

**Presentation(s) by EU Commission (CEC) on the forthcoming proposal for an instrument on "market access of third country enterprises to EU public procurement"**

1. CEC is in the final phase of fine-tuning prior to adoption of the text for inter-service consultation, so the present report does not necessarily present the adopted and published CEC proposal.
2. Also the impact assessment is close to finalisation. All of this should lead to adoption by college of Commissioners by mid/ end March 2012 (newer source says "end of February").
3. CEC considers having found a well balanced solution, based on numerous responses and despite fundamental differences of opinions of the contribution to the consultation.
4. CEC international commitments, including market access restrictions, will be implemented into EU law, in order to avoid doubts about the possibilities of rejecting third country enterprises, which is currently subject to legal uncertainty. Also the situation of GPA members will be incorporated.
5. If a country has not joined the GPA, enterprises from such a country do not have a right to be admitted. Rejecting them will be clearly stated as an option, applicable if approved by CEC and announced from the beginning.
6. Exclusions based on negotiated restrictions of market access will be allowed by CEC without such analysis, considering that such markets are not covered by GPA commitments.
7. In general, CEC considers that a uniform approach in all Member States on this question is necessary, and that CEC has to have some control over such rejections.
8. The instrument is likely to include a special regime intended to make the simple acceptance of abnormally low tenders more complicated/ impossible.
9. The instrument will have "teeth":
  - a) In a first step, the system will kick off on an ad-hoc basis (i.e. following an indication/ complaint submitted to or facts having come to the knowledge of CEC).  
Then CEC will analyse the legal and real situations, including reciprocity, of a third country's public procurement market. If this is not open on a symmetric basis, CEC will close the market concerned, but not markets in other countries or for other goods/ services.
  - b) If such complaints repeatedly concern the same country and market, then an "ultimate remedy" rule will apply. It will allow CEC to launch a procedure on its own initiative, analysing the question if a third country market is structurally closed.  
If this is the case, CEC will close the corresponding market in the entire EU for all firms from this third country.
  - c) CEC does not intend to police systematically all procurement procedures.
10. CEC considers that this "ultimate remedy" would have avoided the "COVEC case".  
(UP: this has been said without giving further arguments, so that it is difficult to check.)
11. UP note: in a not too distant future following the adoption of this instrument, CEC should not hesitate to use these new rules in practice, in order to show that the "teeth" of the procedure can actually "bite".

**GPA following the political agreement on a modernised text**

12. The political agreement of 15/12/2011 concerns in principle the 2006 draft GPA, respectively its up-dated version of 12/2010.
13. The agreed text is available at the WTO website as annex of the political agreement:  
[http://www.wto.org/english/tratop\\_e/gproc\\_e/negotiations\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm)
14. "... all elements of the re-negotiations have now been agreed in principle, subject only to final verification and legal review." (from the WTO website).