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Definitions and Clarifications

Before turning to the substance of the report, it is important to shed some light on the terminology used in the context of procurement and international trade. The terminology is not standard and many people use terms differently. Whatever terms are used, however, it is critical to understand what is meant by them in order to appreciate the significance of what is being discussed or negotiated. The following terms are used in this report.

1.1 Transparency

The word 'transparency' is widely misused, but it is mostly used as a shortcut to refer to a transparent domestic legal framework for procurement. In this case 'transparent' implies that something is 'good' or 'acceptable'. It is frequently used in the expression 'transparent government procurement' (TGP). As a word, it simply means that something it not opaque, i.e. that it is possible to see through it, but that does not provide an adequate explanation of what is meant by the expression.

In the procurement context, it may be useful to consider the peculiarities of the government purchaser so that the critical role played by the concept of transparency can be appreciated. The government is not an individual,[2] but a collectivity of individuals who generally hold hierarchical positions within that collectivity. The relationship between these individuals is governed by the institutional arrangements of government. In general terms, it may be that the purchasing policy of the government is set by the elected government,[3] but the execution of that policy (i.e. the purchases) is carried out by the bureaucracy (civil service), operating as agents of the government.[4] From that perspective, the actions of the agent may be invisible (opaque) since, unless there is any mechanism to hold the procurement agent accountable, their actions will be out of sight or may be concealed. Indeed, the agent controls the flow of information concerning the subject of the purchase, the procedures, the bidders and the result of the procurement.[5]

As far as the government/public purchaser is concerned, its interest will be to ensure that it knows what its agent does in terms of procurement in order to satisfy itself that the agent is acting in the interests of his employer, is achieving the goals set by his employer, does not make a personal benefit from any procurement transaction and otherwise conducts the procedure in an efficient manner. The personal interest of the procurement agent may well be something else.[6] Transparency is used as a means of controlling the procurement agent so that the principal can monitor[7] the procurement actions and decisions of the agent and make sure that he is indeed acting in the real interests of the government and, by extension, the country. It is thus a tool used

by the government to guarantee knowledge of the facts for the purposes of verification and administrative control.

The procurement officer/agent also stands at a disadvantage in respect of the tenderers, because it is the tenderers that possess the relevant information both about market conditions and about their own products and costs. The transparency provided by advertising provides the agent with the tool they need to conduct the search. In this respect, the agent can use (and the government can make sure they use) advertising as a means of collecting (and recording) price and product information allowing them to make the best purchasing decision, untainted by their own personal preferences.

The transparency of the competitive process itself provides the tenderers with an incentive to act as 'honest brokers' and to disclose to the agent, through appropriate tenders, the information which is otherwise unknown to them, i.e. competition forces bidders to offer their best prices[8] since, where competition exists, this is the only way to be successful. The tenderers themselves need to have confidence in the procurement system, notably in the commitment of the purchaser/agent to follow the stated procedures (to act fairly). The transparency afforded by public tender opening, availability of records and notification, and explanation of results ensure that tenderers will have such confidence. In addition, tenderers require confidence in the implementation of the procedures and in their ability to enforce them in the event of deviation. This, in turn, requires transparent enforcement mechanisms.

Transparency also has a role to play at the level of international organisations, but the substance of the provisions does not change; only the objective changes. For international regulators, transparency is a mechanism used to ensure that the benefits of competition are made available to all those tenderers who are entitled to benefit under the international system at issue. The imposition of transparent procedures, the advance setting and notification of selection and award criteria, and the requirement to define specifications in advance by reference, where possible, to recognised standards are mechanisms used to avoid the possibility of overt discrimination. The transparency tools used, however, will be the same. It is the access conditions and thus the objective pursued through the use of the transparency tool that will differ.

The term transparency has only been used in a formal way in a few forums. The WTO has, since the Singapore Ministerial Declaration of 1996, been seeking to negotiate an agreement on transparency. This is now explicitly made separate from the market access negotiations also being conducted at WTO level. A transparency principle has also emerged from the work of the Asia-Pacific Economic Cooperation (APEC) Government Procurement Experts Group and figures among the list of the APEC non-binding principles on government procurement. In the European Union, transparency has recently emerged as a new fundamental principle of the Treaty through a series of judgments delivered by the European Court of Justice.[9]

Apart from this latter EU principle which is rather specific, these principles of transparency provide examples of how the principle may be applied and implemented in practice in a regional or international context. The core transparency tools envis-

aged under the auspices of the WTO and APEC are broadly similar and reflect the practice which has emerged over time in all developed procurement systems. The wheel has not been re-invented. These principles have emerged over many years in a domestic context; they are not the product of international agreements. The principles may conveniently be reduced to five core mechanisms: publication of the legal framework; publication of procurement opportunities; procedural transparency; transparency of contract awards; and transparent dispute settlement. Seen in this way, the transparency principles conveniently cover most fundamental aspects of a procurement system. The degree of transparency is thus a means of measuring the state of the procurement system as a whole and, for the most part, this is the way in which it has been used.

As a result of the above and for the purposes of this report we will use the term transparency or TGP to refer to the transparency of the legal framework for procurement within a given country. The level of transparency will be measured against the five core transparency tools. These will be used to measure the degree of transparency achieved in the focus countries – Dominica, Nigeria, Samoa and Tanzania.

We repeat here, however, that the issue of TGP is independent of the question of market access.

1.2 Domestic and international competition

It is also important to recognise that international trade or competition is not the result of any international agreement on market access. It exists in any event. Regardless of the existence of a global economy (whether we like it or not) which has facilitated commercial exchanges between distant countries, not all countries can produce all they need or want; they are not self-sufficient. Whenever a country needs to purchase something it does not produce or manufacture, it is obliged to seek providers from outside its borders and to import its requirements. That is international trade and it is likely to be prevalent in some developing countries which do not have the capacity to manufacture high-end products or carry out technologically complex projects. Where the country wishes to benefit from the best international prices, it would be advised to ensure that those foreign suppliers compete to provide its requirements on the best terms. That is international competition. This has nothing to do with market access granted in the context of an international agreement (see below), but with the operation of the theory of comparative advantage (section 1.5).

In practice, domestic procurement rules will generally simply require some form of competition to take place. For the most part, it makes no difference whether or not the products and/or the suppliers are domestic or foreign. If there are no domestic suppliers or bidders, governments will clearly accept/open their procurement to foreign bidders or suppliers if they want to meet the needs of their citizens. They are obliged to buy foreign products. The procurement rules that apply are generally the same.[10] It is extremely rare to see a national system which excludes foreign bidders or competition.[11]

That is not to say that governments will not attempt to condition foreign participation in some way or to protect domestic industry where there is some domestic production (see 1.4 below), but it is unrealistic to assume that there is no international trade or competition in domestic procurement markets already. Where a country needs foreign competition, it exists and it is welcome.

The question is what happens when it considers that it *may*[12] not need it. Where there is a domestic supply base, some countries may prefer domestic suppliers rather than foreign suppliers. Possibly the starkest example of how this may come about is found in the Indian federal procurement rules contained in the general financial rules (GFR), where foreign bids may be entertained only when those goods are not available in the country.[13] In most cases, however, the mechanism used in the procurement context[14] is to apply some form of domestic preference. These measures are designed to reduce the impact of foreign competition on domestic production by placing obstacles in the way of foreign goods and services.

When it comes to international economic organisations, therefore, the challenge is not to introduce international competition (which exists anyway when required), but to reduce or eradicate those obstacles which may have been created by national governments to protect domestic industry in situations where there is both domestic and international supply. This becomes an issue of market access involving the removal of obstacles with a view to creating equal access opportunities for national and foreign bidders alike, eliminating discrimination in favour of national and between foreign suppliers (usually referred to as the principles of national treatment and most favoured nation).

1.3 Market access

Woolcock[15] makes a distinction between framework rules, which we define here generally as transparency rules or TGP, and liberalisation. By liberalisation he means the bilateral and multilateral commitments made by the members of a trade agreement involving procurement and based on reciprocity. He also recognises, however, that improved transparency is also liberalising in the sense that it enhances competition and procurement results (i.e. transparency rules are necessary to render effective the non-discrimination/liberalising provisions). In order to avoid the confusion explained in the introduction between improved procurement rules and 'liberalisation', we prefer the term 'market access', where Woolcock uses 'liberalisation'.

We use the term because it conveniently and rather precisely describes the intention of, for example, the commitments undertaken by the WTO members who have joined the plurilateral GPA and which are reflected in the annexes to the GPA. While the text of the GPA describes the commitments with regard to the legal framework (the transparency provisions), the annexes set out in detailed terms the market access conditions which apply between the members, e.g. which contracts are covered and not (scope and value), which procuring entities are obliged to grant access, together

with any exemptions or reciprocity conditions which apply between some or all of the members.

As stated in the introduction, the quality of the national legal or regulatory framework (its level of transparency) is in most cases a prerequisite for membership of an economic organisation dealing with procurement. Where it is not satisfactory, it must be improved. This can have two different but potentially dual purposes. From the country's perspective, it has the purpose of improving the national procurement system to deliver better quality, and quicker and cheaper procurement results. It may also have the purpose of enabling the country to seek membership of a regional or international economic organisation. From the perspective of the regional or international economic organisation, the purpose will be primarily to assist the putative member in attaining an acceptable level of TGP to enable it to join, thus paving the way for reciprocal market access.

Once this is achieved, then the parties will be able to negotiate market access conditions concerning the extent to which they will offer reciprocal access for the benefit of their bidders to the procurement markets of each other. This is a distinct process from improving transparency.

Most trade agreements[16] will follow the same path or involve the same issues: they will deal with the quality (transparency) of the procurement framework and the degree to which bidders from all parties will be able to obtain access to each other's procurement markets.

1.4 Domestic preference

We have already indicated that foreign competition will exist in all countries to a greater or lesser degree. Where international competition is significant, countries will often have in place measures which seek in some way to protect domestic industry. These measures include local content rules or rules of origin which establish a preference for locally produced goods; price preferences for local goods and labour; requirements to use local labour either imposed on the main contractor or his sub-contractors; the set-aside of contracts or of a percentage of contracts by means of quota for the benefit of regional or local firms or of privileged firms such as small businesses or those which are owned and operated by minority groups or disadvantaged groups;[17] preferences, other than price preferences, which operate to favour specific groups in the event of the submission of equivalent bids; the possibility given to privileged groups of matching what is otherwise the most competitively priced bid (often referred to as a 'purchase' preference) and any other measure whose object or effect is to prefer a certain category of firm. These preferences may be applied at different stages of the procurement process and will not always appear at the bidding stage. They may be applied, for example, as conditions of eligibility, or statutory or contract compliance, during the selection process or at the stage of the award of the contract.

While it is frequent to see such preference measures, experience shows that govern-

ments do not, on the whole, have a well-articulated economic justification for preference policies, i.e. they do not always have a well thought out reason for applying them. The application of domestic preferences may result in immediate visible effects, e.g. increased prices obtained for domestic goods or larger numbers of contracts awarded to local suppliers and fewer to foreign suppliers, but little thought is given to any consequential welfare effects on the actual benefit supposedly achieved for domestic industry.

One argument is that preferences can be effective in the case of an 'infant industry' that needs assistance to enable its development to viable commercial performance. If there was substance in such a justification, a rational approach would dictate that the protection involved (akin to a tariff but more limited in application) would be reduced as the industry developed. That rarely happens. Justification for preference is more likely to be about maintaining jobs (an unlikely outcome in many instances) or ensuring that national producers obtain a 'fair share' of government business. This is not the same thing as increasing economic welfare. It is more obviously related to social or political objectives, as in the USA with the residual Buy American Act and various special set-aside or preferential schemes for small and disadvantaged suppliers. Another common theme is that preference margins are needed because all other countries have them, whether explicitly or not. The Tanzanian preference, discussed below in the context of financial procurement, has shades of such an argument. Whatever the motivation, real or imagined, there is no doubt that they are used in practice.

One preliminary point to bear in mind is that if the intention is to seek to protect domestic industry, then the preference will need to apply to goods of domestic origin or to national labour. The practice in some countries of providing a preference to national companies or individuals has nothing to do with protecting national industries. It is a mechanism for financially benefiting individuals, usually strong interest groups within the country. A preference for a national company does not necessarily guarantee or even encourage the use of domestic goods or labour. A national company can sell on imported goods or use foreign labour as easily as anyone else. It merely provides the company with guaranteed government income. To be effective in benefiting domestic industry (a legitimate objective), any domestic preference would need to attach to the product[18] or labour in question.

In the context of the general country assessments carried out as part of this report, it would seem that Tanzania is following this path. Article 25 of the procurement guidelines appear to allow procuring entities, when procuring goods, works or services by means of international and national competitive tendering, to grant a margin of preference for the benefit of tenderers for certain goods manufactured, mined, extracted or grown in Tanzania, or works by Tanzanian contractors, provided that this is clearly stated in the tender documents. The guidelines go on to say that suppliers contractors, service providers or buyers of assets who are citizens of Tanzania shall be eligible to be granted a margin of preference provided they meet the nationality criteria set out in section 49 of the Public Procurement Act and are registered. When foreign suppliers participate in tenders (for goods, services or works contracts) there is a

maximum margin of price preference that can be granted. Further, section 49 of the Act provides that where financial resources are exclusively provided by a Tanzanian public body, each procurement of works goods or services that has a value not exceeding a threshold specified in the regulations shall be reserved exclusively for local persons or firms. Tanzania thus appears to adopt a double obstacle: a preference for national products and labour supplied by national firms or individuals. This is re-enforced by a set-aside provision (i.e. the practice of allowing only domestic bidders or a section of domestic bidders to bid), although this only applies to domestically funded portions of a contract where the procurement is otherwise financed by donors which apply tied aid practices. In this way, it may be seen as no more than a *quid pro quo*.

Having made this preliminary point, there is some doubt as to the efficacy of domestic preferences at all.[19] In this context, we will discuss only price preferences, perhaps the most common form of domestic preference used in a procurement context. Set-asides are also frequent, of course, and are also used as exceptions to international agreements such as the GPA. For example, the USA maintains the infamous set-aside for minority-owned companies. South Africa also uses set-asides to provide a preference for companies owned by people disadvantaged by the previous apartheid regime. As mentioned above, Tanzania also employs set-asides as a form of *quid pro quo* in the case of procurement financed by donors. Nonetheless, price preferences as the most obvious form of protection have attracted the most attention and there is thus more economic literature available for analysis.

Price preferences have been used extensively in the context of public procurement; they seek to grant limited protection to domestic industry by giving local goods or local suppliers a price preference which operates by artificially increasing the costs of (foreign) competing products. The prices of the imported products are not actually increased and paid, as with tariff restrictions, but are increased by a certain percentage for evaluation purposes. It is an accounting method only. The expressed aim is not to protect inefficient suppliers, but to allow efficient suppliers to develop and emerge in the domestic market. The argument is that to allow unrestricted access for third country suppliers to markets in the early stages of their development[20] may give governments access to cheaper products but at the cost of the development of a domestic supply base and of impoverishing the national economy.

The price preference is a limited restriction based on a preference for purchasing the domestic firm's products provided the increased cost involved in buying the domestic product does not exceed the cost of buying the foreign product by a certain fixed percentage.[21] It is based on the notion that the domestic bidder should be compensated for its cost disadvantage and the price preference thus benefits the domestic firms who have a cost disadvantage by allowing the government to opt for the higher priced bid. The benefit to the government is that the profit made by the domestic supplier re-enters the national economy, thereby increasing social welfare.[22] To operate optimally, however, such price preferences would have to apply on an industry by industry (or product by product[23]) basis according to the relative cost advantages

between domestic and foreign suppliers and, if carried out properly, would even militate in favour of a price preference for foreign goods where they have a comparative cost disadvantage. Such an analysis would be gargantuan, however, and most countries which operate such a system, evidently not only developing countries, have opted for single fixed preference levels across the board.[24]

These do not accurately reflect the cost advantages and disadvantages and will serve to achieve the stated results only in those sectors where the percentage chosen fortuitously matches the domestic firms' cost disadvantages. The result would be, in those cases where the domestic firm has a comparative advantage, simply to increase the procurement cost to the government buyer without creating any particular efficiency benefit to the domestic supplier, which is able simply to increase its price. While the domestic supplier is able to increase its benefit at the expense of the foreign supplier and, inevitably, at the expense of the government buyer, it is open to question whether the resulting benefits are indeed passed on to domestic consumers and whether social welfare is, in fact, enhanced.[25] Certainly, the domestic firm or firms remain protected from competition and, with guaranteed government markets and guaranteed high profits, would have no incentive to improve its or their economic efficiency.

It has been suggested[26] that price preferences may, paradoxically, serve to achieve one of the goals of procurement regulation, i.e. to reduce the price to the government. While recognising that the existence of such preferences is not motivated by this goal, but by political 'protectionist' or interest group objectives, their application may nonetheless operate to achieve the goal. As indicated above (under transparency), one of the problems faced by the government as buyer is information (or the lack of it). The government does not know the expected costs of any firm; if it did, there would be no need to organise competitive bidding and the government would simply order from the lowest cost supplier. In comparing domestic and foreign bids, the government is at a further disadvantage because it will not know the extent of the effect on costs of the comparative advantage held by the competing firms. In the absence of price preferences, the foreign firm which has a comparative advantage may decide to exploit the domestic firm's comparative disadvantage by bidding at a price which is marginally below the price a domestic firm would offer, but which would be significantly higher than its own cost, thus increasing its profit. By favouring a domestic bidder with a price preference, the government would force the foreign bidder to reappraise the situation. In order to win the contract, it would have to reduce its price not to the price that would be offered by the domestic supplier, but to that price plus the percentage of the price preference. The price preference thus serves to lower the bid of the comparatively advantaged supplier even further.

This results in increased social welfare to the extent that the government has reduced the rent obtained by the foreign supplier and lowered its procurement cost. The limitations of such unexpected benefits arising from the imposition of price preferences are the same as above. In order to work optimally, the preferences would need

to be fixed by industry and by product in order to reflect accurately the precise cost advantages which prevail. In any event, the benefits, where they exist, are accidental and not the primary reason for the price preferences.

In addition to achieving such unexpected benefits, it has also been suggested that the existence of price preferences actually has no effect on trade, i.e. does not reduce imports or increase domestic price, output or employment.[27] This finding rests on the premise that government demand does not account for all purchases and that there is a sufficiently large private market for the same (substitutable) goods. In these circumstances, discriminatory price preferences which shift the demand of the government buyer towards domestic products will generate an equal and opposite shift in private consumer demand towards imports, because the private sector can buy the identical (or substitute) product at the same price on the world markets. The effect of an increase in government demand for domestic output will be to leave the domestic price unaffected and displace private buyers onto the international market. Analytically, the price preference is simply a transfer from the government to domestic producers, akin to a subsidy.

In many cases, however, particularly in the case of economies in transition and some developing countries which are politically or geographically isolated, demand for many products emanates almost exclusively from the government. Where this approximates total demand, the government will end up as the only buyer of the domestic product, and if it applies the price preference, it will pay a higher price than if it had been willing to buy products supplied as imports from foreign producers.[28] Where government demand cannot be satisfied by domestic supply, then domestic preferences will tend to reduce imports and lower national welfare as a result of the captive domestic prices paid by the government, at least in the short run; the long-run effects will depend on other variables (notably the exit and entry possibilities), but it is quite possible that there would be no significant effect.[29] Where this protection is not merely a question of cushioning a comparative disadvantage, but a means of creating or maintaining a domestic industry where none would otherwise exist, then the cost of that protection to the country and to the social benefit of its citizens is dramatically increased.

Further, purchasing decisions are rarely restricted to price. Governments as well as other buyers will take into account a number of different factors, such as quality, life of the product and concomitant services such as after-sales services or training. In these cases, price becomes less critical and to have a significant effect, the price preference would have to be fixed at a high level. This, of course, would merely exacerbate the cost implications for the purchaser and commensurately decrease the economic efficiency of the domestic firms.

The practical effect of price preferences will also have much to do with the prevailing market structure. Where the local suppliers are few (or where there is only one monopoly supplier) or where they are heavily cartelised, then the price preference will merely succeed in exacerbating the lack of competition and efficiency. Faced with

protected markets (especially in the context of a dominant public buyer), the local suppliers will have no incentive to improve their efficiency or seek to innovate or invest in new technologies. Complacency replaces rivalry and inefficiency replaces competitiveness, with potentially devastating effects for economic progress and development.

The precise effects of price preferences are difficult to assess. What can be said, however, is that in a perfectly competitive world, there may be no significant effect on trade or at least an effect which is benign. There is no economic support for the argument that they unequivocally assist domestic industry.[30] Since we do not live in a perfectly competitive world, the only conclusion that can be drawn is that the beneficial effects of price preferences remain dubious, while their costs for the country applying them and for international trade remain uncertain.

1.5 Regional and international procurement regulation

No country can escape the reality of the global economy and no country can isolate itself from international trade. When goods and services are not produced at home, they must be purchased from abroad. The world's economies are becoming increasingly interdependent both as a result of technological advances and political initiatives. But this interdependence brings vulnerability as well as advantage. Whilst cross-border transactions become easier to effect and more difficult to control, difficulties arise as a result of the various economic cultures involved, their regulatory systems and their 'domestic' policies, which have the effect of protecting the domestic market.[31] In such circumstances, the task of governments is, where possible, to manage the operation of the global market to their benefit.

In an attempt to control or manage the effects of international trade and to gain the maximum benefit from the advantages it has to offer, many governments have opted to create regional or international regulatory systems whose aims are to garner these advantages by creating a level playing field between the participants. This may be a purely economic initiative and one intended to improve in one way or another the available benefits, mainly by cutting out attempts to distort trade. The most obvious example of this is the WTO. It may also have a political motivation intended to consolidate specific regions and to optimise the operation of international trade within that region. Here, the EU is a good example, although there are many others: the European Free Trade Area (EFTA), the North American Free Trade Agreement (NAFTA), the Asia-Pacific Economic Cooperation Forum, all of which exhibit similar intentions, subject to the degree of integration envisaged.

The benefits to be expected from international trade and, therefore, those to be maximised and managed by all governments affected by it are based on the theory of comparative advantage first espoused by the economist David Ricardo.[32] It is a theory based largely on the premise that each country is blessed with different endowments of land and natural resources, labour and capital, and that, depending on how

efficiently these are combined, some countries will be able to produce some products more cheaply than others. By concentrating on the production of products which they can produce more cheaply (i.e. where they have an absolute advantage), a country will be in a position to exchange those products for others which are produced more cheaply elsewhere. Thus trade is beneficial because the allocation of resources is inefficient or, to put it another way, different countries begin with different resources. Two countries, for example, are able to benefit from trade because they each have an absolute advantage in the production of one of two goods, i.e. the cost of producing the product in one society is cheaper than the cost of producing the product in the other. However, the theory also postulates that both will also benefit from trade if one has a comparative advantage in the production of the good. Thus, even where one society is better at producing all products, it will be better off in specialising in those products where it has a comparative advantage and trading that product for others.

The basic premise is that, based on comparative advantage, free trade will lead to increased global welfare because resources will be allocated efficiently so that production is carried out in the most efficient manner (location) possible and the output is distributed according to demand by way of efficiency in exchange. In a perfectly competitive world, this would lead to a single equilibrium price which would pertain when the quantity demanded equalled the quantity supplied. All attempts at creating free trade systems (at whatever degree of integration) are based on the theory of comparative advantage.

The regional and international organisations referred to above exhibit various objectives from the trade liberalisation of the WTO to the market integration of the EU. The free trade agreements seek to liberalise trade within a given region or between identified countries, and other groupings such as APEC offer a set of non-binding principles which are designed to encourage freer trade between the parties. Whatever the precise motivation, each of these co-operative efforts exhibit a number of similar characteristics. The rules which they adopt reflect the belief that free international (or regional) trade will provide increased social benefits to the members of the different groupings. To achieve those benefits, national objectives need, to the extent possible, to be limited so that they do not create or maintain obstacles to the achievement of freer trade.

All governments possess sovereign powers which enable them, within the confines of their territory, to determine their own policies and objectives, and to adopt all measures for their implementation. However, as an actor in the international arena, international law may place limits or conditions on the pursuit of such national objectives and on the application of implementing measures where these may have an extraterritorial effect on other states. Where states voluntarily adhere to some form of co-operative international regulation, they concomitantly accept restrictions to their freedom of action in respect of those matters which are so regulated. In other words, if they join the club, they are expected to adhere to the rules of the club and do nothing which harms the club.

National objectives are not prohibited as such and members will usually be allowed to retain national policies which are designed to protect matters which fall mainly within the ambit of the exercise of national sovereignty, such as national security, public health and national heritage; they are, however, otherwise prohibited to the extent that they cause injury to the trading (or domestic) interests of the other members. The aim is to ensure non-discrimination between the members of the club based on the free trade principles of MFN and national treatment. Membership of the grouping/organisation requires acceptance of the rules it has developed to guarantee the achievement of the benefits of membership, though there may be exceptions, over a transitional period, for those economies which need to adjust to those rules. The same is true of the procurement rules of these organisations where they exist. They are designed to regulate the free trade between the procurement markets of the members.

However, it is important not to lose sight of the reality of the situation. Even free trade has a political dimension. In terms of procurement, it may be naive to suggest that procurement systems based on free trade principles are motivated purely by economic altruism. Governments are content to subscribe to such systems not only because they seek to develop their own domestic markets through competitive forces, but because they see advantages for their own suppliers in having access to the markets of third countries. They see access as a means of maximising their comparative advantage. That membership of such a system implies reciprocal access merely indicates the belief that their own domestic markets are sufficiently strong to withstand such competition.

It is not only developing countries that benefit from exceptions to the WTO's procurement system. Industrialised countries which otherwise openly welcome free access to their procurement markets have negotiated a significant list of areas of procurement that are either excluded from the general provisions because they fear difficulties as a result of their comparative disadvantage or which are subject to policy considerations which they are reluctant to give up. The annexes to the GPA which set out such exceptions are an integral and essential part of the whole system. They highlight very clearly the tensions between free trade in procurement and national interest. Parties negotiating access to the GPA (and similar organisations) would thus be well advised to study such annexes (or market access conditions) carefully, since they disclose the real scope of free trade in procurement. MFN and national treatment will often be set aside in the face of particular national interests.

New members will also be expected to negotiate their own annexes which detail the market access conditions which will apply. They should thus be informed by the existing annexes to ensure that they gain no less protection than the current membership. The GPA contains provisions providing special and differential treatment for developing countries which are thus able to limit market access to some extent. These will also provide additional protection to new members and should be relied upon for the benefit of the negotiating party.