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Should Egypt join the WTO Government Procurement Agreement (GPA)?*

by Pr. Ahmed Farouk Ghoneim

1. Summary

This policy brief tries to answer the critical question of whether Egypt should join the WTO GPA or not? The debates on theoretical and policy levels have not reached a clear cut answer regarding the pros and cons of a developing country joining such agreement. Yet, we try in this policy brief to clarify some of the misconceptions associated with the joining of such agreement, and identify what are the steps needed for membership to be fruitful.

2. Introduction

The public procurement in Egypt is governed by the Tender Law 89/1998, its executive regulations, and a number of complementary prime ministerial decrees, Ministry of Finance circulars, provisions in other laws, and legal opinions (fatwas) issued by the State Council. The law has been amended twice in 2008 and 2010, without any major changes in its regulations (EBRD, 2013). The Ministry of Finance is the responsible entity for executing and implementing the law, and its related regulations. The General Authority for Government Services (GAGS) undertakes procurement and financial control activities and inspections for central and local budget resources by participating in all evaluation committees and monitoring compliance with applicable laws and government procedures. There is a gap between what is stated in the law and what is implemented. Among the reasons for such gap is broad concepts embedded in the law and its executive regulations, which make them insufficient for consistent application. Moreover, the excessive and cumbersome bureaucratic procedures and extensive checks and balances resulted in huge inefficiency in terms of applying the law. As a result of such gap the contracting ministries and agencies have created their own unwritten procurement rules which became by time known for bidders (World Bank, 2003). Hence, despite the fact that the law in general has been assessed to allow for fair competition and non discrimination (EBRD, 2012; EBRD, 2013) the lack of specific regulations and discretionary power granted for contracting agencies have resulted in pre-empting the law from its good faith.

The efforts to reform the procedures associated with public procurement system in Egypt have remained modest, mainly as a result of the vested interests involved in the process and the lack of an efficient institutional setup that go-

verns the whole process. In light of such facts, the question of whether joining WTO GPA can help Egypt improve its public procurement system in terms of efficiency and enhancement of transparency while overcoming the expected negative developmental effects is the focus of this brief.

3. Approach and Results

The task of determining the potential benefits and costs for Egypt from joining the GPA is far from being easy. The reason is paucity of data and information on the public procurement system. Hence, the approach applied here follows the evaluative framework for individual WTO members considering accession as depicted in Anderson et. al (2011) and Chakravarthy and Dawar (2011). We identify three main pillars associated with socio economic development and try to answer whether joining GPA can help Egypt to achieve them or not.

(i) Enhancing exports and inward foreign direct investment (FDI) of the country concerned in the GPA members' economies

Currently there are 42 members of the GPA including the European Union (EU) countries. In addition 10 countries have applied for accession whereas 4 other WTO members have provisions in their WTO accession protocols in which they have agreed to eventually seek GPA membership (Anderson et. al., 2011; Anderson, 2010). This is a significant increase in membership which started by 21 members in 1996 (Chen and Whally, 2011). Despite the fact, that it is always argued that developing countries have always been reluctant to apply for GPA accession, it is worth noting that all the countries that have applied for accession are developing ones. Yet is this bad or good for Egypt if the decision was made to join? To answer this question a number of facts needs to be stated.

First, Egypt's major trading partners accounting for more than 60% of its trade are EU and USA, which are already members of the GPA. The total market value of the GPA members was estimated to be \$ US 1.6 trillion in 2008, which is a significant number (Anderson et. al, 2011) though what really counts is the market penetration rate. Moreover, among the countries seeking accession are Jordan and Oman where Egypt has strong trade relations with them through the Pan Arab Free Trade Area (PAFTA) and Agadir agreements. In addition, Saudi Arabia (which is among the WTO members with provisions in their accession protocol pinpointing their interest in accession) is considered among the major trading partners for Egypt within the PAFTA. The strong trade ties with existing or potential GPA members imply that both Egyptian and foreign businesses in such countries are familiar with the Egyptian as well as those countries' markets, which could be a positive aspect for both Egyptian businesses when bidding outside in such markets, as well as for foreign businesses bidding in Egyptian market. There is no guarantee that such information on trade will be easily translated to equivalent information on public procurement. In other words, the presence of several trading partners in the GPA could either act as a positive aspect or neutral for Egypt when joining the GPA. Yet, empirical evidence has confirmed that GPA membership has a positive impact on trade in goods and services between GPA parties as well as on outward foreign affiliates' service sales (Chen and Whally, 2011).

The second issue which needs to be considered is the presence of China among the countries seeking accession to the GPA. However, presence of China will be equally worrisome for all GPA members when compared to Egypt due to its aggressive price competition tools. In other words, China's accession will probably be subject to strict conditions that ensure that its aggressive price competition will be handled in its terms of accession, and hence we cannot depend on this factor as one of the criteria to evaluate Egypt's accession to the GPA. It is rather a mute factor that will remain so till the conditions of China's accession are known, as well as the conditions of Egypt's accession especially those regarding threshold and sectors, as well as the conclusion of the negotiations on the revised text of GPA.

It is also worth noting that GPA can act as an engine for enhancing inbound FDI, especially in the fields that require domestic establishment as for example construction activities, which represents a significant portion of government procurement in a country like Egypt. There are no available published data or information on the size of the public procurement in Egypt. It is worth noting that the Ministry of Finance is still in the process of collecting a comprehensive database for public procurement in Egypt (Ministry of Finance, 2016). Some scholars attempted to estimate Egypt's public procurement share in GDP. It was stated that it reached 17% of GDP in 2010/2011 (Abdellatif and Zaky, 2013). The membership of GPA acts as "stamp of approval" for the investment and procurement policy of the country concerned which helps to encourage more FDI (Anderson, et. al, 2011).

(ii) Promoting good governance: enhancing competition and lessening costs

Joining the GPA will surely help to enhance competition and lessen costs (Anderson et. al, 2011) as it will act as an effective device for enhancing transparency and abiding by rules.

The negative side is that the efficiency gains enjoyed by the government will not be shared by local suppliers who might be kicked out of the market due to fierce foreign competition. Hence the economy as a whole, versus the government, will not enjoy the full reap of such gains unless consumers will enjoy better prices for publically procured goods and services, which is an issue that has to do with efficiency of distribution. But if focus is on the production side, then kicking out local producers out of the market can have negative socio-economic effects. Again such fear, can be controlled in the accession terms by identifying phased-in addition of specific sectors and entities (including defense departments), offsets (including local content requirements), price preferences, and thresholds which will enable the government to count for sensitive sectors and/or small firms.

As a matter of relief for Egypt, it is worth noting that the estimates of government procurement which falls outside the purview of GPA for a developed member as the EU has been 80% of total public EU procurement (Anderson, et. al, 2011) which is expected to be higher for developing countries. Not to mention the "home bias" in the Egyptian procurement system which is driven by many factors including compliance costs, domestic policy environment, etc. which all act as a shield from high substitution of foreign firms for domestic ones in procurement activities. Adding to that there is some evidence that the public and private imports are not substitutes (Shingal, 2011) which act as another shield level against the fear from substituting Egyptian products and services by foreign ones. Moreover, and as identified by Anderson et al, 2011 the negative impact on the economy is lessened by the high probability of foreign firms winning the bids subcontracting local firms, and possibility of technology transfer. Moreover, empirical evidence has shown that joining GPA has not led to the increase in the value of foreign procurement in the countries which have joined, though it has increased the import demand for contracts (Shingal, 2011).

Another fear, that can act as an obstacle is the negotiating costs as well as the costs of altering different laws, rules, and regulations related to adapting the domestic law and regulations to GPA. It is worth noting that such costs, which are relatively significant, can be lessened through the technical and financial support provided by international organizations and donors (Anderson et. al, 2011). Moreover, Egypt is not a federal state, and hence the government procurement is governed by a central law which will lessen the costs associated with adapting to the GPA when compared to federal systems. Finally, the flexibilities embedded in the accession process for any country where tailor made exceptions are made to the GPA rules depending on the specific needs of the acceding country (Anderson et. al, 2011) is certainly an important aspect which should be considered if Egypt decided to join.

(iii) Fighting corruption, anchoring reforms, and enhancing transparency

The GPA in itself can act as an anchor for reforms, whether on the investment policy, procurement procedures, export strategy, or institutional and legal framework. This is important in the case of Egypt. Despite the fact that the law has been modified twice, it remained short of addressing the shortcomings of its implementation implying the existence of reluctance for reforms by some stakeholders who benefit from the current status quo. It is worth noting that corruption is a world-wide phenomenon in public procurement worldwide and especially in developing countries (Shingal, 2015). As a result, joining an international agreement like GPA can act as an effective device in initiating and anchoring reforms on several fronts whether related to the procurement policy per se or related fields including corruption, investment, and exports. It is worth mentioning that the revised GPA includes a new provision that imposes a specific requirement on GPA Parties to avoid conflicts of interest and corrupt practices (Anderson et. al, 2011).

4. Conclusions

The current governing regime has undertaken tough economic reforms in the last two years (in terms of reducing fuel subsidies, devaluation, etc.) emphasizing that if the political will is present it can be translated into credible implementation of joining GPA. Moreover, the desire of the current regime to combat corruption can make use of joining such agreement as it can act as an effective tool to overcome the loopholes in implementation of the domestic law. Hence, GPA can help in addressing such pitfalls and combating nepotism and crony capitalism that hindered fair competition. Yet, the political domestic sensitivity of joining such agreement (in terms of the loss of the domestic contractors' preference) implies that the decision of accession if undertaken should be prudently communicated to the public.

Moreover, it is worth mentioning that joining GPA can help only indirectly in providing a fair ground for bidders in their dispute with the Government. The Egyptian law remains in low compliance with GPA Article XX, and by the nature of WTO agreements a dispute can be only solved by WTO dispute settlement mechanism. This implies that GPA can create some sort of indirect "positive pressure" on the Egyptian Government to abide by the GPA rules and align its domestic law with it, as by all means foreign investors cannot take the Egyptian Government to the WTO dispute settlement mechanism in case of lack of compliance. The reason is that the WTO dispute settlement is exclusive for governments and no private parties can sue governments in front of it.

Hence, in this regard accession to GPA should be accompanied by reforms as investment disputes' settlement system. GPA can only work for the benefit of Egypt if other regulatory reforms are carried out in terms of improving the business and investment environment in general and the Investor State Dispute Settlement (ISDS) mechanism where data shows that there has been increasing number of disputes arising after the 25th of January revolution where 18 cases have been reported in the period 2011-2016 compared to 20 cases over the period 1998-2010 (<http://investmentpolicyhub.unctad.org/ISDS/CountryCases/62?partyRole=2>). In fact, the Egyptian government has undertaken a lot of reforms including the issuing of a new investment law (law 72 of 2017 and its executive decree) and establishment of the investors' centers which expedited the steps of registration and establishment of new companies, yet issues associated with disputes remain relatively problematic.

5. Implications and Recommendations

Joining GPA is not a panacea for Egypt. The political will for reform and the desire to fight corruption could act as strong incentives for the current regime to join GPA as a mean to achieve such goals. Yet, joining GPA alone might not help if the surrounding business and investment environment is not ready and the human

capacity concerned with implementation of the GPA remains reluctant to apply GPA. Hence, joining GPA with its flexible provisions allowed for development purposes should be prudently applied by the implementing agencies in Egypt to ensure that they serve development purposes and not be hijacked by special interests. Political will is of paramount importance to ensure that flexibility is not abused and that GPA helps the Government to achieve transparency in the procurement process and provides a fair ground for competition. In this regard and for acceding to the GPA be useful for Egypt, there is a need to revisit the related rules and regulations, especially those dealing with investment disputes. Moreover, there is a need to amend the law to be in compliance with GPA Articles, as Article XX (e.g. the lack of independent and clear protest mechanism is one of the major aspects affecting the transparency of the public procurement system in Egypt and renders in its low compliance with the WTO GPA Article XX). Finally, the institutional setup governing the procurement must be revised to ensure common practice by all implementing agencies and lessen the discretion provided to the contracting agencies in their own jurisdiction.

References

Anderson, Robert D., Philippe Pelletier, and Kodjo Osei-Lah (2011), "Assessing the value of future accessions to the WTO Agreement on Government Procurement (GPA): Some new data sources, provisional estimates, and an evaluative framework for individual WTO members considering accession", World Trade Organization Staff Working Paper ERSD-2011-15, https://www.wto.org/english/res_e/reser_e/ersd201115_e.htm

Anderson, Robert D. (2010), "The WTO Agreement on Government Procurement: an emerging tool of global integration and good governance", *EBRD Law in Transition Autumn, 2010*, pp. <http://www.ebrd.com/downloads/research/news/lit102.pdf>
Chakravarthy, S. and Kamala Dawar (2011), "India's possible accession to the Agreement on Government Procurement: what are the pros and cons?", Chapter 4 in in S. Arrowsmith and R. D. Anderson *The WTO Regime on Government Procurement: Challenge and Reform*, Cambridge University Press

Chen, Hejing, and John Whally (2011), "The WTO Government Procurement Agreement and Its Impacts", NBER Working Paper No. 17365, <http://www.nber.org/papers/w17365>

EBRD European Bank for Reconstruction and Development (2013), *Public Procurement Sector Assessment: Review of Laws and Practice in the SEMED region – Egypt, Jordan, Morocco, Tunisia*. http://www.marchespublics.gov.tn/onmp/upload/documents/ebrd_report_eng.pdf

EBRD European Bank for Reconstruction and Development (2012), *Global Practice Guide: Public Procurement*, prepared by Lex Mundi. http://www.lexmundi.com/lexmundi/Public_Procurement_Guide2.asp

El Gibaly, Abdel Fatah (2010), «Transparency in Government Procurement», Series of White Papers to Promote Transparency & Combat Corruption in Egypt, CIPE. http://www.cipe-arabia.org/files/pdf/Corruption/Policy_Paper_Procurement-EN.pdf

International Monetary Fund (IMF) (2008), *IMF Survey: Egypt: Reforms Trigger Economic Growth*, <http://www.imf.org/external/pubs/ft/survey/so/2008/car021308a.htm>

Shingal, Anirudh (2015), "Internationalization of government procurement regulation: The Case of India", EUI Working Paper RSCAS 2015/86 http://cadmus.eui.eu/bitstream/handle/1814/37822/RSCAS_2015_86.pdf?sequence=1

Shingal, Anirudh (2011), "Foreign market access in government procurement", paper presented at the thirteenth annual conference of the European Trade Study Group, 8-10 September, 2011, University of Copenhagen, <http://www.etsg.org/ETSG2011/Papers/Shingal.pdf>

World Bank (2004), *Project Performance Assessment Report: Republic of Tunisia*, Report No. 31017, https://ieg.worldbankgroup.org/Data/reports/ppar_31017.pdf

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World Bank (2003), Arab Republic of Egypt Country Procurement Assessment Report, December 2003 Operational Core Services Middle East and North Africa Region. <http://siteresources.worldbank.org/INTMNAREGTOPGOVERNANCE/Resources/CPAREGYPT2003.pdf>

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