

LegCo Panel on Manpower

Agreement on Government Procurement of the World Trade Organisation

Background

The LegCo Manpower Panel discussed the implications of the Agreement on Government Procurement of the World Trade Organization (WTO GPA) on local employment at the meeting on 18 July 2002. The Administration was requested to explore ways to retain jobs for local employees by, for example:

- (a) awarding service or construction contracts, where the contract sum is below the WTO GPA applicable threshold, to local suppliers;
 - (b) breaking a contract into several smaller contracts to keep within the WTO GPA applicable thresholds; or
 - (c) amending our commitment under, or withdrawing from, the WTO GPA so that the Hong Kong Special Administrative Region (HKSAR) Government would not be so bound.
2. Members have particular interest in prefabrication of construction works, printing, production of uniforms and shoes and other supplies for the Government. This paper sets out the Administration's response.

The Administration's response

3. We appreciate and share the concern of Members and the local labour unions in retaining job opportunities for local workers as far as possible. In this light, we have carefully and seriously reviewed the application of WTO GPA in HKSAR to see whether there is any room to accommodate Members' suggestion. However, we have concluded that the current procurement policy and system should be maintained for the following reasons :

- the HKSAR Government's procurement policy is guided by the

policy objectives of achieving the best value for money and maintaining open and fair competition. By encouraging participation through open, fair and transparent procurement procedures and practices, the Government seeks to obtain responsive and competitive tenders from which to determine the most advantageous one which best serves HKSAR's public interest. Drawing up a particular requirement on local production of supplies or services will go against our established policy of value for money. Our analysis indicates that it would be inefficient, for example, to carry out prefabrication in Hong Kong having regard to our much higher cost base. This is also true for other supplies given the much lower labour and production costs across the border. We would be "paying more for less", instead of "doing more with less", if we decide to go down this route.

- Our high ranking by international think tanks, such as the Heritage Foundation, as the freest economy in the world would be jeopardized should we withdraw from or twist the rules of WTO GPA. This would undermine the confidence of international investors, whom we are courting actively in view of the job opportunities that would generate from their investment.
- A requirement of local production of supplies is difficult to enforce as it entails at least a huge bureaucracy and frequent inspections. This is administratively costly, and local employees may not benefit from such requirement if it cannot be effectively enforced.
- Any intended division of contracts to below WTO GPA applicable thresholds would be regarded as circumvention and violation of international obligations. Among other provisions, Article II:3 of the WTO GPA prohibits the division of procurement requirement with the intention of avoiding the application of the Agreement. This may also lead to a challenge by other WTO GPA parties under the Dispute Settlement Mechanism of WTO; and the circumventing party may, as a result, be subject to retaliatory trade sanctions.

- Withdrawal from WTO GPA is a negative approach and will seriously damage Hong Kong's image. Other GPA parties including the United States and the European Community will be entitled to withdraw their GPA commitments towards Hong Kong, and our trade may, as a result, be subject to discriminatory treatment in those government procurement markets.

4. Whilst the Administration accords top priority to easing unemployment, in devising measures to create job opportunities we must carefully evaluate the possible implications to ensure that our long-term development potential would not be compromised by pursuing short-term interests. We have therefore decided to maintain the current procurement policy, which is in the best interests of Hong Kong.

Economic Development and Labour Bureau (Labour Branch)
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