Government Procurement Regulation in the WTO

Semester: Fall semester- 2023
ECTS: 2
Lecturer: Dr. Rika Koch
Dates: Four Thursdays in October and November (19.10, 2.11, 16.11, 30.11), 9.15 – 11.45 hrs
Room: Silva Casa Auditorium, World Trade Institute, Hallerstrasse 6, 3012 Bern.

Audience:
- Master of Advanced Studies of International Law and Economics (MILE) Students – Compulsory
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe - Compulsory
- Master Level students, University of Bern - Elective
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe – Elective

Course Overview

| International Government Procurement Law |
|-----------------|---|---|-----|---|
| Class | Date | Day | Time | Lecturer | Topic |
| 1 | 19.10 | Thursday | 9.15 – 11.45 | 2.5 | Rika Koch | Introduction to international government procurement regulation in the WTO |
| 2 | 2.11 | Thursday | 9.15 – 11.45 | 2.5 | Rika Koch | Government procurement principles, Sustainable Government Procurement (pt. I) |
| 3 | 16.11 | Thursday | 9.15 – 11.45 | 2.5 | Rika Koch | Sustainable Government Procurement (pt. II) |
| 4 | 30.11 | Thursday | 9.15 – 11.45 | 2.5 | Rika Koch and guest lecturers | Developments and contemporary issues in government procurement in the WTO |
Course Description

This course provides an introduction to the international law governing government procurement (also referred to as “public procurement”). Students will gain an in-depth understanding of what government procurement is and how it is regulated within the World Trade Organisation (WTO) through the Government Procurement Agreement (GPA). The course will focus on contemporary issues that surround international government procurement, e.g. the strategic use of government procurement to advance sustainability goals. Finally, students will familiarize themselves with current developments in government procurement within the WTO, on a national level and through Free Trade Agreements (FTA).

Learning Outcomes

At the end of the course, students will know what government procurement is and why it is a relevant topic in international trade. They will gain an understanding of what plurilateral regulation entails, what the main government principles and rules are according to the WTO’s GPA. They will also learn how these principles can be reconciled with other policy objectives in government procurement. Of particular emphasis will be the objectives of environmental and social sustainability. Finally, students will be able to assess government procurement disputes and to develop arguments as a complaining or a responding party before the WTO adjudicatory bodies.

Lecturer

Rika Koch

Rika Koch is a assistant professor and co-leader of the public procurement research group at the Bernese University of Applied Science (BFH). In addition, she is a lecturer in WTO Law and a guest lecturer on Swiss foreign economic law at the Universities of Zurich and Bern. Before her current role, she served as a legal counsel in the Swiss Federal Administration, where she advised on a number of legal issues, especially public procurement projects.

She studied political science at the University of Zurich, Law at the University of Bern and did her PHD on green government procurement at the University of Zurich with a research stay at the University of Nottingham (UK), funded by the Swiss National Foundation SNF.

In her research she focuses on public procurement law at the inersection of environmental and social law, but also on questions surrounding public procurement law and digitalization, such as data protection and artificial intelligence (AI).
SESSION 1: 19TH OF OCTOBER 2023

Subject
Introduction to international government procurement regulation in the WTO

Topics
1. What is government procurement and why does it matter?
2. Government procurement exception in multilateral WTO law (Article III:8 of the GATT).
3. Plurilateral government procurement regulation through the GPA?
4. How does the GPA work, what are its main principles?
5. Why is corruption and collusion an issue in government procurement?

Compulsory Reading Material

Optional Reading Material
SESSION 2: 2ND NOVEMBER 2023

Subject
Sustainable Government Procurement pt. I: The strategic use of government procurement to foster environmental policy goals

Topics
1. Government Procurement Principles pt. II
2. Strategic procurement: How can governments use procurement as a strategic policy tool to foster environmental goals?
3. How can ‘green government procurement’ be reconciled with the GPA?
   o Technical Specifications
   o Award Criteria
   o Process and Production Methods (PPM)
   o Justification Reasons
4. Cases

Compulsory Reading Material


Optional Reading Material
• Koch, Rika (2020), Green Public Procurement under WTO Law, Springer, Chapters 6.4 – 6.9 .
SESSION 3: 16TH NOVEMBER 2023

Subject
Sustainable Government Procurement pt. II: The strategic use of government procurement to foster labour standards and other sustainability goals

Topics
1. Why are labor standards and other social concerns relevant in government procurement?
2. Does the GPA leave room for social concerns and if so, which ones?
   - labor standards
   - gender-equality
   - support for minority groups and Small and Medium Enterprises (SME)
3. National examples of green and social government procurement: How do GPA-states implement sustainability in their government procurement laws and practices?
4. Cases

Compulsory Reading Material

Optional Reading
SESSION 4: 30TH NOVEMBER 2023

Subject
Outlook: Developments in international government procurement law and policies in the WTO and beyond

Guest Lecturers:
- Judge Marc Steiner (Federal Administrative Court)
- Reto Malacrida (WTO)

Topics
1. Procurement in times of Covid-19: How resistant to crisis was (and is) international government procurement?
2. Current developments in the GPA:
   - Accession: What are the main obstacles preventing other (developing) member states from the WTO from joining the GPA?
   - “WTO+”: Government procurement chapters in Free Trade Agreements (FTA)
3. Impact of the GPA on its signatory states: The case of Switzerland

Compulsory Reading Material

Optional Reading Material
Exams and Grades

- **Short written submission**: The examination for this course will consist of a short written submission (approx. 3 pages), where students are required to **analyse a public procurement dispute for its consistency with WTO law**, arguing from either the complainant's or the respondent's perspective. The dispute will be allocated to the students by the lecturer.

Readings

All readings are available in the following link: