

RESPONSES TO THE CONSULTATION PAPER ON THE REVIEW OF THE OECD ANTI-BRIBERY INSTRUMENTS

Comment from the World Trade Organisation (External Relations Division)

The Director-General has asked me to reply to your correspondence of 18 January and to thank you for sharing with us the consultation paper entitled "Review of the OECD Anti-Bribery Instruments on Combating Bribery of Foreign Public Officials in International Business Transactions Ten Years after Adoption".

Generally, many WTO rules have the effect of subjecting the exercise of administrative discretion to transparency mechanisms and safeguards and of reducing the scope for arbitrary exercises of power, in the interests of an open and predictable multilateral trading system. A broad range of WTO legal provisions and activities are potentially of relevance, including: (i) Article X of the GATT, relating to publication and administrative rulings to be administered in a uniform, impartial and reasonable manner; (ii) similar transparency-related provisions in many other WTO Agreements; and (iii) the WTO's work in the area of government procedures.

The existing (1994) plurilateral Agreement on Government Procurement (GPA) helps to reduce the scope for corrupt practices by setting out a comprehensive set of rules aimed at ensuring transparent, competitive and non-discriminatory conditions in national procurement markets. The Agreement also requires all GPA parties to establish and maintain domestic review (or "bid challenge") systems whereby bidders believing that they have been improperly treated in a procurement process can make a complaint that will be heard by an independent review body.

Provisional agreement was reached by the Parties to the GPA in December 2006 on a revision of the GPA rules. In addition to improving and modernizing the general rules aimed at establishing transparent, competitive and non-discriminatory procurement procedures, the revised Agreement will contain a number of provisions explicitly addressing corruption concerns. To begin with, the Preamble to the revised Agreement will refer specifically to the "importance of transparent measures regarding governmental procurement, of carrying out procurements in a transparent and impartial manner, and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption" in addition to referring to the objective of liberalizing and expanding international trade in relation to government procurement markets and other goals and purposes.

Moreover, Article V:4 of the revised text (to be re-numbered as Article IV:4 when the Agreement is adopted) contains a specific requirement that procurement which is covered by the Agreement be conducted "in a transparent and impartial manner" that: (i) "avoids conflicts of interest"; and (ii) "prevents corrupt practices". Furthermore, Article VIII:3 of the revised Agreement provides for the right of procuring entities to exclude suppliers from individual procurements on grounds, inter alia, of: (i) final judgements in respect of serious crimes or other serious offences; and (ii) professional misconduct or acts or omissions that adversely reflect upon the commercial integrity of the supplier".

Note finally that in context of the Doha Development Agenda, the Trade Facilitation negotiations aim, in part, to clarify and improve relevant aspects of GATT Article X, which contains basic transparency obligations for trade in goods, with a view to further expediting the movement, release and clearance of goods, including goods in transit.

We wish you every success in your endeavours, and would very much appreciate if you would continue to keep the WTO updated on your work.