

The background of the slide features a close-up, slightly blurred image of the European Union flag, showing the blue field with yellow stars. The flag is waving, and a portion of the white flagpole is visible on the right side.

The proposed EU regulation on the access of third-country goods and services to the EU's internal market in public procurement – T h e I n d u s t r i a l C o n t e x t

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The proposed EU regulation on access of third-country goods and services to the EU internal market in public procurement* –

The Industrial Context

Overview

I. Background

1. The Commission's motivation
2. Some economic facts and figures on EU trade and investment in relation to third countries

II. Overview of the main elements of the proposal

III. Overview of Member States' and industrial positions

IV. Main elements of the proposal in detail:

Assessment from world market oriented industries

V. Summary and recommendations

* Quoted as „the proposal“ in this presentation.

I. Background (cont.)

1. The Commission`s motivation

The Commission regards

- openness of publ. proc. markets of the EU/third countries unbalanced (EU widely open, many third countries closed)
- EU position in negotiations on foreign market access weak

The proposal aims at

- strengthening the EU position in international market access negotiations and
- clarifying the rules governing access by third-country companies, goods and services to the EU procurement market

I. Background (cont.)

2. Some economic facts and figures on EU trade and investment in relation to third countries

Complex but highly important area of EU business, also beyond members of the GPA*:

Example: China

- world's second largest trading nation (after the U.S.)**
- EU's second largest trading partner (after the U.S.)**
- Chinese exportation: EU is largest recipient**
- Chinese importation: EU is largest supplier**
- EU estimated as largest exporter of technology to China**

* Government Procurement Agreement of the World Trade Organization (WTO).

** Source: Information of the Foreign Ministry of Germany regarding China, April 2012,
http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Laenderinfo/China/Wirtschaft_node.html

I. Background (cont.)

- EU goods exports to China (2011): 136 bn Euro (+ 20% on 2010)*
- EU goods imports from China (2011): 292 bn Euro (+ 3% on 2010)*
- China and EU trading more than 1 bn Euro every day**
- Foreign inward investment:
 - EU to China (2011): 17 bn*
 - China to EU (2011): 3 bn*

Further examples: India, Brazil, others

- also important trading and investment partners of EU business

* Source: European Commission, Directorate General for Trade, Trade - China (Nov. 2012), <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/china/>.

** European Commission, Facts and Figures on EU-China trade (Sept. 2012), accessible via the above mentioned website.

I. Background (cont.)

- on the one hand:
still some problems in trade relations with third countries,
in part still
 - restrictions of market access in third countries
 - lack of protection of intellectual property rights
 - pressure for technology transfer
 - in specific area highly problematic low-price-offers of state owned third country bidders in EU publ. proc. cases
(e.g. publ. works contracts in Poland won by Chinese state owned bidders)
- on the other hand:
 - huge opportunities for EU business in third countries
(see figures above!)
 - high impact of bus. with third countries on growth and employment in the EU (e.g. in recovery after financial crisis)

II. Overview of the main elements of the proposal

Three essential elements:

(1) admission of exclusions of tenders

with a more than 50 percent share originating from third countries
on request of public purchasers with approval by the Commission
(Art. 6)

(2) provision on abnormally low tenders

in cases of tenders with a more than 50 percent share originating
from third countries
(information of other bidders if acceptance of such a bid is intended)
(Art. 7)

(3) external procurement investigation instrument of the Commission

- allowing for investigations, consultations and
- adoption of exclusions/sanctions regarding tenders with a more than 50 percent share originating from third countries
on Commission's own initiative application of third parties
(Art. 8 to 10)

III. Overview of Member States' and industrial positions

The positions differ:

- France, Italy and some further Member States/industries in favour of the proposal
- EU construction industries in favour of stronger measures to safeguard reciprocity, in part with some criticism in detail
- Some 15 Member States and many central/northern EU Member States/industries opposed to the proposal

IV. Main elements of the proposal in detail: Assessment from world market oriented industries

1. General comments

- There is reason to reflect on optimizing knowledge and tools regarding fighting market restrictions in third countries and dumping practices in third country tendering in EU proc. mark. (especially in the area of construction industry) –
but:
- Any such tools should not cause new dangers to free trade, fair competition and the EU internal market
- blanket exclusions of foreign suppliers have always led to negative impact on bus. – including the home industries! (recent example: U.S. steel cases!)

IV. Main elements of the proposal in detail: Assessment from world market oriented industries (cont.)

2. Specific comments on the proposal:

ad(1) admission of exclusion of tenders on request of publ. purchaser with approval of the Commission (Art. 6)

- highly problematic:
 - not linked to misconduct of an individual tenderer
 - can easily lead to new trade conflicts and distortions of competition also inside the EU internal market (numerous goods with considerable shares originating from third countries!)
 - references to rules of origin cause new bureaucratic burdens and legal uncertainties
 - danger of even more litigation in EU publ. proc.

IV. Main elements of the proposal in detail: Assessment from world market oriented industries (cont.)

ad(2) provision on abnormally low tenders
(information of other bidders if acceptance of such a bid is intended)

- provisions on abn. low tenders according to publ. proc. rules less problematic than blanket exclusions at least if they concern all tenderers – EU and non-EU – („non-discriminating“)

but:

- most important seems optimized basic provision on abn. low. tenders (in the publ. proc. directives)
- information of other bidders useful in all cases of tenders of state-owned bidders from third countries

IV. Main elements of the proposal in detail: Assessment from world market oriented industries (con.)

ad(3) external procurement investigation instrument
of the Commission including adoption of exclusions/sanctions
(Art. 8 to 10)

- These provisions are critical too, as they
 - also refer to tenders with shares from third countries
 - thus could equally lead to distortions of competition within the EU internal market
 - would equally cause new bureaucratic burdens/
legal uncertainties with a view to the rules of origin
 - are especially problematic regarding sanctions against
GPA members
(in spite of Art. 9 para 2!)

V. Summary and recommendations

1. Summary

➤ The aims of

- strengthening the EU position in market access negotiations and
- clarifying the rules on access of bidders from third countries can be welcomed

but:

➤ A publicly accessible indepth analysis of the present legal situation is missing

➤ The concrete proposal is not advisable as

- it might easily cause new trade conflicts and
- especially the reference to goods with a certain share from third countries causes problems
- the references to the rules of origin would lead to new bureaucratic burdens and legal uncertainties
- it could also easily lead to new distortions of competition and legal conflicts within the EU internal market
- it could significantly hinder a proper functioning of publ. proc. in the EU
- would have a negative impact on EU`s recovery after crisis

V. Summary and recommendations

2. Recommendations

Instead of the present proposal, effective measures with less negative impact should be considered

These might include

- a more effective (non-discriminating) provision on abnormally low tenders
- initiating further anti-dumping instruments in the area of services in the GATS context
- general information of other bidders in case of participation of state-owned bidders
- legal and practical guidance for publ. purchasers and suppliers regarding participation of third country bidders

The ICC is willing to continue the exchange of information and views on these issues with the Commission, the EP and further stakeholders!