

Transparency Disciplines in the WTO
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I am delighted to be here to introduce Ekrem Sarper, Program Manager, Transparency, of the Coalition of Services Industries. I think we have cause to celebrate what I hope will be a new chapter in the fight for transparency and good governance and against corruption. Ten years after the conclusion of the OECD Anticorruption Treaty, we are poised to make a breakthrough as significant as that which is transforming our global healthcare systems, that is, the move from the late treatment of the disease of corruption to the conditions needed for early health of political systems, namely transparency and accountable regulatory regimes.

The history of the WTO is really a history of transparency. What the GATT negotiators realized in 1947 was that by creating transparency around broader measures used to control trade, you could focus attention on the cost such barriers impose on our economies and negotiate them away. The WTO as an organization has done more than any other institution to bring the rule of law to global commercial practices¹ and therefore has a critical role to play in this chapter of the fight, provided that the members of the WTO have the vision and determination to put “transparency” in its proper role alongside the concepts of “most favored nation” and “national treatment” as the fundamental principles of our global trading system.

The WTO Ministerial in Singapore in December 1996 officially put transparency and anti-corruption on the agenda of the WTO. Indeed, at that time there were some who argued that the most effective means of combating corruption would be to use trade sanctions, like our Section 301,

¹ For a critical view of the WTO as an institution that has ignored its role in “substantially increasing trade related corruption.” see Peter Eigen, “Controlling Corruption: A Key to Development-Oriented Trade” Carnegie Endowment TED brief number 4, November 26, 2002.

to retaliate against countries that engaged in, or enabled, corruption. I think that misconceived the forces that have been most instrumental in pressuring governments to adopt measures for transparency. Externally, the forces of global capital have been demanding greater accountability and transparency in decisionmaking as a condition for investment flows. Internally, the forces of democratic change have been transforming political regimes, eliminating single party rule in many countries, and bringing into power regimes whose campaigns were based on accountability and transparency.

I argued at the time that a better approach would be to follow a series of fairly simple prescriptions:

- Level up, not down: Reject the view advanced by some international institutions to ignore or tolerate corruption. Those institutions argued corruption helped to mitigate the impact of over-regulation. Recognize that corruption is one of the most pernicious barriers to economic development.
- Stop subsidizing bribery and start incentivizing ethical practices: Terminate tax exemptions and other government benefits to transactions involving bribery and require no-bribery pledges as a condition for access to government largess.
- Get the bureaucrats out of business: The greatest opportunities for bribes tend to be where governments are actually running businesses through state controlled enterprises and over-regulation.

Significant progress has been made in each of these fronts. The OECD set a global standard criminalizing foreign bribery just as domestic bribery is criminalized in every country in the world. Germany and Japan have modified the laws that made bribes deductible from taxes. Privatization has, in many cases, taken governments out of running businesses and put them in their proper role as regulators.

Quite properly, this meeting is focused on the challenge of creating frameworks for good regulation – the core of good governance in a modern economy. We have learned a lot about the challenge of building support for transparency from the efforts over the last eight years to negotiate a Procurement Transparency Agreement. Ultimately, that effort failed and the best we can say is that it is still on the agenda, but not for anytime soon. However, I think only by understanding the lessons of this effort can we make the progress we are seeking.

First, governments are very reluctant to tackle corruption head on. Governments do not like to treat diseases that they would prefer to pretend they do not have. In fairness, they need help in identifying and adopting global best practices for transparency. In the end, countries must see their interests served by the commitments they accept.

Neither the United States nor the EU demonstrated the kind of leadership that would be commensurate with their rhetorical commitment to transparency and anti-corruption. The United States refused to offer the carrot Congress designed to encourage procurement transparency.² Pascal Lamy insisted on linking procurement transparency with the Singapore issues and the EU was always there to block progress on an agreement³

Second, pressure from civil society can be effective only if civil society is not at war with itself. Too many NGOs have seen globalization, corporations, market disciplines and the rule of law embodied in the WTO as part of the problem and not part of the solution.

Most importantly, we need to focus on the tools and disciplines that will build healthy regulatory regimes, regimes built on transparency, accountability, public access and participation in decisionmakingdecision-making. In this context, I think it is both interesting and ironic that Pascal Lamy in his comments upon his retirement said if he has a regret it is the limited progress that has been made on issues like transparency and corruption in multilateral institutions other than the WTO.⁴

We have an opportunity to avoid that same mistake and that is what Ekrem's initiative is all about. He and his colleagues at CSI have developed a practical tool to focus on best practices and the benefits of transparent regulatory regimes.⁵ I urge you to listen and to join us in improving this toolkit and making it available to all those public officials who would like to

² U.S. law (19 USC 2512(b), Section 302(b) – see attached) permits the President to open U.S. government procurement to suppliers from a foreign country provided that the country in question has (a) “agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the [WTO government procurement] agreement” and (b) “maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement.

³ For the reasons why the WTO is not suited as an institution to tackle corruption, see Pascal Lamy, “Curbing Corruption in a Globalized World; A Tribute to Peter Eigen”, Readers Digest Event, January 8, 2004. Available on <http://europa.eu.int>.

⁴ Pascal Lamy, “My Last Day as EU Trade Commissioner,” EU Trade News, November 19, 2004.

⁵ See www.ogproject.org.

strengthen their societies through transparency and political accountability – the best antibody against the disease of corruption.