GOVERNMENT PROCUREMENT IMPERATIVES AND MICRO-ECONOMIES IN THE OECS SUB-REGION

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Introduction

Economic governance at the dawn of the 21st Century is intimately linked to facilitating the generic process of globalization. However, the employ of economic governance imperatives is at best an exercise in futility if they do not also embrace regulatory mechanisms that work to facilitate the growth of national economies. Notwithstanding this, in an era of the rapid proliferation of globalization modalities and processes, national economic development is significantly compromised without robust national involvement in regional, hemispheric and multilateral trade. Intimate involvement in regional, hemispheric and multilateral trade agreements is essential to facilitate trade liberalization and integration imperatives and the more fundamental objectives of socio-economic transformation. This notwithstanding, the micro-economies of the Caribbean have remained on the fringes of the hemispheric and multilateral trade architecture and necessarily so continue to be marginalized in the globalization process at large.

Many of these micro-economies have been slow to assiduously and aggressively participate in the hemispheric and multilateral trade architecture. This has broad and acute implications for benefits to accrue and subsequently filter down from the trading system to these economies. The article provides a focused analysis of government procurement issues regionally, hemispherically and internationally. It seeks to articulate Caribbean micro-economies' involvement, at large, in such a trade-related area.

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Governance: A Conceptual Review

Given that the Conference on Governance in the Contemporary Caribbean: The Way Forward centers on governance, the analysis of government procurement imperatives that follows, will be premised by a contextual analysis of governance. Governance should not be equated with government, *per se*. Rather it entails public administration within a political context, with adherence to the concept of the public interest. Government, on the other hand, can be viewed as an institution rather than a process. In the 1990s - with the growing importance of governance imperatives, as expressed by international aid agencies, governance has been described as encompassing the complex mechanisms, processes, relationships and institutions by which citizens articulate their interests and mediate their differences through collective action. In this context, central to the issue of governance is the concept of power and more specifically who exercises power and how that power is exercised by the various stakeholders in given institutional frameworks specific to a given society.

While these institutions are specific to and reflective of the socio-economic predisposition and historical and cultural realities of any given nation, the institutions of governance, in general, can be thought of - as elaborated on by the Canadian based *Institute on Governance* - as comprising: the legal system (which includes courts and the judiciary), democratic institutions (for example, legislative bodies and other representative institutions), civil society (either community based organizations or non-governmental organizations (NGOs), churches, etc.), economic markets (that comprise labour and business groups), and lastly, the public service itself (made up of its constituent parts at the national, subnational and local levels).

The capacity of various stakeholders within a given institutional framework, to defend their differences and articulate their interests is linked to the power certain institutions command in the governance process and the mechanisms in place to facilitate this. So, whether the process of governance remains balanced or not and fair, transparent, participatory, responsive, equitable, accountable and effective is a function of who exercises power and how much of it they exercise.

**Government Procurement: Towards a Definition**

Government procurement typically makes reference to purchases and provision of goods and services governed by regulations and associated legislation in respect of the technical, legal and administrative actions pursued by central governments, local governments, governmental agencies and ministries, statutory corporations and institutions wholly owned by the government to obtain ownership of or the right to use non-personal services. This notwithstanding, it is difficult to uniformly define government procurement - especially in the context of legal regulations - as it means many things to many parties especially since the architecture of and modalities involved in the acquisition of goods and services and execution of works differ across national jurisdictions. As a result, the term assumes its own unique identity and application in various jurisdictions. This is particularly evident in the Inter-American Development Bank publication 'National Legislation, Regulations and Procedures Regarding Government Procurement in the Americas' which documents the nuances of government procurement definitions and
associated modalities in the Americas (Inter-American Development Bank 1998). To advance a definition of government procurement I shall paraphrase the ones of particular relevance as follows:

- Any purchase or sale on account of the Nation, as well as any lease, rent, work or supply contract; or
- Purchase, contracting, or sub-contracting of goods, services, and personnel by the Government, governmental agencies and/or statutory corporations and institutions; or
- Those goods and services acquired with public funds, not including gifts; or
- Contracting carried out by public entities for the purchase of goods, contract services and/or public works, for the consumption of the entities itself and public in general; or
- Purchasing for the direct benefit and use of government entities; or
- Purchase of personal and real property, services not considered consulting services, execution of works, lease of personal and real property and consulting services; or
- Acquisition of ‘Articles’, i.e., goods, materials, stores, vehicles, machinery, equipment and things of all kinds and “Works”, i.e., buildings and engineering works (services) of all kinds.

**Background Issues in Government Procurement-based GATT/WTO Frameworks**

Annex 4 of the Agreement establishing the World Trade Organization (WTO), in 1994, is the ambit within which the Agreement on Government Procurement (AGP) is articulated.2 As specified in Article 1 of the AGP the “Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.”3 In respect of the Agreement, it “applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services. Entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply mutatis mutandis to such requirements” (WTO 1994: 1). In addition to covering central government procurement the AGP also covers purchases by sub-national governments. Furthermore, the AGP is applicable to any procurement contract where the value is not less than the relevant threshold outlined in Appendix I.4 The AGP works to ensure non-discrimination in government procurement markets through detailed attention to, inter alia, tendering procedures, publication of invitations to bid, time limits for tendering and delivery, tender documentation and procedures related to tenders from the point of submission to the actual award of the contract, use of specifications, qualification requisites of suppliers eligible to bid, and provision of information following the award of contracts.
The genesis of the conceptual thrust of the merits of an AGP was premised on the assertion that unstandardized government procurement practices, across various national jurisdictions, run contrary to the exercise of international free trade and the practice of fair/equitable treatment in international commerce in respect of private and public sector entities. Conventional wisdom dictates that unstandardized government procurement practices and associated modalities have implicit bias (in respect of discriminatory practices) and transparency-related bottlenecks. Secondly, unstandardized and non-universally applicable government procurement practices have distorting effects on international trade given the significant percentage which government expenditure typically command in GDP, in most every national jurisdiction. As regards the latter, this has historically been of particular concern as generally government purchases of goods and services are very large and the non-applicability of General Agreement on Tariffs and Trade (GATT) disciplines in respect of government purchases has had ramifications for billions of dollars worth of actual and potential international trade per annum.

In this regard, throughout the half century in the wake of World War II, the argument has consistently been made that the fundamental principle of equitable participation in commerce by actors, both endogenous and exogenous, to a given domestic government procurement market was being violated by a multilateral trading framework that historically did not account for explicit government procurement provisions in national treatment obligations as they appear in GATT/WTO disciplines. Further to this, a first attempt was made at the Tokyo Round to better include government procurement under the purview of GATT rules and incorporate ‘transparency’ imperatives into government purchasing procedures as well as greater international competition in the bidding for government contracts through the negotiation of a Code on Government Procurement. However, the Agreement – signed in 1979 and subsequently executed in 1981 - had a number of limitations in that it was only applicable to ‘national’ government entities for a limited range of goods and was applicable only to contracts above a ‘threshold’ of Special Drawing Rights (SDR) 130,000.

It was the watershed AGP that emerged in the mid-1990s, however, that - based on mutual reciprocity - put in place a commonly agreed schematic of ‘rights’ and ‘obligations’, a sine qua non of which is non-discrimination and obligations of transparency and openness in the procurement process, amongst signatory members in regards to national laws, regulations, procedures and practices in respect of government procurement. These common disciplines and related legal instruments, it has been argued, are a requisite feature of a multilateral trade framework that will further facilitate the transnational liberalization of trade and the employ of effective international commerce – amongst global buyers and sellers at large – in the market place. The execution of a greater degree of effective international commerce is expected to come from an improved and universally accepted international environment for the conduct of and procedures for world trade/commerce because of the non-discrimination, notification, consultation, surveillance and dispute settlement and transparency imperatives of the AGP.

**FTAA and Government Procurement**

The AGP is viewed as an important instrument in facilitating the further liberalization of world trade. However, government
procurement imperatives within the ambit of the Free Trade Area of the Americas (FTAA) is also critically important for hemispheric trade liberalization. The thirty-four signatories of the FTAA are committed to the global rules-based trading system under the WTO and this is particularly reflected in the objectives of the FTAA which although it strives to create a free trade area is perceived as taking place in a manner that is consistent with and not contrary to the relevant multilateral WTO disciplines.

Further to this, within the context of FTAA negotiations the broad objectives of negotiations in government procurement are to expand access to the government procurement markets of the FTAA countries for all signatories alike. Specifically, negotiations in government procurement are expected to:

- Achieve a normative framework that ensures openness and transparency of government procurement processes, without necessarily implying the establishment of identical government procurement systems in all countries;
- Ensure non-discrimination in government procurement within a scope to be negotiated;
- Ensure impartial and fair review for the resolution of procurement complaints and appeals by suppliers and the effective implementation of such resolutions.

Further to Paragraph 5 of the FTAA Toronto Ministerial Declaration which acknowledged that as a result of broad differences in levels of development and size of the economies in our hemisphere, we will remain cognisant of those differences in our negotiations so as to ensure that they receive the treatment that they require to ensure the full participation of all countries in the construction of the FTAA, differentiated thresholds for undertaking certain commitments are envisaged. The document Treatment of the Differences in Levels of Development and Size of the Economies in Trade and Integration Agreements (FTAA 2000) reaffirmed this thinking on differences in Member Country obligations in respect of size of economies; evidence of this is in the area of the utilization of offsets and thresholds by smaller economies in a government procurement agreement. The FTAA makes allowances in respect of exceptions to national treatment obligations; most notable are Rules of Origin and de minimis provisions and allowances under the text submissions of the Negotiating Groups on Government Procurement (NGGP) as follows:

National Treatment/MFN – While its most recent submissions have been amendments to proposed draft text, CARICOM's earlier submissions proposed language on the treatment of domestic industry in smaller economies. (FTAA.nggp/w/71)

Suggested Text with regard to domestic industry in Smaller Economies: (FTAA.nggp/w/71)

"Article II Notwithstanding the provisions of paragraph 1, smaller economies shall be allowed to maintain certain exceptions in order to pursue the development of domestic industry, the utilization of offsets and the safeguarding of sensitive sectors crucial to the national economic interest."

Special and Differential Treatment: The following language was proposed in FTAA.nggp/w/71:
1. Parties to this Agreement shall, in the implementation and administration of this agreement accord flexible treatment to the smaller economies of the hemisphere, taking into account, inter alia, their small size, levels of development and vulnerability to external shocks. Such measures shall include, but are not limited to measures to:

(a) safeguard their balance of payments position and ensure a level of reserves adequate for the implementation of programmes for national economic development;

(b) promote the establishment or development of domestic industries, through exceptions to the national treatment obligations, such as buy national policies, including the development of small scale and cottage industries and economic development of other sectors of the economy;

(c) support industrial units so long as they are wholly or substantially dependent on government procurement;

(d) encourage economic development and expansion through sub-regional arrangements (e.g. CARICOM).

Entities (Coverage) – The following language was proposed to take into consideration the fact that for smaller economies only, the coverage of central government procurement is necessary given the miniscule size of the purchases at sub-central levels. (FTAA-nggp/w/71)

(a) In order to ensure that smaller economies are able to fulfill their obligations under this Agreement, consistent with their development needs, and taking into account the provisions mentioned in the preceding paragraphs, coverage among smaller economies shall be limited solely to procurement undertaken at the level of the central government.

(b) Developed countries, in preparing their coverage lists, shall endeavor to include entities procuring products and services of export interest to smaller economies.

Publication of Laws and Regulations - The following language was proposed with respect to technical assistance (FTAA-nggp/w/71)

Developed parties to this agreement shall seek to facilitate the requests of the small economies for technical assistance in the development and maintenance of suitable infrastructure to ensure the easy accessibility and availability of information in these member states.

Offsets – The following language on the use of offsets by smaller economies was proposed (FTAA-nggp/w/71)
Government entities within smaller economies shall be allowed to utilize offsets, under certain conditions, in the qualification and selection of suppliers, products or services and in the evaluation of tenders and awards of contracts. Such offsets may include the requirement for incorporation of domestic content, among other provisions.

Transitional Period – The following proposal was made with regard to a transitional period (FTAA.nggp/w/71).

Smaller economies shall be allowed a transitional period of 20 years to complete the full implementation of the provisions of this arrangement, beginning from the date of its entry into force.

Micro-economies – The following language was proposed (FTAA.nggp/w/71).

Given the miniscule size of the government procurement markets of certain micro-economies (e.g. the OECS), consideration should be given to the exemption from all, except those contracts above a certain threshold level (to be determined), obligations under this agreement.

Publicity for Inviting Tenders – Language for the treatment of smaller economies with regard to tenders was proposed (FTAA.nggp/w/71).

2. Smaller economies will require technical assistance in ensuring that notifications issued are easily accessible to other parties as well as among smaller economies, particularly in light of the hardware requirement associated with the use of electronic media.

3. Smaller economies should also be allowed to engage in joint regional bidding for the award of contracts given the limitations of small size and limited infrastructural capability. Recognizing that such regional bidding will require a longer period for the preparation and submission of bids by smaller economies, more developed members should facilitate, as far as possible, the full participation of smaller economies in the process.


The FTAA Working Group on Government Procurement, which has since become a Negotiating Group on Government Procurement, held its first meeting in Washington, DC on June 25 and 26, 1996. The only Caribbean countries to consistently participate in successive NGGP are The Bahamas, Barbados, Dominican Republic, Jamaica and Trinidad & Tobago. Regrettably, Organization of Eastern Caribbean States (OECS) Member Countries have not participated in the NGGP process.

In keeping with the FTAA Trade Negotiation Committee mandates, the Negotiating Group on Government Procurement developed a Draft Chapter on Government Procurement. This Chapter is aimed at developing a common understanding on statistical information systems on government procurement in the countries of the hemisphere;
and discussed the modalities and procedures for market access negotiations.

In recent months of negotiations CARICOM has had to resist efforts to place special and differential treatment in a separate chapter. It appears that CARICOM has the sole interest in ensuring that provisions are put in place to assist smaller economies. CARICOM's strategy has been to argue for special and differential treatment that extends beyond transitional periods and that may include cost differentials. CARICOM has made submissions on the following areas: National Treatment, Special and Differential Treatment, Entities (Coverage), Offsets, Transitional Period and Micro-economies.

**OECS Member States and Government Procurement: The Case of Saint Lucia**

The Government of Saint Lucia interprets “government procurement as the means of acquiring goods or services including construction work by Government Ministries/Agencies, or the sale of goods in accordance with any directions given by the Director of Finance. This includes the purchasing, hiring, leasing or any other contractual means of engaging suppliers in the provision of services” (Central Tenders Board 2000). The relevant Government legislation in place in respect of government procurement is the *Procurement and Stores Regulations, No. 37 of 1997*.

Government Ministries/Departments are responsible for their own procurement of goods or services. The Permanent Secretary of any Government Ministry, as the chief accountant of the Department, has the authority to approve the procurement of goods or services below EC$20,000 in value. Where the value of the good or service is EC$20,000 but does not exceed EC$100,000, the Departmental Tenders Board approval is required. The Departmental Tenders Board must submit a report to the Chairperson of the Central Tenders Board as soon as possible after its meeting. Once the value of the good or service being procured exceeds EC$100,000, the Central Tenders Board has the power to approve the said procurement. The Central Tenders Board is responsible for a significant amount of total government procurement (Central Tenders Board 2000). The Central Tenders Board constitutes the following:

- The Director of Finance or his/her nominee who shall be the Chairperson of the Board;
- A nominee of the Attorney General;
- The Chief Economist, Ministry of Planning or his/her nominee;
- A representative of a Government ministry depending on the subject matter of the tender; and
- A representative of the Saint Lucia Chamber of Commerce, Industry and Agriculture.

There are a wide variety of goods and services being consistently acquired under government procurement. The type of goods and services purchased under government procurement in Saint Lucia ranges from medical supplies to consultancy services; government procurement also includes educational material for schools, construction works, office equipment and furniture, vehicles, heavy-duty machinery such as tractors, machinery and equipment for the Fire Service Department, to
Saint Lucian merchandise imports comprising imports of goods only, over a five year period, 1994 to 1999, were - $814.52 million, $827.35 million, $850.19 million, $900.06 million, $905.1 million, and $929.92 million, respectively. Imports of services over a five year period, 1994 to 1999, were - $264.8 million, $317.5 million, $325.6 million, $325.7 million, $349.0 million, and $359.4 million, respectively (Ministry of Finance and Economic Affairs 2000). Many of the Government of Saint Lucia’s expenditure interventions on a competitive tendering basis, however, are classified as capital expenditure and not recurrent expenditure. The Government’s recurrent expenditure on goods and services over a five year period, 1994 to 1999, were $54.9 million, $56.6 million, $55 million, $54.4 million, $61.6 million, and $71.6 million respectively; as regards government expenditure to GDP ratios, from 1994 to 2000, in respect of current expenditure to GDP and capital expenditure to GDP they were as follows (see Table 1):

Table 1. Government Expenditure to GDP Ratios (1994-2000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Current Exp. to GDP</th>
<th>Capital Exp. to GDP</th>
<th>Total Exp. to GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>18.18%</td>
<td>5.55%</td>
<td>23.73%</td>
</tr>
<tr>
<td>1995</td>
<td>17.49%</td>
<td>10.26%</td>
<td>27.75%</td>
</tr>
<tr>
<td>1996</td>
<td>18.37%</td>
<td>6.74%</td>
<td>25.12%</td>
</tr>
<tr>
<td>1997</td>
<td>19.04%</td>
<td>5.51%</td>
<td>24.55%</td>
</tr>
<tr>
<td>1998</td>
<td>19.67%</td>
<td>5.39%</td>
<td>25.77%</td>
</tr>
<tr>
<td>1999</td>
<td>19.89%</td>
<td>6.55%</td>
<td>26.44%</td>
</tr>
<tr>
<td>2000</td>
<td>18.9%</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>


* Constitutes interest payments on debt and transfer payments as well as other expenditures, e.g. government employee salaries etc. (Given that this is an economic analysis, recurrent expenditure – which constitutes expenditure that also relates to the principle component of debt repayment – is not considered in this context).

The Central Tenders Board maintains that there are no explicit or implicit prohibitions, preference margins, set-asides and offsets currently in the national legislation with respect to the purchase of foreign goods or services from foreign suppliers or discrimination of purchases from such suppliers. Notwithstanding this, which is likely the case only on paper, since 1995 current expenditure to GDP has been precipitously rising reaching a peak of over 19% of GDP in 1999. This has implications for the significant distortion of sub-regional and regional trade especially since regional trade regulations on public purchasing practices in the case of all OECS Member States are absent given that there is currently no sub-regional or regional agreement on government procurement practices and modalities and that regional preferential government procurement policies (including ‘buy national’ policies) affect millions of dollars worth of potential trade each year.
Without such a commonly agreed upon regional code in respect of government procurement there is a greater propensity for discriminatory government procurement practices in the region. There is a view that the expansion of cross jurisdictional trade and entrepreneurialism both within the sub-region and in CARICOM proper is stunted as a result of the practice of *de facto* non-compliance with respect to treatment of foreign suppliers no less favorably than domestic counterparts. This is the case especially where the utilization of offsets and the safeguarding of sensitive sectors crucial to the national economic interest is viewed as necessary. The fact is, both central and sub-national governments in the CARICOM region are big buyers of goods and services, and while much of this purchasing is conducted in an ‘open’ and ‘non-discriminatory’ fashion, preferential government procurement policies – however *ad hoc* – are in place. This works to undermine government policies ‘in the books’ that are explicit about all procurement of goods and services being undertaken and leveraged on the ‘value for money’ concept.

**CARICOM and Government Procurement**

The FTAA notwithstanding, within the Caribbean Community (CARICOM), no disciplines for government procurement practices are in place in any of the Agreements/Protocols, not even in the Single Market and Economy provisions. There currently is an initiative within CARICOM in respect of government procurement further to which the Inter-American Development Bank (IDB) has been approached for funding. This initiative is intended to achieve a number of objectives, paramount amongst which is a regional agreement on government procurement. The agreement is necessary from two standpoints. First, if there is to be any coherency on the part of Member Countries of the Caribbean in respect of a regional government procurement policy such a code is warranted. Intra-regional Caribbean imports/exports of goods have remained at around 8% - 10% of total imports/exports throughout the latter 1990s (Statistics Department 2000). Amongst OECS Member States intra-OECS merchandise imports have been declining as of late; they contracted by 10.6% to EC$80.56 million from 1998 to 1999 (see Appendix 1). It remains very unlikely, then, that this ratio will increase in a robust fashion in the short-term all on its own unless, of course, there is a significant diversification or increase in the volume of the productive base of Member Countries. While a radical shift in production modalities and/or base are unlikely to occur in the short- to medium-term, intra-regional Caribbean imports of goods as a percentage of total imports can be catalyzed by the inclusion of government markets into regional single economy/market disciplines – currently not in place within CARICOM.

A regional government procurement Agreement would work to put in place an enabling environment to facilitate the increased volume of cross-jurisdictional trade. This is because distortions in trade brought on by heterogeneous jurisdictional specific and applicable procurement regimes – with inherent biases - would be circumvented as a result of the weeding out of opaque, often discriminatory practices within domestic government procurement markets. In addition, as highlighted by the case study of Saint Lucia, the public sector in the OECS sub-region plays a major role as a consumer of goods, services and public works and so will be able to save on the costs of contracts, even more so, as a result of a liberalized intra-regional government procurement market with a governing Agreement.
with 'binding' commonly applicable, non-discriminatory and transparent practices and modalities for all signatories. Further to this, the Agreement would also have to reflect robust due process and public accountability provisions with affiliated independent dispute arbiters/review mechanisms, enforceable in the courts (so as to effectively provide relief/remedy to complaints about procurement processes which are not able to be resolved through direct consultation with the procuring agency in the first instance).

A regional government procurement Agreement would have both direct and ancillary benefits for governments with acute fiscal incapacities and resource constraints. Furthermore, the opening of sub-regional and regional government procurement markets to competitive supply would create new business opportunities for enterprises and entrepreneurs; working to boost the flow of intra-regional trade in goods and services. This would have obvious positive spill-overs for the economic union envisaged within the CARICOM framework.

The Liberalization of Government Procurement Frameworks in Retrospect and Prospect

Most-favored-nation (MFN) imperatives have been the harbinger of the multilateral trading system since the establishment of the GATT framework. It has been acknowledged that by extension non-discrimination multilateral obligations should apply to government procurement, with certain exceptions for developing countries. This is the case given the exigencies of the multilateral trading system and the exiguity of developing countries, like those in the OECS sub-region, whose effective participation in the international political economy (IPE) is at a natural disadvantage. The preamble to the WTO Agreement recognizes the need of developing countries to secure a share in the growth in international trade commensurate with the needs of their economic development. This is in keeping with the trade relations between developed and developing countries that historically have been characterized by preferential treatment as reflected in those that provide special protection to developing countries' markets and those that accord special access to the markets of the developed countries. In the former category fall non-reciprocity of tariff negotiations, the broadly-drawn exemption with regard to infant industry protection, and the exception given to developing countries in multilateral trade negotiations from the general prohibition of quantitative import restrictions. The second category comprises the various schemes which developed countries have implemented to provide beneficiary developing countries with duty-free or preferential access to their markets such as the Generalized System of Preferences (GSP) and especially relevant to the OECS countries, and in particular the Windward Islands, the Lomé Conventions replaced by the Cotonou Agreement.

As previously alluded to, an effort to uphold special and differential treatment is also extended within the AGP, itself, in that it compensates for the special circumstances of underdeveloped countries in a liberalizing world. Accession to the AGP is on a voluntary basis and to date no OECS Member State has done so. If the AGP does compensate for disparities inherent in domestic government procurement market suppliers relative to their foreign counterparts why have OECS Member States and indeed developing countries not approached the AGP enthusiastically? The fact remains that

- Upon the conclusion of the Uruguay Round, all but three of the AGP's
signatories were developed countries;¹⁷

- Relatively speaking the AGP was the least well received Code, by WTO signatories, in comparison to other Agreements rendered under the Uruguay Round;

- Negotiations to expand the coverage of the 1979 government procurement Code took place at the Uruguay Round; however, OECS micro-economies government procurement market capacity does not competitively compare to that of larger developing let alone developed countries.

Regardless of special and differential treatment provisions within the AGP, opening once zealously guarded domestic procurement markets to foreign companies to bid for purchasing contracts of government owned entities is still met with considerable resistance and apprehension by developing countries, at large, for obvious supplier competition reasons.¹⁸ For the OECS, however, while this is a concern, accession to the AGP remains a moot consideration as a regional policy on government procurement does not as yet even exist. Indeed, until and unless a regional CARICOM-based government procurement policy (with explicit consideration of ‘best-practices’) and accompanying regional Agreement, that would form a separate CARICOM Protocol all on to its own, is put in place, accession to multilateral-based government procurement disciplines is a non-starter. This is the case for the simple fact that OECS and CARICOM Member Countries must approach multilateral government procurement imperatives as cohorts and in a coherent/unified fashion; without a regional government procurement Agreement this is unlikely to come to pass. Once regional and hemispheric government procurement Agreement-related pre-requisites are finalized, only then will OECS Member States and Member Countries of CARICOM proper be in a position to navigate multilateral government procurement disciplines.

In regards to a regional CARICOM government procurement Agreement, it would have to sanction certain prohibitions, prejudice and procedural flexibility in favor of OECS micro-economies relative to larger CARICOM Member Countries, with respect to exceptions or inclusion within potential contract related thresholds given the miniscule size of their government procurement markets. Secondly, specific bidding formula and associated modalities would have to be devised for OECS micro-economies such that in certain instances, arrangements regarding multiple island bidding for the award of contracts would be allowed. Thirdly, and perhaps most important for OECS micro-economies, given their high degree of reliance on import procurement, they may wish to approach a regional government procurement Agreement in a similar fashion that the AGP has taken, except amplify its ‘bilateral’ parameters and prerogatives. Specifically, as opposed to a broad brush approach to market access for regional suppliers in general, such that granting each regional Agreement signatory treatment as favorable as they would grant to any other country in the application of their trade regimes, OECS governments could, instead, negotiate commitments – ceteris paribus – with individual CARICOM Member Countries of the Agreement. In this way OECS micro-economies may confine access opportunities in certain areas of their government markets to those countries with which they have negotiated similar access; therefore affording them the necessary latitude they would need given their import procurement dependency.
Within CARICOM, government procurement represents a considerable percentage of GDP and as such constitutes a considerable gap in regional trade; it is an imperative that the trade-restrictive effects of this be circumvented if robust cross-jurisdictional trade within the region is to be effectively enabled. It is crucial, then, that regional policymakers work assiduously to incorporate government markets into regional trade disciplines. Building on the success of a regional CARICOM-based government procurement policy and architecture in the near future will facilitate new business opportunities for OECS sub-region enterprises and entrepreneurs, working to boost the flow of intra-sub-regional and regional trade in goods and services and in the long-run hemispheric and trans-continental trade in goods and services.
Endnotes

1 Globalization is a ubiquitous term in the international policy sciences and, as such, has acquired a generalized application in recent years. This, in large part, is the case because it is more so a descriptive rather than analytical concept. It is widely understood as and is synonymous with the increasing and intractable deregulation and integration of cross-border activity amongst various state and non-state actors in the areas of economics, politics and socio-cultural affairs and the harmonization of legal frameworks governing transactions in these areas of activity. Such activity has been consolidated by the current reorganization of legal and social processes in or sociolegal dynamics of the global order and transboundary interactions within that system (Bardouille 2001: 156).

2 The AGP was actually implemented on January 1st, 1996. The AGP falls under the General Agreement on Trade in Services (GATS) as one of the four Annex 4 Plurilateral Trade Agreements. The GATS, with its universally applicable MFN provision, despite some of its many shortcomings, is a milestone in the multilateral free trade process in that it represents the first comprehensive legal framework for and national commitments of signatories to the global liberalization of trade in services with respect to market access and associated service suppliers within those markets. (International services in this context make reference to cross-border transactions on the one hand and establishing a commercial relocation of factors of production on the other). However, while disciplines built into GATS attempted to circumvent new trade barriers the actual reduction of service related trade barriers, already in place, within government/domestic regulations were left for future Rounds of multilateral negotiations. This remains complicated by the fact that transnational services flows are largely intangibles and associated barriers to, as well as discriminatory practices in respect of those flows, by foreign service providers, at national borders are also not explicit as they are in the case of barriers to trade in goods.

3 Coverage of a Party’s obligations is defined in Appendix I under the Agreement in the context of procuring entities and services, including construction services. Each Party’s Appendix I has five Annexes:

- Annex 1 containing central government entities
- Annex 2 containing sub-central government entities
- Annex 3 containing all other entities that procure in accordance with the provisions of the Agreement
- Annex 4 specifying services, whether listed positively or negatively, covered by the Agreement
- Annex 5 specifying covered construction services

The relevant Parties that acceded to the Agreement in 1996 are:

- Canada
- European Community
In respect of thresholds, they are heterogeneous in that they are a function of whether a central or sub-national government is involved and further the type of purchasing entity involved.

Reference is made to Article III(1) of the AGP which states:

National Treatment and Non-discrimination

"With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favorable than:

(a) that accorded to domestic products, services and suppliers; and
(b) that accorded to products, services and suppliers of any other Party” (WTO, 1994: 2).

Refer to the preamble of the text of the AGP that states “recognizing that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers; recognizing that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement” (WTO, 1994: 2).

FTAA Member Countries constitute thirty-four democratic societies in the Americas that collectively have committed themselves to conclude negotiations of the FTAA no later than 2005. Negotiations to create the FTAA were officially launched at the Second Summit of the Americas in Santiago, Chile, in April 1998, following the process initiated at the First Summit held in Miami in December 1994.

Government procurement is the thematic area of one of the Working Groups in the FTAA of a total nine that meet regularly in Miami - the other Working Groups are: Dispute Settlement; Market Access; Investment; Services; Agriculture; Intellectual Property Rights; Subsidies, Antidumping &
Countervailing Duties; Sanitary and Phytosanitary Measures; Competition Policy and Standards & Technical Barriers to Trade. Additionally, three other groups created by the San José Declaration have also convened in Miami on a regular basis: a Consultative Group on Small Economies; a Joint Government-Private Sector Committee of Experts on Electronic Commerce; and a Committee of Government Representatives on the Participation of Civil Society.

9To date, meetings of the Negotiating Group on Government Procurement (NGGP) have taken place as follows:

1998/1999 Meetings:
- First Meeting, Miami, Florida, 22-23 September 1998
- Second Meeting, Miami, Florida, 8-9 February 1999
- Third Meeting, Miami, Florida, 7-9 April 1999
- Fourth Meeting, Miami, Florida, 8-11 June 1999
- Fifth Meeting, Miami, Florida, 23-25 August 1999

2000 Meetings:
- Sixth Meeting, Miami, Florida, 17-18 February 2000
- Seventh Meeting, Miami, Florida, 25-26 May 2000
- Eighth Meeting, Miami, Florida, 21-23 August 2000
- Ninth Meeting, Miami, Florida, 11-13 October 2000
- Tenth Meeting, Miami, Florida, 20-22 November 2000

2001 Meetings (as of October):
- Eleventh Meeting, Panama, 23-25, 2001

10The nine OECS Member States are Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines; Anguilla and British Virgin Islands are Associate Members of OECS.

11Imported goods procured for government use are free of import duty.

12The Departmental Tenders Board performs the functions of the Central Tenders Board when the value of the goods or services does not exceed EC$100,000.

13The Central Tenders Board is appointed to evaluate tenders for the procurement of goods or services; and the sale of public goods. The Board is the regulatory authority responsible for governmental purchases. Three members of the Board including the Chairperson form a quorum and all decisions of the Board are determined by a majority of the members who were present at the commencement of the meeting, including the Chairperson. In respect of Government of St. Lucia tendering modalities, the following is paraphrased from the Procurement and Stores Regulations, No. 37 of 1997.
Tenders may be invited for the procurement or sale of goods or the procurement of services including construction work in accordance with any directions given by the Director of Finance. Notice of any invitation to tender is published in the ‘St. Lucia Gazette’ and at least one local newspaper; and a copy of any such tender is sent to the Chairperson of the Central Tenders Board. Depending on the nature of some projects and the requirements of some funding agencies, the invitation to tender is published in at least one regional and one international newspaper. The tenders are sealed envelopes addressed to the Central Tenders Board under confidential cover. Until the decision regarding the acceptance of a tender has been taken by the Central Tenders Board or a Departmental Tenders Board, tenders must be kept securely locked or otherwise secured by the Secretary, and the contents of any tender shall not be divulged to any person. Tenders are not to be opened before the date and time specified in the notice. Tenders are expected to be received before the closing date and time specified in the notice; tenders received after the closing date and time shall be disallowed except in very exceptional circumstances.

Membership of CARICOM is open to the following countries: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and any other State of the Caribbean Region acceptable to the membership in accordance with Articles 1, 2 and 29 of the ‘Treaty Establishing the Caribbean Community and Common Market’. Article 3 recognizes the Bahamas, Barbados, Guyana, Jamaica and Trinidad & Tobago as ‘More Developed Countries’ and all the others as ‘Less Developed Countries’.

This process entails, among other things, the intra-regional liberalization and integration of all national goods, services and factor markets and, as a result, the creation of a single, seamless market space within CARICOM.

It is hoped that a regional policy on government procurement will be developed as a result of the study, as will the development of a procurement data collection and classification system, and lastly it is hoped that a legal agreement, as a protocol all on its own, can be crafted on regional government procurement modalities/architecture.

During the Millennium Round the only developing countries that were signatories to the AGP were Hong Kong, Israel, Singapore.

Make reference to the preamble of the AGP which states - recognizing the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries and Article V in respect of ‘Special and Differential Treatment for Developing Countries’.
References


FTAA, Treatment of the Differences in Levels of Development and Size of the Economies in Trade and Integration Agreements (FTAA.TNC/w/81- March 31, 2000).


Statistics Department. 2000. Departmental Information Provided by the Statistical Unit. CARICOM Secretariat.

WTO. 1994. The Text of the Agreement on Government Procurement. WTO.
### INTRA-OECS MERCHANDISE IMPORTS

<table>
<thead>
<tr>
<th>Inta-OECS Imports by:</th>
<th>Value (ECS'000)</th>
<th>% Distribution of the Value of Imports</th>
<th>% of Change of the Value of Imports</th>
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<td>OECS (all members)</td>
<td>90,080</td>
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<td>4,652e</td>
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<td>3.5</td>
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<td>12,347e</td>
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<tr>
<td>St. Lucia</td>
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* - estimated

Total merchandise imports from Member States declined by 10.6% to ECS$80.56 million, accounting for 2.1% of total OECS' imports (slightly down from the 2.4% achieved in 1998). The total value of goods imported by OECS Member States from within the hemisphere and trans-Atlantic in 1999 was ECS$3.76 billion.

**Source:** OECS National Statistical Offices
### VALUE OF INTRA-OECS MERCHANDISE IMPORTS

(In thousands of Eastern Caribbean dollars)

<table>
<thead>
<tr>
<th>Imports from</th>
<th>Antigua and Barbuda</th>
<th>Dominica</th>
<th>Grenada</th>
<th>Montserrat</th>
<th>St. Kitts and Nevis</th>
<th>St. Lucia</th>
<th>St. Vincent and the Grenadines</th>
<th>Total Ultra</th>
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**Source:** OECS National Statistical Offices.