

# Introduction

One of the challenges facing those who are negotiating trade agreements affecting government procurement is the confusion which exists concerning terminology and the scope of the issues being negotiated. As a result, the first task of this report is to provide a clear and concise explanation of some of the issues and terms used in the context of public procurement regulation. This is not a purely academic exercise; it is also important because the primary task of the report is to assist the negotiating parties. They need to understand fully the benefits and costs of a transparent procurement system and, separately, the effect of trade agreements containing procurement rules on their economies. It should be emphasised at the outset that when we talk of a procurement 'system', we are referring to whatever laws, regulations, decisions, procedures and practices are in place in any given country to regulate public procurement. The precise legal and regulatory framework will differ from country to country so that the term 'system' will be used as shorthand to cover all eventualities.

The key point of departure is understanding that the benefits of a sound domestic procurement system (in other terms, a 'transparent' procurement system) arise independently of any market access conditions imposed by or granted to bidders from third countries. There are two separate issues here: first, the creation of a sound domestic system; and second, where it is desired, the opening up on a reciprocal basis of the domestic procurement market.

In part, the confusion arises in the course of international trade negotiations because a transparent domestic procurement system is seen as a precondition of membership of a regional or international organisation which then imposes market access conditions. Thus discussions relating to membership of such an organisation will address the questions of transparency and market access more or less simultaneously.<sup>1</sup> Market access cannot be assured in the absence of a sound domestic procurement system in the country seeking membership. But these issues need to be understood as *separate* and *sequential*. The existence of a satisfactory national procurement system is a prerequisite, but it is also stand-alone and could be all that is required. The benefits of such a system for the country in question are significant and, from a country's perspective, it may be that no more is needed. Where that country participates in regional or international economic organisations, it is possible (but not inevitable) that it will be obliged to ensure access to its procurement markets for bidders from other members of that organisation in return for the right of its own bidders to have the same access to the markets of the other members. This condition of market access comes after and in addition to its own domestic procurement system and may also bring additional benefits in terms of increased competition.

Guaranteed market access may well have an effect on the make-up of the domestic procurement market, on the identity of the bidders and on existing trade flows. These

may be termed the ‘trade effects’ of the international procurement regulation since it may be the market access conditions of the agreement which produce these effects. All known international agreements concerning procurement are based on reciprocal market access arrangements, i.e. the bidders from one of the members will have access to the markets of the other members to the extent that their own country grants similar access. The trade effects will also, therefore, potentially flow both ways. Bidders from one member country will face increased competition from bidders from other member countries, but they themselves will also be able to compete in the procurement markets of those countries. The extent to which they are able to do this (in terms of financial and technical capacity) will also determine, in part, whether the overall trade effects are positive or negative for the country in question. This will also depend on the economy as a whole and on the import/export flows.

Assessing the potential trade effects will depend on the availability of information relating to these and other issues. The effects will inevitably be country specific and must be seen in context. It is not possible to conduct such an exercise in the abstract; for the purposes of this report, four countries have been identified for preliminary examination: Dominica, Nigeria, Samoa and Tanzania. As will be seen from the report and its annexes (which contain the country-specific reports), considerably more information is needed before the likely trade effects can be gauged with any precision. The report does, however, indicate what further information is needed to identify the likely trade effects in any given country.

The policy options open to ACP countries negotiating access to trade agreements which contain procurement provisions will, in part, be determined by the potential trade effects of those agreements on the domestic procurement market. While we can point to the likely general trade effects of membership of such agreements and, therefore, of the general policy options open to the negotiating parties, the best options will need to be based on the potential trade effects likely to be encountered in a specific country. Determining those likely trade effects will in turn depend on having sufficient knowledge of the economy in question.

This report is therefore divided into five parts, which address each of these issues in turn:

1. Definitions and clarifications
2. Transparent government procurement
3. Market access
4. Potential trade effects
5. Policy options

Since the report is intended as a tool for a variety of readers in the ACP countries, some of whom will be involved in the negotiating process, an attempt is made to be as comprehensive as possible, making appropriate reference to the relevant literature, while avoiding as far as possible overly technical terms and language.