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Life Beyond Reciprocity: Why Competition in Public Procurement is in the EU's Own Interest

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In the name of reciprocity, the European Commission is crusading against barriers that hinder European companies from competing for public contracts in foreign markets. Notwithstanding concerns about unfair competition in international trade, closing the door to the European market is a shot in the dark that may have counterproductive effects. Before aiming the lance at others, the EU should first put its own house in order.

Earlier this year, the European Commission proposed to empower the more than 250 000 contracting entities at national, regional and local levels in the EU with the right to exclude tenders of which more than 50% of the value consists of products or services originating from countries that do not, *in law or practice*, grant equal market access to European companies. The proposed regulation, which would apply to bids above the threshold of €5 million, also seeks to protect against 'abnormally low tenders' from foreign companies.

Reciprocity, in terms of a balance of benefits, has long been a conceptual cornerstone in international trade negotiations. However, in an era of globalised production networks, openness to trade should not only be perceived as a privilege granted to other countries. Even in the absence of substantial reciprocity, Europe is doing itself a favour by keeping its procurement markets open.

Government procurement generally represents around 15-20% of GDP in OECD countries. It involves a great responsibility for public authorities to maximise the value of taxpayers' money. The performance of the public sector is essential in order to assure the well-functioning of backbone services, such as transportation communications, education and health, which have spill-over effects in other sectors of the economy. The economic crisis and the subsequent austerity measures have put emphasis on improving efficiency and quality. In this respect, an open and competitive procurement procedure is of great importance.

Now, the Commission claims that the EU's procurement market is more open than others. Several WTO-members are reluctant to relinquish their policy space and make commitments within the framework of the multilateral Government Procurement agreement (GPA), especially since public procurement is commonly used as a policy instrument to promote domestic industries. Many countries maintain restrictions in sectors where European companies have strong export interests, for instance in transport communications, medical devices, pharmaceuticals and green technologies.

In theory, around €352bn of EU's public procurement is already open to bidders from other countries participating in the GPA under the principle of national treatment. According to the Commission, the share of imports in the public sector is 7.5% in the EU, whereas only 6.1% in China. Moreover, the value of the procurement offers open to foreign bidders is €178bn in the United States (imports represent 4.6% of the use of goods and services in the public sector) and €27bn in Japan (4.7%).

However unfair it may seem, the pot should not call the kettle black. It is actually questionable whether the European procurement market, or rather markets in plural, are more open in practice than those of the EU's trading partners. The 7.5% figure for the EU takes into account both imports from other EU-countries as well as extra-EU imports, as recalled by Messerlin and Miroudot in "EU public procurement markets: How open are they" (2012). Not only do the extra-EU import penetration rates in the public sectors vary between European countries, but most EU-countries have lower import rates than their trading partners. The ratios of extra-EU public imports are for instance only 2.7% in Germany and 2.3% in France.

In any case, the logic of closing one's door while asking others to open theirs is not clear as a bell. Although the international procurement initiative is not officially a 'buy-European' proposal with local content requirements, it does send out an ambiguous signal.

It is unlikely that an inward looking policy will increase the EU's leverage, nor will it inspire countries such as China, India, Japan, Brazil or even the United States or Canada to open up their procurement markets. Europe's trading partners might instead take up the gauntlet and retaliate.

Distortions in the form of unfair competition on the international market for public procurement should instead be addressed directly with adequate measures. This will be a difficult task, but let us consider some of the possible alternatives.

First of all, the EU should clarify its own regulatory framework in order to provide for transparent and equivalent procurement procedures. The fact that Member States have begun to pursue their own policies in response to what is perceived as unfair practices cannot possibly be blamed on the EU's trading partners, but rather on the incompleteness of the Single European market.

As part of the exercise to defragment the Single market, regulations could be established in order to hinder unfair practices. Such mechanisms could include obligations to disclose information regarding financing of projects in order to enhance transparency and mitigate malpractices. There could also be stricter requirements on a sound balance between price and quality. In addition, access to procurement contracts could be confined to companies that respect fundamental international conventions, high environmental standards as well as national health- and safety regulations and labour market conditions.

Achieving a level playing field in terms of de facto equal market access in the field of public procurement internationally will be challenging. The EU currently seems to be flogging a dead horse when trying to convince its trading partners to open up their procurement markets for foreign competition. The EU is notably facing difficulties in on-going bilateral discussions with Canada, Japan, India and the United States. Another concern is that procurement was somewhat overlooked in the older generation of trade agreements. It will be difficult for the EU to reopen bilateral agreements with for instance Mexico, Chile, South Africa and Turkey to include or expand the provisions on procurement. In the end, the reforms will probably need to come from inside these countries.

Ultimately, non-reciprocity does not necessarily mean that the EU is losing. On the contrary, Europe can benefit in the long run from unilateral openness. Competition will contribute to efficiency and quality. Most importantly, it will provide an environment in which the public sector delivers value and quality to taxpayers in return for their money.