On Europe's markets and free market aspirations

Why Europe's new international public procurement instrument will open markets world wide

By Karel De Gucht and Michel Barnier

How do you open markets world wide, to the benefit of European consumers, companies and jobs?

Europe's answer to that question is equally short: *we lead by example*. We are the world's largest single market, and our foreign trade policy is actively focused on further liberalising trade through both multilateral and bilateral negotiations.

But what happens if others don't follow our example? What incentives do our partners have to open their markets to our businesses when their own businesses have full access to ours? As negotiators, that's a question to which there are no short and simple answers.

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Take public procurement, a sector of major economic importance. In the EU, purchases by government correspond to around 19% of GDP and companies whose business directly depends on procurement represent over 30 million jobs. It is also a booming sector in emerging economies and one in which European companies are very competitive.

The European public procurement sector is the most open in the world. Outside contractors are able, welcome even, to compete on our market, subject to the same conditions as European companies.

Between the EUs 27 member states procurement markets are also liberalised. And rightly so: this has driven down prices, increased the competitiveness of our companies and offered more value for money to authorities and tax payers across Europe.

And yet, we are far ahead of other countries in this approach. Other economies, though they enjoy access to the EU market, are far more reluctant to open their own markets to the EU. While some €352 billion of European public procurement is included in the WTO agreement on government procurement (GPA) and therefore open to bidders from member countries of the GPA, the value of American procurement offered to foreign bidders is just €178 billion, for Japan that figure is only €27 billion. China and India have not yet committed any part of their fast growing procurement markets and currently, EU business wins only a fraction of the Chinese and Indian procurement contracts.

Whatever the overall economic merits and flaws of this situation, this is increasingly hard to explain to our businesses, who see foreign competitors actively engaging on our markets and are barred from doing the same elsewhere.

This undermines the legitimacy of our open markets. It hampers the pro-active trade policy we want to pursue.

At the end of last year, the EU was at the forefront of efforts to renegotiate the WTO Government Procurement Agreement. We were happy to come to a new deal among the 15 WTO members that are party to the agreement to improve the disciplines for this key sector of the economy and expand the market access coverage with up to 100 billion euros a year. There can be no doubt about our free market credentials. But we cannot accept imbalances between those that push for market opening and those that refuse to do so to grow ever larger.

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For that reason, we have devised an instrument that will, if approved by EU Member States and the European Parliament, allow us to tackle imbalances in international public procurement markets. Through this procedure, contracting authorities in Member States may exclude bidders for large contracts who use goods and services mainly originating in a non-EU country that upholds a high degree of closedness of their procurement markets. They will need a green light from the European Commission to do so, which will only be given if these goods and services are not subject to any agreement the EU has signed up to, or part of serious negotiations on such an agreement. And we have built in a *de-minimis* threshold below which third country bidders cannot be discriminated against so that the new regime puts pressure on foreign companies and governments without leading to unnecessary bureaucracy.

In case of serious and repeated discrimination, the Commission may start consultations with the government in question and, if that government continues to bar European companies from its market, the Commission may close a certain sector of the procurement market of the EU as a whole. Naturally, if the EU has taken a legal commitment to the third country in the WTO GPA or a free trade agreement to keep its market open, it will fully honour its commitments.

The measure is designed to be used as a carrot, rather than as a stick, but we should not be afraid to brandish it if need be.

In this way we are confident to strengthen our negotiating position when discussing access to third country public procurement markets. Only in this way can we make foreign companies aware that they cannot continue to enjoy the benefits and the opportunities offered by our open markets while their home governments continue to close theirs.

Our proposal will also clarify the rules of access to the EU's public procurement market, and in doing so bring more legal certainty for both international suppliers and public entities that need goods or services. It will confirm that the EU market is basically open, and that we want to keep it that way.

But the door of free trade has to open both ways – otherwise public demands to shut it altogether will well gather strength.