

WTI Brown Bag Seminar



Title

The revised WTO Government Procurement Agreement and its impact on sustainable procurement: Swiss and EU perspectives

Speaker

Mr. Marc Steiner, Judge to the Swiss Federal Administrative Court

When

Thursday
May 24, 2018
12:30-13:30

Where

Silva Casa Auditorium
World Trade Institute
Hallerstrasse 6, 3012 Bern

Abstract

The WTO Government Procurement Agreement (GPA) is considered to be the most relevant international legal framework when assessing public procurement practice (not only of industrial countries). The revised "sustainable" GPA ("green" technical specifications and award criteria) entered into force April 2014. There is an argument, according to which there is a wide (or a wider) margin for purchasing public entities to consider the production process in the context of the GPA compared to classical WTO law. This might not be evident at first glance from the perspective of a WTO lawyer used to the PPM debate, but not used to the public procurement context. The explanation is that there is a significant difference between an import ban and public procurement. Regulatory behaviour of public entities leads to a limitation of the margin wherein (private) consumer choice can be exercised, whereas government procurement implies choices of the public authorities acting as consumers themselves. Art. 68 of the new directive 2014/24/EU even allows to integrate environmental externalities when assessing lifecycle-cost. The draft version of a new Swiss public procurement regulation does include sustainability as a regulation goal ("Gesetzeszweck").

Biography of the speaker

Marc Steiner holds a Master of Law from the University of Basel and is admitted to the bar. He has delivered an expertise on Green Public Procurement in Switzerland (2006) and issued a working paper on how to integrate social aspects in public procurement processes (2009, 3rd version 2015). Marc Steiner has been appointed as a Judge to the Swiss Federal Administrative Court in 2007 (2nd Division, primarily in charge of economic matters including public procurement and competition). His comparative approach has been stimulated especially during two internships at the ECJ (1996 and 2008). Furthermore, Marc Steiner was invited to act as an expert during the public hearing of the Internal Market and Consumer Protection Committee of the European Parliament on "Modernisation of Public Procurement" (title of the presentation: "Sustainable Public Procurement – Legal Background"; 24 May 2011). In September 2015 he was invited as a speaker to the WTO GPA Symposium (Session 3: Ensuring the continuing relevance of the GPA: the New Work Programmes of the GPA Committee and related policy considerations) and in February 2017 to the WTO Symposium on Sustainable Procurement (https://www.wto.org/english/tratop_e/gproc_e/gp_symp_22feb17_e.htm).