APEC's Non-Binding Principles (NBPs) on Government Procurement available at http://www.apecsec.org.sg/govtproc/gphome.html and the Government Procurement Rules in Integrating Procurement Rules in the Americas for the Free Trade Area of the Americas available at http://alca-ftaa.iadb.org/eng/gpdoc1/gp1ec.htm .

[107] See preamble to the Final Text to the US-Morocco Free Trade Agreement available at http://www.ustr.gov last accessed on 21st March 2007.

countries by entrenching the principles of non-discrimination, transparency and efficiency in procurement. The substantive and procedural provisions resemble those in the GPA, although they vary in detail. Like the GPA, the FTA covers procurement in both goods and services, for central and sub-central entities that are listed in each Party's schedule to the annexes.[108] However there are a number of entities of each Party that are excluded from the operation of the Agreement.

The principle of non-discrimination is the basis of the Chapter where members and their procuring entities are required to treat the goods, services and suppliers of the other party no less favourably than their own.[109] Article 9.2.4 of the Agreement forbids the use of offsets such as the requirement of local content and domestic labour to be used in covered procurement. The effect of such provisions on non-discrimination is to limit the ability of each Party to use preferential government according to the national objectives that are sought to be achieved.

The Agreement upholds the principles of transparency in procurement by requiring entities to publish procurement laws, regulations and judicial decisions.[110] It requires entities to publish in advance a notice of intended procurement.[111] Furthermore, each party is required to encourage its entities to publish as early as possible its planned procurement in a given fiscal year.[112] As with the GPA, open tendering is the recommended method of procurement although limited tendering is permitted in exceptional circumstances where certain conditions must be met and the tendering procedure must not be used to avoid competition, or to protect domestic suppliers.[113] Furthermore, technical specifications must be only in terms of performance and functional requirements,

[108] Ibid Annex 9-A-1, 9-A-2, or 9-A-3,
[109] Ibid Art. 9.2
[110] Ibid Art.9.3
[111] Ibid Art. 9.4.1
[112] Ibid Art. 9.4.3
[113] Ibid Art.9.9

and should not be more trade restrictive.[114] The conditions for participation of suppliers are restricted to legal, technical and financial ability.

Just like the GPA, Article 9.12 of the FTA requires the parties to put in place domestic review mechanisms where aggrieved suppliers can appeal. A member is required to select an administrative or judicial authority that is independent of the procuring entity being appealed against. This authority is permitted to give interim measures but this should be given in consideration of public interest.

The only derogations permitted under the FTA are similar to those in the GPA. These pertain to the protection of public morals, order or safety; the protection of human, animal, or plant life or health; the protection of intellectual property and also those relating to goods or services of handicapped persons, of philanthropic institutions, or of prison labor.[115] However, these should not be applied so as to constitute a barrier to international trade.

It is important to note that the Agreement does not recognise the equivalent of Chapter V of the GPA which provides preferential treatment to developing countries considering the varied difference in development between the two Parties. Furthermore, the FTA does not provide an option for Parties to negotiate any derogations such as the use of offsets as Article XVI of the GPA does. The FTA therefore creates reciprocal obligations of procurement liberalisation for each of the parties irrespective of Morocco's level of development.[116] Although a Party is permitted to modify its coverage of entities, the condition that it must offer compensatory adjustment sufficient to maintain a level of coverage comparable to that before the modification makes it difficult for Morocco, or such other less developed country with a small procurement market, to negotiate

[114] Ibid Art.9.7
[115] Ibid Art. 9.15
[116] Although the Preamble to the FTA states that the differences in the Parties' level of development and the size of their economies are considered in the bilateral cooperation, this is not reflected in Chapter 9 in which Morocco has assumed similar obligations as the more developed United States.

acceptable changes, although these may be necessary to achieve certain developmental goals.

As has been noted, the FTA is substantially similar in content with the GPA to which only the US is a member and as such extends the coverage of the GPA to a non-member. With an increasing proliferation of bilateral trade agreements, it is opined that this trend will continue as developed countries seek to achieve liberalisation in areas not yet agreed upon in the WTO. The FTA therefore fulfils the objective of the US which is '...to open up opportunities for US suppliers to compete on level playing field for foreign government contracts…[and] to push for the reciprocal removal of discriminatory government procurement practices in, multilateral, regional and bilateral fora.'[117]

This trend can also be seen in the on going negotiations between the European Union and developing countries for the Economic Partnership Agreements (EPA's).[118] The European Union's negotiating mandate seeks to ensure that EPA's create full transparency in procurement rules and methods at all government levels and that they establish progressive liberalisation of procurement markets.[119] Although African, Caribbean and Pacific (ACP) countries are resisting this position and affirming a similar stance as at the WTO,[120] it seems unlikely that they will be able to succeed in excluding government procurement from the final texts of the EPA considering the asymmetrical relationship with the EU.

[117] See United States Trade Representative (USTR) Focus on Government Procurement, available at www.ustrr.org

[118] These are being negotiated between the European Union and the African, Caribbean and Pacific (ACP) group of countries under the Cotonou Agreement and are to be completed by 1 January 2008. See Further http://ec.europa.eu/trade/issues

[119] See Directives for the Negotiations of Economic Partnership Agreements with ACP Countries and Regions, adopted by the Council on 17 June 2002 http://ec.europa.eu/trade/issues/bilateral

[120] See for instance Par. 14 of the African Union Conference of Ministers of Trade (Nairobi Declaration) on Economic Partnership Agreements April 2006 TI//TMIN/MIN/Decl. 2 (IV) available on www.african-union.org stating that government procurement, and other issues such as competition policy be excluded from the EPA negotiations

3.3. GOVERNMENT PROCUREMENT IN REGIONAL TRADE AGREEMENTS IN AFRICA

Government procurement is increasingly being dealt with in existing regional trade agreements between developing countries. In Africa, this was influenced by a need to reform the poor procurement systems which still resembled those that were inherited from the colonial days where procurement was regarded as a 'back-office support function' and characterised by inefficiency and obscure processes.[121] Until recent reforms on government procurement, many countries did not have principal legislation governing procurement, but there only existed subsidiary laws which were passed under the Public Finance legislation.[122] Inadequate laws coupled with weak institutions resulted in procurement systems that lacked many of the elements that constitute a sound system that is; a clear legal framework establishing the rules for transparency, efficiency and mechanisms of enforcement, coupled with an institutional arrangement that ensures consistency in overall policy formulation and implementation as well as a professional cadre of stuff to implement.[123] The state of these laws as well as the differing standards was recognized as an impediment to regional trade and acted as an impetus for reform.

3.3.1. Harmonisation of Procurement Disciplines in the COMESA Region

The Common Market for East and Southern Africa (COMESA) was set up in 1994 to replace the Preferential Trade Area (PTA). This economic grouping constitutes of 20 members with an average population of 370 million people.[124] The project towards the reform of public procurement in the COMESA region dates back to 1998 during a conference on Public Procurement Reform in Africa, in December 1998 in Abidjan, Coted'Ivoire. The conference highlighted the need to accord a higher strategic priority to public procurement reform. In line with the

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[121] Hunja ,'Obstacles to Public Procurement Reform in Africa' available on www.wto.org

[122] See for instance the World Bank's Country Procurement Assessment Reports for of Nigeria, Uganda and Tanzania available at www.worldbank.org

[123] See World Bank 'Elements that Constitute a Well Functioning Public Procurement System' ,available on www.worldbank.org

[124] The Member states are ; Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

recommendations of the Conference, the COMESA Council of Ministers commissioned a study on public procurement laws, regulations and practices across member states to determine the state of government procurement laws in the member states. The study revealed that, although there existed procurement laws in most COMESA countries, these laws were deficient and some aspects of the laws tended to restrict free trade.[125]

This led to the initiation of the COMESA Procurement Reform Project that commenced in 2002 with the assistance of the Africa Development Bank.[126] The main aim of the project was to improve procurement systems among member states and to help start the process of harmonizing laws, procedures and practices on procurement. The reform of procurement laws was in accordance to the COMESA Treaty objectives of creating an enabling environment for investment;[127] the harmonization or approximation of laws of the Member States for the proper functioning of the Common Market;[128] and the probation of any practice which negates free and liberalized trade.[129]

This project was successfully completed in December 2004, and according to the Project Completion Report, it has achieved some of its principle objectives; increased awareness of the need to improve governance (economic efficiency, transparency and accountability) in public procurement, and enabled the passing of the COMESA Public procurement Framework Directive by the Authority (Heads of State and Government) in Khartoum in 2002.[130] The Directive is to the effect that Public Procurement Reform in COMESA should best be attained

[125] See Report available at www.comesa.org
[126] Africa Development Bank gave a grant of UA 1.17 million towards this project. See African Union Website www.afdb.org for details of the project.
[127] Article 3 (c) of the COMESA Treaty available at http://www.comesa.int
[128] Ibid Art. 4(6) b
[129] Ibid Art.55
[130] African Development Fund , Enhancing Procurement Reform and Capacity Project, Appraisal Report, available on http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/OPERATIONSINFORMATION/COMESA%20-%20%20PROJECT%20JULY%202006.PDF last accessed on 20th March 2007.

through: (i) the adoption of modern national legislation on public procurement where it does not exist, or the improvement of national legislation where it is outdated in line with the UNCITRAL Model Law; (ii) adoption of the principles and essential components of national legal frameworks for enhancing regional integration; and (iii) establishment of a technical committee on public procurement.

As a result many countries have adopted new procurement legislation and others are in the process of reforming already existing laws to bring them in conformity with the Directive[131] In order to consolidate the achievements of the procurement reform project, COMESA with the assistance of the African Development Bank has set up plans for a project that will enhance these reforms. The Enhanced Procurement Reform and Capacity Project (EPRCP) aims to improve the management of public expenditures and to create a more conducive environment for public procurement. The project is also intended to improve national procurement systems through transparent rules, regulations and procedures and ensure sustainability of good practices in public procurement.[132]

3.3.2. Other Harmonization Efforts

Closely resembling the COMESA initiative is the West Africa Economic and Monetary Union (WAEMU) Procurement Initiative. The WAEMU regional grouping was created in 1994 with the main aim of strengthening the competitiveness of the economic and financial services that can be integrated into the international economy and is made up of eight West African states; Benin, Burkina Faso, Cote D'Ivoire, Guinea, Mali, Niger, Senegal and Togo.[133]

[131] Uganda and Madagascar and Malawi have new legislation based on the UNCITRAL Model Law. Ibid.
[132] Ibid
[133] See Treaty Establishing the West African Economic Union available at http://www.worldtradelaw.net/fta/agreements/waemufta.pdfhttp://www.uemoa.int/uemoa/historique.htm

The procurement initiative started in 2002 with the adoption of a Code of Transparency in Public Finance Management by the WAEMU Council of Ministers, in accordance with a Directive of the Heads of State and Government.[134] The Code calls on member states to modernize their public procurement systems. With assistance from the African Development Bank and the World Bank, a regional public Procurement Reform Program was established. The first phase of the project (2002-2005) was aimed at helping member states to modernize public procurement rules by aligning them to international acceptable standards. This was done by designing a community wide harmonization instrument that would serve as a community regulatory framework. The project also sought to build on the expertise and institutional capacity for government procurement among member states. The second phase of the project is to focus on harmonization by helping states to incorporate the procurement regulations into domestic legislation; to implement standardized tender documents; and to increase on the institutional capacity of the member states.[135]

There are similar reform efforts in other regions, such as the Arab Maghreb Union (AMU) consisting of Algeria, Libya, Mauritania, Morocco, and Tunisia. Like other efforts, the member countries seek to harmonize their public procurement legislation and regulations, however there is a focus on opening up the public sector to the small and medium sized enterprises in the sub-region. With the assistance of development partners like the World Bank and the International Trade Center, the AMU also seeks to build up the necessary expertise on government procurement.

From the foregoing, it can be seen that like other developing countries, African states are in the process of reforming their procurement laws to internationally acceptable standards such as those set by the UNCITRAL Model Law. There is an

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[134] African Development Bank: Appraisal Report Project in Support of Public Procurement Systems Reform In The WAEMU Zone (Phase II), 2006 available at http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/OPERATIONSINFORMATION/UEMOA%20ENG%2004.12.06.PDF last accessed on 20th March 2007

[135] *Ibid*

explicit recognition of the importance of transparent systems of government procurement both for good governance as well as improved trade between countries.

3.4. IMPLICATIONS OF RTA PROVISIONS ON GOVERNMENT PROCUREMENT FOR THE GPA

The impact of RTAs on the GPA is best understood within the context of the current debate between multilateral and regional approaches to the global trading system. With the current problems facing the WTO, not least because of the soaring numbers of members with divergent interests, there has been an increase in RTAs where negotiations are between smaller numbers of countries making it easier to conclude agreements. This has resulted into two parallel systems of trade governance, each having an influence on the other. This section will examine the implication of RTAs on the GPA as a standard of government procurement principles.

3.4.1. GPA Equivalent and GPA-Plus Agreements

As shown in the US-Morocco FTA, many RTAs are mainly modeled on the GPA applying its principles of non–discrimination, transparency, accountability and due process but to different extents.[136] On the obligation of non-discrimination imposed by both the GPA and RTAs, it is important to note that whereas the former permits developing countries certain derogations that can be negotiated in line with their development needs; this option is not available in RTAs between developed and developing countries. The RTAs take the position of two equal parties with equal obligations and do not in effect recognize the differences in levels of development.

In some instances RTAs go beyond the scope of the GPA thereby acquiring GPA-Plus status. One of the ways this has been done is by binding non GPA members

[136] See also OECD Report , 'The Relationship between Regional Trade Agreements and the Multilateral Trading System: Government Procurement' 2002 available on **http://www.oecd.org/trade** last accessed on 17April 2007

to obligations similar to the GPA as is the case with Morocco.[137] Furthermore, RTAs go beyond the GPA in their scope and coverage for instance, in the US-Morocco FTA, build-operate-transfer contracts[138] are covered although there is no mention of this in the GPA.[139] Some RTAs also cover more entities and provide for lower thresholds than are required by the GPA. This results in more procurement being covered and available to the international market through deeper integration that is desired by the proponents of increased liberalization. It has been argued that in some instances regional approaches that go beyond the GPA might pioneer new approaches that can be a basis for progress at the multilateral level.[140]

3.4.2. Facilitation of domestic reform

It has been argued that RTAs help to prepare countries for membership of the GPA by facilitating domestic reform on government procurement.[141] This is because states that have already instituted domestic reforms that conform to the standards of the GPA will find it easier to adopt WTO principles.[142] As illustrated earlier in this chapter, many African countries have initiated procurement reform of their national laws at the impetus of a regional initiative. As result for instance, COMESA member states have undertaken to conform their laws to the UNCITRAL Model law which promotes similar ideals of a competitive and transparent procurement system as the GPA. However the non binding nature of RTAs implies that reforms will depend on the good will of the member countries. This is also true of Bilateral Trade Agreements which require countries to amend their domestic laws to conform to the Agreements. Closely related to the above is

[137] See also FTAS between EU-Mexico, US-Chile.
[138] These refer to any contractual arrangement, the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works, and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract.
[139] Arrowsmith is of the view that these should be included in the GPA as they are increasingly being used by developing and developed countries alike. See Arrowsmith *Op cit note* 102
[140] Crump L, "Global Trade Policy Development in a two track system' (2006) 9 Journal of International Economic Law 487 at 495
[141] Arrowsmith *Op cit* 102
[142] *Ibid*

that RTAs may give countries technical experience that would be useful to prepare members for accession to the GPA. RTAs therefore help to strengthen the internal structures and institutions that are vital for proper implementation of the provisions of the GPA.

There is however no supporting evidence to show that a country that has instituted reforms to the level of the GPA required standard is willing to join the Agreement. Indeed although procurement reform has taken root in Africa, there is no indication of any interest to join the GPA as no African country is a member to the Agreement and none is negotiating accession. This indicates that although developing countries appreciate the value of an efficient and competitive procurement system, their continued absence from the GPA can be attributed to the strict obligations that may impede their ability to regulate procurement according to the needs of a country.

3.4.3. Benefit to third parties

Since RTAs promote open and competitive procurement markets among member states, this has the unintended effect of providing improved market access for third parties not belonging to the regional grouping. The requirement to publish intended procurement and to conduct procurement in a transparent manner enables even non members to benefit from such rules. For instance, according the COMESA Procurement initiative, members are to avail information concerning available procurement opportunities through the COMESA procurement website which all interested parties can access.[143] In this way RTAs help to further liberalization of procurement markets as envisaged in the GPA.

3.4.4. Technical Assistance

Another aspect is that RTAs foster cooperation and technical assistance among participants to help them meet international standards. To this end the World Bank and the African Development Bank are helping to finance procurement reforms through regional harmonization initiatives in the COMESA region and

[143] See website; www.simba.comesa.int The functionality of this website is limited as there is very limited information on procurement opportunities in the member states.

the WAEMU as stated above. Technical assistance is necessary to improve the institutional capacity of countries to deal with ensuing procurement reforms as these have been identified as obstacles to efficient systems. Furthermore, financial assistance is necessary to conduct sufficient research on the implications of procurement reforms.

3.4.5. A source of Divergence

Although it is recognized that to an extent RTAs have a harmonizing effect of government procurement standards, it is also true that in some instances they may lead to divergence at the international level. This arises where different standards exist between different regional and bilateral Agreements. Furthermore, RTAs frustrate progress at the multilateral level by locking in agreements that respect regulatory differences. Consequently they reinforce national regulatory autonomy and ultimately become a stumbling block to the multilateral system. RTAs may also impede further developments and reform at the multilateral level where they have adopted similar provisions. The general effect of RTA on the application of the GPA as an acceptable international standard on government procurement is to erode enthusiasm for the latter's membership since it is perceived to be easier to negotiate at the regional level than within the WTO.[144]

3.5. CONCLUSION

From the foregoing it can be concluded that although the GPA has not gained wide acceptance among developing countries as a global standard, its principles are being adopted by the same countries through commitments made in Regional Trade Agreements. As illustrated by the US-Morocco FTA, the Chapters on government procurement of many Regional Trade Agreements particularly between developed and developing countries resemble in many respects the provisions of the GPA. Similarly, developing countries are reforming their procurement systems on the impetus of regional agreements like COMESA to acceptable global standards such as those established by the UNCITRAL Model Law which bears similarities with the GPA

[144] Picker, Regional Trade Agreements v the WTO' (2005) (26) 2 Uni Pa J.Int'l Econ.Law 267 at 275

The implication of these RTAs on the role of the GPA as a global standard depends on whether they are based on similar principles. Where RTAs adopt similar standards, they can promote the progressive harmonization of government procurement standards between countries by requiring non GPA members to reform their laws to these standards. However, RTAs may also have the undesired effect of rendering the GPA irrelevant since similar commitments can be obtained without recourse to the rigorous negotiations in the WTO and worsened by the fear of its strict dispute settlement mechanism.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. CONCLUSIONS

This research has established that government procurement is important for a number of reasons. One of these is that it constitutes a large market for potential suppliers in view of the large expenditures involved and it is therefore of interest to proponents of increased trade liberalization. On the other hand it is an important regulatory tool that governments use to achieve different national objectives and they desire to maintain the ability to use this tool without restrictions. The existing domestic and international instruments on government procurement reflect a conflict between these two aspects, therefore highlighting the need to strike a balance between international free trade and the domestic needs of a country.

Where domestic laws on government procurement are out right discriminatory against foreign goods or suppliers, or are non-transparent so as to discourage competition, free trade is restricted. Furthermore, the existence of various standards and procedures between countries is said to constitute a barrier to trade, therefore necessitating the establishment of a minimum standard of procurement through the harmonization of domestic laws. To this end the UNCITRAL Model Law and the GPA are so far the two leading international instruments that set such standards, and establish the principles of non-discrimination and transparency as necessary for a good government procurement system. These two instruments have been used as a basis for reform of procurement systems in many countries and are complementary in many aspects as they both seek to accomplish similar objectives of promoting international trade through the establishment of transparent and non–discriminatory procurement systems. Although the UNCITRAL Model law is of no legal effect, its use as a basis for domestic

procurement laws has helped to harmonize government procurement standards even among non- GPA members.

In its current form the GPA has not attracted the participation of developing countries which believe that there are more costs than benefits to accession to the Agreement. Of major concern is the feared erosion of national sovereignty to regulate procurement to meet particular objectives because of the strict obligation of non-discrimination. This is coupled with concern that the costs of adhering to the procedural requirements to enhance transparency will be too burdensome. The enforcement mechanism of the GPA that permits aggrieved suppliers to challenge a procuring entity, together with a possible option of a member being challenged at the WTO dispute settlement body where it is not conforming to the Agreement, make it difficult for developing countries to accede to this Agreement.

The current proliferation of regional trade agreements between developed and developing countries, and those signed between developing countries with extensive provisions on government procurement can be considered as a reaction to the problems in the GPA and the WTO to achieve greater liberalization of government procurement. These Agreements have similar and in some instances more binding provisions than those in the GPA. Such Agreements have been used by the proponents of trade liberalization to influence more countries to open up their government procurement markets even though these countries refuse to make similar commitments in the WTO. For developing countries, RTAs have been a motivation for instituting domestic reforms in procurement usually based on the UNCITRAL Model Law. There is no doubt that RTAs can be a building block to increased membership to the GPA by promoting the principles of non-discrimination and transparency. However, RTAs can also be a deterrent for the development of the GPA as a global standard where they are considered as alternatives to multilateral disciplines in procurement under the ambit of the WTO. The impact of RTAs on the GPA will depend on the nature of these

Agreements and to what extent regionalism and multilateral trade arrangements work not as competitors but rather as complimentary systems.

4.2. RECOMMENDATIONS

In light of the important position that government procurement plays in international trade as well as its pivotal role as a policy tool for development, it is opined that the GPA stands out as the most effective instrument to achieve harmonization of global procurement standards. Unlike the UNCITRAL Model Law, or the different regional instruments, the GPA has the force of the dispute settlement system of the WTO and the Trade Policy Review Mechanism that makes it enforceable. Although developing countries may regard this as one of the most repelling aspect of the GPA, it provides a lock-in effect for government procurement reforms especially in countries where corruption is rife and procurement reform is not likely to be easily accepted.

Furthermore, the WTO offers a relatively more balanced negotiating forum for developing countries than in Regional Agreements. The imbalance in the bargaining power between a developed and developing country is more skewed in bilateral agreements where developing countries do not have the benefit of negotiating groups as in the WTO.[145] As the trend has shown developing countries are more likely to make more binding commitments in bilateral agreements that what would have been required in the WTO. This is worsened by the fact that bilateral trade agreements do not offer preferential treatment to developing countries but are based on reciprocity between parties.

However procurement initiatives within Regional Agreements between developing countries should be embraced as these encourage reform of national procurement laws. These may act as soft law that prepares countries to make binding commitments at the multilateral level. However the benefit of such Agreements will depend on the extent to which they liberalize the procurement markets of member states to third

[145] Sometimes these negotiating groups may not be appropriate where there is a disparity of interests between the developing countries, for instance between a more developed country like India and a Least Developing County Like Uganda..

parties, thereby encouraging competition. Nonetheless, caution must be taken in having several negotiating fora as these may strain the meager resources available for developing countries to negotiate.

The above notwithstanding, the following specific recommendations are considered necessary if the GPA is to achieve acceptance among developing countries:

4.2.1 Amendment of the GPA

The Agreement needs to recognize the importance of preferential government procurement to address the needs of developing countries. The GPA should be amended to permit members to offer preferential treatment to their domestic industry in order to achieve stated development objectives. In this respect the GPA should adopt the approach of the UNCITRAL Model that permits this, albeit within a certain established framework to control the abuse of such flexibility. However, in view of the questioned benefits of such preferential procurement policies to general global and national welfare, the GPA would need to have a suitable time frame for the gradual phasing out through negotiations or according to an agreed framework of these policies. Furthermore there is a need to make the special and differential provisions as contained in Article V of the GPA binding and enforceable for them to be meaningful to developing countries.

4.2.2 Coordination between different Institutions

This is necessary if the GPA is to get legitimacy among developing countries as an Agreement that also caters for their needs as the UNCITRAL Model is regarded. Furthermore, coordination is necessary to harmonize the different instruments on government procurement that is the GPA; the UNCITRAL Model Law, the Procurement Guidelines of Financial Institutions and donor agencies; and the various regional instruments on procurement. Such coordination efforts could involve the relevant institutions obtaining observer status in the Committee on Government Procurement in the WTO which would encourage exchange of ideas necessary to streamline the harmonization of standards between different instruments. [146]

[146]The only International Organisations with Observer Status in the Committee include: the International Monetary Fund, Organization for Economic Cooperation and Development, United

4.2.3 Institutional and Human Capacity Building

The relevant national institutions of developing countries need to be enabled through training of staff and increased funding through grants. This is necessary for effective implementation and monitoring of the GPA. Although this is being done by the World Bank together with regional institutions, training must be done in light of the GPA to obtain better understanding of the Agreements and its implications.

4.3. CONCLUSION

Although developing countries succeeded in stopping any negotiations for a multilateral Agreement on government procurement and still enjoy the non-member status to the GPA, it is opined that the status quo may not be long lived in view of the push for trade liberalization and the removal of all trade barriers. Developing countries therefore need to use this period to build up their negotiating positions and to ascertain the implications of any positions taken. Of importance is the need to participate as observers in the GPA which will enhance their capacities albeit without making any commitments.

Nations Conference on Trade and Development and the International Trade Centre. See further http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm

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