



Unions Demand Fair Trade Now!

TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT

PROCUREMENT

Unions have long maintained that trade agreements should not constrain federal and sub-federal procurement rules that serve important public policy aims, such as local economic development and job creation, environmental protection and social justice – including respect for human and workers' rights. However, some trade agreements, as well as the WTO Agreement on Government Procurement include procurement rules that undermine the ability of governments to enact and enforce procurement rules that are related to these important policy goals. The Trans-Pacific Partnership Agreement (TPPA) must not replicate the mistakes of the past.

Eliminating or Reducing Preferences for Local Business or Which Support Public Policy Goals

The central provisions of procurement agreements are those that require national treatment, meaning that governments cannot generally favour local suppliers in government contracts for goods and services. In addition, governments are barred from imposing technical specifications in their public contracts if those specifications pose an “unnecessary” barrier to trade, and government contracts can only contain supplier qualifications that are “essential” to the performance of the contract. Rules on technical specifications and supplier qualifications could allow foreign companies to ask their home government to challenge procurement rules designed to achieve social or development goals. The most

recent US model contains language which provides that a procuring entity is also not precluded from preparing, adopting, or applying technical specifications to require a supplier to comply with generally applicable laws regarding (i) fundamental principles and rights at work and (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. This must be reflected in the TPPA as well.

In the past, some governments have filed exceptions, such as for small and minority-owned businesses or certain public services, utilities or transportation, but others have taken no exceptions and thus have little policy space – which is worrying, particularly with regard to public services.

Jobs: Are More Jobs Gained or Lost?

Of course, we are aware that access to foreign procurement does create opportunities for domestic firms, some of which may support domestic jobs. However, the most important reasons for government procurement rules favouring local suppliers are to support economic development by assisting small local firms to grow and to serve other important public policy aims as described above. Opening procurement to foreign bidders helps large firms, not the ones that most need it, and makes it very difficult to achieve those other aims. Additionally, there is the question whether the jobs potentially lost to opening procurement to foreign bidders are greater than the domestic-based jobs potentially gained by access to foreign procurement markets. Also important are the kinds of jobs at stake.

These matters deserve careful, comprehensive analysis before moving forward. Based on careful analysis of the potential impacts of procurement liberalisation under the TPPA, both positive and negative, governments should adjust their offers and requests accordingly. These matters are even more relevant in developing countries which may never have the opportunity to build strong domestic firms if large-scale global businesses, which have already achieved economies of scale, outbid smaller domestic firms, dominating a nation's entire government procurement market.

Responding to Economic Crisis

In the wake of the economic crisis, some countries moved to prime their economies through economic stimulus measures. However, even the stimulus measures that were completely consistent with procurement obligations under the WTO AGP and various FTAs sparked sharp criticism as being “protectionist” and an intense international debate on trade and procurement policy. This cynical debate was designed to undermine the legitimacy of the idea that a nation may use its government expenditures to stimulate its economy—or for any other policy objective. The very nature of the business cycle makes it certain that each TPPA nation will eventually face the question of whether or not to use the public purse to stimulate its own economy. Should they do so, they will find that any additional procurement concessions made in the TPPA (over and above concessions already made in the WTO and existing FTAs) will diminish the impact of fiscal stimulus. Governments must keep this in mind as they move forward with the negotiations.