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## **INTERNATIONAL COOPERATION AND THE REFORM OF PUBLIC PROCUREMENT POLICIES**

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## **ABSTRACT**

### **International Cooperation and the Reform of Public Procurement Policies\***

The stalemate reached on launching negotiations on most of the Singapore Issues at Cancún provides an opportunity to revisit the knowledge base upon which proposals for international collective action may be drawn. This Paper examines the available evidence on public procurement practices in developing countries that could be relevant to multilateral rule making. Although there is considerable agreement on ends (efficient, non-corrupt, and transparent public purchasing systems), little information is available on means: effective and replicable strategies that developing countries have adopted to improve their public procurement systems. A concerted effort to substantially add to the knowledge base on public procurement reforms in developing countries, through targeted research and international exchange of information on applied procurement policies and outcomes, is critical to identify areas where binding multilateral disciplines may be beneficial. The literature surveyed in this Paper suggests that reforms of public procurement systems are often guided by international instruments and templates, but are not informed by quantitative assessments of the cross-country experience as regards the different options, mechanisms and technologies that can be adopted. A research agenda to help fill these lacunae is presented – implementation of which might inform a WTO-based effort to identify options for international cooperation.

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Submitted 08 September 2004

## **International Cooperation and the Reform of Public Procurement Policies**

### **I. Introduction**

No agreement was reached at the September 2003 meeting of the World Trade Organization (WTO) in Cancún on the modalities for negotiations on new multilateral rules on transparency in government procurement, or for that matter on any of the so-called Singapore Issues. Recent scholarship and commentary has assessed the merits of such negotiations, the causes and likely consequences of the collapse of the Cancún WTO Ministerial Meeting, and the pre-requisites for and likelihood of reinvigorating the Doha Round. This paper will not revisit these issues. Suffice it to say that the views of analysts, governments and stakeholders differ substantially—and, for what it is worth, the two authors of this paper have disagreed over several of these issues. We are in complete agreement, however, that the “breathing space” created by the Cancún failure provides an opportunity to re-evaluate the adequacy of the evidentiary base upon which trade negotiators, policymakers, and others can draw when devising and evaluating proposals for new international trade rules.

Evidence matters for at least four reasons. First, a focus on evidence and on the factual record grounds discussions of proposed rules in actual national experience and not on theoretically-inspired “first principles” (be they legal or economic) or on “best practices” whose universal validity are rarely established. Second, a thorough understanding of the relevant magnitudes involved often casts the alleged priorities for multilateral rule making in a different light. Third, proposed rules can be evaluated as to whether they prevent a WTO member from replicating an effective reform (or development) strategy that was pursued by another nation. Fourth, and related to this, information is needed on the complementary actions and policies that may be needed in order to ensure that proposed reforms will be beneficial to a country. In a round of trade negotiations that purports to be pro-development the latter reasons are especially poignant.

In this paper we take one of the Singapore Issues—transparency in government procurement—and describe what is known about the size of developing country

procurement markets and the trajectories and consequences of procurement reform.<sup>3</sup> While there is some publicly available information on procurement practices in developing countries, we argue there is not sufficient evidence as to the means by which successful public procurement reform can be implemented.<sup>4</sup> This in turn makes it difficult to formulate and defend proposals for new multilateral rules in this area. This is not to say that improving transparency is unimportant for public procurement processes—but is it necessarily a priority for developing countries? Did nations that successfully reformed their public procurement practices start by improving transparency or were other steps taken first? Indeed, were measures to improve transparency contingent on other reforms being in place?

The importance we attach to evidence and national experience in formulating multilateral rules should not be seen as necessarily resulting in opposition to further negotiations on government procurement practices in the WTO. There may well be a convincing evidence-based case for the incorporation of further binding disciplines in the WTO. However, to date, no such a case has been made because it cannot be made. There is simply not enough evidence on the ‘return on investment’ to alternative types of procurement reforms, the role that international disciplines can and should play, and how such disciplines need to be complemented by national actions to ensure a positive payoff. In part such evidence requires the pursuit of a research program to shed light on the success or otherwise of public procurement policies in a range of developing countries. While research can yield conflicting findings, it seems to us that sorting through discordant conclusions is better than reasoning in what at present is pretty close to an empirical vacuum.

The paper is organized as follows. Some of the reasons for the increased attention given to public procurement laws and practices in developing countries are discussed in

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<sup>3</sup> In Evenett and Hoekman (2003) we define a procurement regime to be transparent if the terms upon which the procurement process is conducted and the criteria on which decisions will be based are properly documented and made widely available; the award decision is made publicly available and motivated; and it is possible to verify that the documented procedures and criteria were applied.

<sup>4</sup> This contrasts to the considerable literature on procurement in the OECD nations. See e.g., Arrowsmith and Davies (1998), Arrowsmith and Trybus (2003) and Arrowsmith, Linarelli, and Wallace (2000). A website created by Professor Steven Schooner at <http://www.law.gwu.edu/facweb/sschooner/links.html> provides an extensive list of links to information on the web devoted to public procurement.

the next section. Section III turns to the factual record on the size of procurement markets in developing economies. Section IV summarizes the findings of the literature on the effects of public procurement reforms, and highlights the weaknesses therein. Section V describes two approaches that could go a considerable way to closing the existing knowledge gaps on the means by which public procurement reforms in developing countries have been implemented and the likely costs and benefits of such reforms over time. Section VI concludes.

## **II. The rising prominence of developing country procurement practices**

Procurement policies are important from a development perspective. Reducing poverty and attaining health, education and other objectives requires getting the most out of the limited funds available for state purchases of goods, services, and infrastructure. Efficient public procurement practices also contribute towards the sound management of public expenditures more generally (Hunja 2003). Procurement planning enables the identification of major investment expenditures, which in turn facilitates budgetary decision-making. In addition, the effective provision of public services often requires the coordinated delivery of materials and the like, which the state purchasing apparatus must accomplish. It is difficult to imagine how a state can deliver improvements in the well being for its citizens without a public expenditure system that includes effective public procurement policies. This recognition accounts in part for the growing interest in public procurement laws and practices and in the feasibility and likely consequences of their reform.

There is also a growing appreciation of the linkages between specific national objectives and public procurement practices. For example, state contracting is often a central focus of campaigns to tackle corruption and to ensure that appropriate distance is kept between government officials and the private sector. Procurement policies may be part of an industrial policy or an instrument to attain social objectives (e.g., support for small and medium sized enterprises, minority-owned businesses, disadvantaged ethnic groups or geographic regions) through set-asides and preference policies. The manner in which a state implements its public procurement policies has implications for the achievement of such objectives, and for cost efficiency. Indeed, it may speak volumes

about numerous other priorities, practices, and concerns (McCradden 2004). Often there will be a tradeoff. Knowing what the various objectives are and how effective and efficient procurement policies are in attaining them should be an important dimension of assessing the performance of governments.

Another reason why procurement issues are attracting increasing attention is that they may condition access to foreign markets. International trade negotiations—whether bilateral, regional, or multilateral—are a mechanism through which governments address the terms upon which foreign firms can compete in domestic public procurement markets. WTO disciplines on procurement are currently voluntary, in that they apply only to signatories of a so-called plurilateral agreement, the Agreement on Government Procurement (GPA). Most developing countries have not joined the GPA, although they have been under some pressure to do so from OECD countries. Procurement has also been subjected to negotiated disciplines in the context of bilateral and regional trade agreements, examples being the European Community, NAFTA, and recent agreements between the US and EU on the one hand and partner countries (developed and developing) on the other. In determining how to respond to proposals for multilateral disciplines on government procurement, developing countries need to determine the costs and benefits of the status quo as compared to different types of proposed rules. From a (global) welfare perspective it is also important to ascertain the extent to which existing procurement policies cause significant negative (pecuniary) spillovers on foreign firms.

Given the growing prominence of public procurement law and practices in developing countries the question immediately raises as to what evidence and national experience is available to inform reform strategies and multilateral rule making. As a first step in considering the evidentiary base on public procurement practices in developing countries it is useful to assess the available data on the size of public procurement markets, which is the subject of the next section.

### **III. Establishing the factual record: procurement in developing countries**

Data on *total* government expenditure levels, in particular on central government outlays, include payments such as compensation for government employees that are not usually the subject of state contracts with private sector firms or other suppliers. There have been a few attempts to strip out such payments from total government spending levels, so as to

provide a more accurate guide of the amount of state outlays that might be influenced by state procurement laws and practices. The latest comprehensive such study is (2002a). This employs the System of National Accounts (SNA) to compute the magnitude of procurement of goods and services by state bodies in 106 developing countries in 1998 as well as the OECD. In addition to stripping out expenditures on salaries and wages of state employees, this study differentiates between current government expenditures and capital expenditures. The estimates of the size of the procurement markets are reported (as a share of each nation's respective GDP) in Appendix 1.

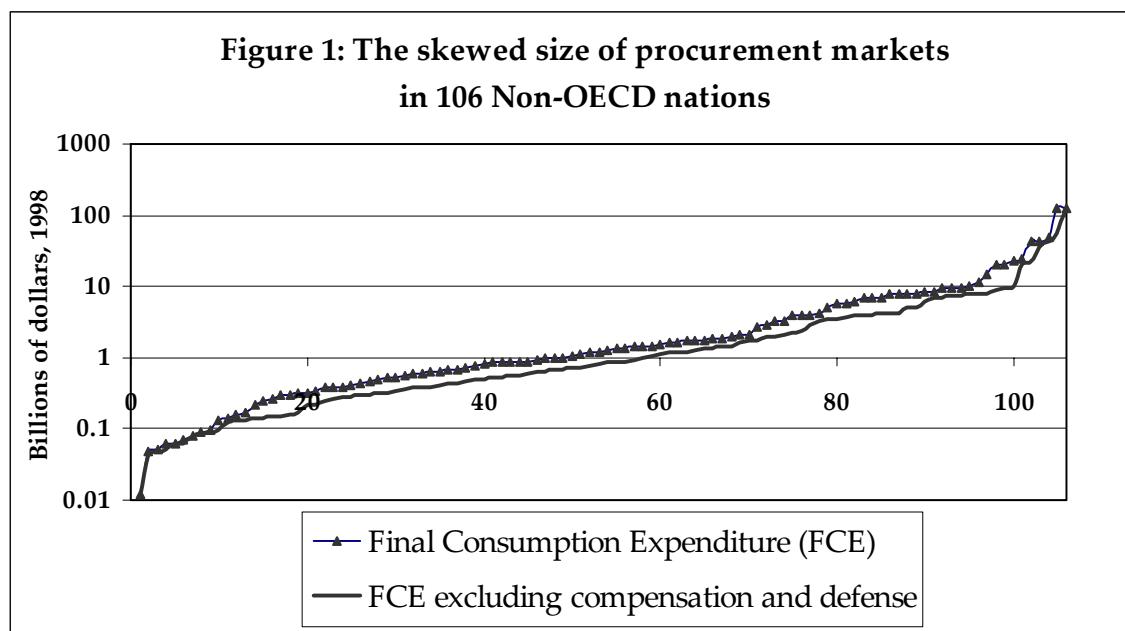


Figure 1 plots the distribution (from smallest to largest) of the computed size of government procurement outlays for the 106 developing economies. The skewed nature of this distribution is clear: in 1998 about half of the developing countries covered had state procurement outlays less than or equal to \$1 billion. Only six developing countries had state procurement markets<sup>5</sup> that exceeded \$10 billion. Table 1 makes clear just how few of the developing countries have public procurement markets that are of any magnitude. This raises the question whether there could be a large payoff to OECD firms in improved “market access” to developing countries’ state procurement markets.<sup>6</sup>

<sup>5</sup> See the “FCE excluding compensation and defence” line in Figure 1.

<sup>6</sup> The size of public procurement spending on goods and services may underestimate the total trade impact of procurement rules. For example, local content requirements for inputs may imply that transactions that do

**Table 1: Non-OECD procurement markets exceeding US\$5 billion, 1998**

<b>More than US\$5 billion and less than US\$10 billion:</b> Egypt, Morocco, Chile, Peru, Puerto Rico, Bangladesh, India, Israel, Kuwait, Malaysia, Singapore, Syria, United Arab Emirates.
<b>More than US\$10 billion:</b> South Africa, Brazil, China, Indonesia, Saudi Arabia, Russia.

*Source:* OECD (2002a).

Taking all of these 106 developing countries together, this OECD study found that government purchases of goods and services in these economies accounted for approximately 5.1 percent of their combined national outputs. (The comparable figure for the OECD member states was 7.9 percent.) The 106 developing countries' procurement markets amounted to 13.9 percent of the total worldwide procurement spending in 1998.

The share of total procurement outlays available to (international) competition is a function of many variables. These include the share of government services that are 'contracted out' to the private sector, the size distribution of contracts (smaller expenditures (contracts) will not be attractive to foreign firms), the size of central government as compared to local or municipal governments, and the share of expenditures financed through development assistance funds that are tied to sourcing of goods and services from the donor country, etc. Available data on the relative importance of aid flows as a share of government expenditure suggest that aid finances a significant share of total purchases of goods and services by developing country governments. The ratio of official aid flows (bi- and multilateral) to total expenditure was equivalent to 35 percent of total expenditures on goods and services for low-income countries in the early 1990s. For lower middle-income nations, total aid accounted for 16 percent of expenditures; for upper middle-income economies the figure dropped to 6 percent (Hoekman, 1998).

It is worth noting that very few developing countries' discriminatory state procurement practices against foreign firms appear to have been the subject of complaints by trade ministries in industrialized countries. Table 2 lists the United States' trading

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not directly involve a state agency can be influenced by public procurement policies. Evenett and Hoekman (2004) analyze the conditions under which procurement policies affect market access.

partners that have been cited in an annual report devoted to assessing discriminatory foreign procurement practices. No LDCs are listed; only a few of the larger developing countries appear to attract the attention of the United States Trade Representative—although one must be open to the possibility that the USTR used the (unfulfilled) threat of “naming” a country in these reports to induce changes in other countries’ procurement practices. Even so, there is little to suggest that the state procurement markets of much of the developing world have been large enough to attract the attention of trade officials in leading industrialized countries.

**Table 2: Public procurement practices of developing countries cited as concerns in USTR annual reports on discriminatory trade practices**

Date or year the report was published.	Countries mentioned in the United States' <i>Annual Report on Discrimination in Foreign Government Procurement</i> .	
	“Identified” cases of discrimination.	“Issues of Particular Concern That Do Not Meet the Criteria for Identification.”
1992.	European Union: government-owned telecommunications in selected member states.	
30 April 1996	Germany: Heavy electrical equipment.	Japan: Public works. Japan: Supercomputers. Japan: Computers. Australia: Pre-selection criteria for bidders. Brazil: Expanded discriminatory procedures in 1994. China: Non-transparent, closed, and uncompetitive procedures.
30 April 1999	None.	Korea: Construction of Inchon International Airport. Japan: Computer products and services. Japan: Design and consulting and construction services.
30 April 2000	None.	Japan: Public works. Taiwan (China): General procurement procedures. Canada: Provincial price preferences. Mexico: Implementation of New Procurement Laws and NAFTA-related tendering periods. Korea: Airport construction. Germany: “Sect Filters” (to ensure that the principles of Scientology are not used or spread in fulfillment of a contract.)
30 April 2001	None.	None in addition to prior years.

Source: Website of the Office of the United States' Trade Representative.

Turning to actual procurement laws and their implementation, a small literature has emerged on public procurement practices in developing countries. Table 3 provides a listing of recent studies.

**Table 3: List of recent literature on specific instances of public procurement reform in 24 developing economies or assessments of existing procurement policies.**

Num -ber	Economy or region	Literature	Least developed economy or region?
1.	Bangladesh	Lovei and McKechnie (2000)	Yes
2.	Botswana	Lionjanga (2003)	
3.	Bhutan	Trepte (1998)	Yes
4.	Brazil	Levy (2001), OECD (2003) (citing <i>Business News America</i> 2002), and Ozorio de Almeida (2004)	
5.	Chile	Orrego-Urzua, Osorio, and Mardones (2001)	
6.	China	Cao (2003), Tian (2001, 2003), Liu (2004)	
7.	Columbia	USAID (1999)	
8.	Czech Republic	Mardas and Varsakelis (2000)	
9.	Estonia	Annikve (1998), Lamvol (2002)	
10.	Ecuador	Moncayo (2004)	
11.	Guatemala	USAID (1999)	
12.	Hungary	Mardas (2001)	
13.	India	Srivastava (1999), Khorana (2002), and Das (2004).	
14.	Kenya	Obiri (2003)	
15.	Korea	Choi (1999)	
16.	Kosovo	Piselli (2003)	
17.	Laos	Trepte (1998)	Yes
18.	Nicaragua	Cohen (n.d.)	
19.	Nigeria	Ekpenkhio (2003)	
20.	Pakistan	Transparency International (2002)	
21.	Poland	Glebocki (2000), Piasta (2000), and Lemke (2003)	
22.	South Africa	Wittig (1999), Caron (2002), Watermeyer (2004).	
23.	Tanzania	Nkingu (2003)	Yes
24.	Uganda	Wittig (1999), Agaba (2003)	

*Notes:* This list is based on a search of (i) the websites of the World Bank, OECD, the International Trade Centre, the United Nations Commission on International Trade Law, and the WTO; (ii) the Social Science Research Network database, and (iii) the tables of contents of the leading public procurement journals, including the *Public Procurement Law Review* and the *Journal of Public Procurement*, and (iv) recent conferences on public procurement reform in developing countries. This list focuses on the writings of individuals and not documents produced by official bodies or reports of international organizations. Additional *official* sources of information on procurement practices include WTO *Trade Policy Reviews*, especially for members of the GPA at [http://www.wto.org/english/tratop\\_e/tpr\\_e/tpr\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm); submissions to the WTO Working Group on Transparency in Government Procurement, at [http://www.wto.org/english/tratop\\_e/gproc\\_e/gproc\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm); the World Bank's Country Procurement Assessment Reports (non-public); and Individual Action Plans of APEC members, at <http://www.apec-iap.org/>.

Even though the 37 articles reported in Table 3 surely do not constitute the entire literature, only four focus on least developed countries (LDCs). Few studies attempt cross-country comparisons of reform experiences or procurement practices—exceptions are Trepte (1998) for Bhutan and Laos and Wittig (1999) for South Africa and Uganda. Moreover, only a few of the articles<sup>7</sup> attempt any form of quantification of the costs, benefits, or effects of existing procurement practices or reform proposals.

The only cross-country data that is available on the procurement ‘performance’ of countries are international surveys. An example is the survey of perceptions of government procurement practices conducted by the World Economic Forum and reported annually in the *Global Competitiveness Report*. Table 4 presents the average responses (scored on a scale from one to seven) of business people to five questions about public procurement policies in 46 developing countries.<sup>8</sup> (The five questions are stated at the top of the table.) For each of the five questions posed, business people perceive that 10 developing countries fall below the respective 46-country sample average; suggesting that these 10 countries are seen to have poor procurement practices across-the-board. The perception that state officials “favour well connected firms and individuals” is strong in Bolivia, the Dominican Republic, Ecuador, Guatemala, Honduras, and Zimbabwe (all of which score less than two on a scale of one to seven.) Furthermore, “irregular extra payments or bribes connected with public contracts/investment projects” appear to be more prevalent in Bangladesh, Bolivia, Nigeria, Paraguay, the Ukraine, and Zimbabwe (all of which score less than three) than elsewhere. While only suggestive, the survey responses reveal there is considerable variation in the perceived even-handedness of procurement practices across markets.<sup>9</sup> This in turn may have implications for domestic and foreign firms’ investment decisions. Unfortunately, no information can be distilled from such surveys regarding the extent to

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<sup>7</sup> See, for example, Mardas and Varsakelis (2000), Srivastava (1999), Khorana (2002), and Choi (1999). Interestingly, most of these refer to the trade policy-related aspects of procurement reforms—suggesting that empirical analyses of domestic procurement practices are rather thin on the ground.

<sup>8</sup> For comparison purposes, the mean values of responses in the OECD nations are also reported.

<sup>9</sup> These survey responses have been criticized as subjective, as potentially biased by different cultural norms, and by the fact that few business people are familiar with the procurement policies in many jurisdictions—so raising the question as to how the survey’s compilers aggregate across the many respondents’ answers when producing summary statistics for a sample of dozens of countries. Yet the reported “average” survey responses are being used more and more often in public discussions and now form part of the empirical (if not factual!) record on national procurement regimes.

which differences in underlying procurement laws and their implementation affect these aggregate perceptions, or how responsive the latter are to reforms. To the best of our knowledge, no one has attempted to answer this question.

To summarize, the current evidentiary bases upon which to formulate policy advice on procurement reforms in developing countries is weak. The measures of the size of national procurement markets are dated; the description and analysis of national procurement regimes is fragmentary and incomplete; reports on the perceptions of the even-handedness of national procurement regimes have not been used much in policy analysis; and the paucity of cross-country analyses of national procurement practices is striking.

#### **IV. What is known about the effects of procurement reform?**

Much tends to be *claimed* for the benefits of procurement reforms. However, there is little analysis whether these benefits were *realized* after reform initiatives occurred. What follows briefly assesses the credibility of some of the evidence mustered in support of these reforms. This is often anecdotal in nature; does not provide policymakers with a sense of the relative costs and benefits of different policy options. Frequently it cannot withstand the rigorous scrutiny that should be applied policy analyses. Again, the weaknesses in the available literature should not be seen as an indictment—rather as an opportunity which further analysis could rectify.

Much is claimed in favor of the reform of public procurement practices, as the following rather typical statement about improvements in transparency makes clear:

“Transparent procurement procedures can contribute to a more efficient allocation of resources through increased competition, higher quality procurement and budgetary savings for governments and thus for taxpayers. They can also help attract more investment by lowering risk. Objective and transparent procedures can in addition help enhance the efficiency of local suppliers as they compete for public contracts, thereby improving trade prospects by making these suppliers more competitive exporters.... Finally, transparent procurement procedures can help limit bribery and corruption, which are particularly rampant in the procurement field” (OECD 2003, page 3).

Or, to cite an EC submission to the WTO Working Party in the run up to the Cancún meeting in 2003, benefits of transparency include:

**Efficiency and innovation:** Public procurement applied in a transparent environment with a clear set of [predefined] rules defined [...] may allow tendering companies from both developed and developing countries to foster enhanced competition thus stimulating innovation amongst bidders.

**Better value for money:** Transparent tendering should lead to effective competition by comparing offers from different bidders. When tenders are to be opened to foreign bidders, the differences in terms of value and quality regularly brings prices down, as in any other auction system. Governments and public entities have a political duty to purchase goods, services and works through the most economically advantageous offer. More transparency in procurement open to foreign suppliers contributes to increased competition and governments obtain lower prices, thereby reducing budget expenditure.

**Encouraging investment and partnership:** Access to a foreign market when tenders are to be opened to foreign bidders, is always difficult, requiring, as it does, previous market research, the setting-up of a distribution system, the opening of local branches and/or the appointing of representatives. It is usually the case for foreign bidders wishing to win a public contract to set up a joint venture or similar partnership with local suppliers who are more familiar with domestic law, rules and procedures thus increasing the chances of success. Transparency will increase investment and partnership.

**Reducing corruption:** Amongst the different forms of corruption affecting foreign trade (judicial corruption, political corruption), bribery (to officials and politicians) during the tendering process is one of the most significant and distorting of all corruption practices: extra expenditure for public budgets ultimately borne by tax payers, reducing free competition and quality of deliverables, discouraging investment, etc. Publishing calls for tenders, notifying contract awards, including the successful bidder's name and final price, and making award criteria more transparent and accountable are some of the basic principles of transparency in government procurement which directly affect corruption practices. (EC submission to the WTO, WT/WGTGP/W/41, June 2003).

Ideally, the evidence offered in support of such claims would trace through the changes in public procurement policies to some observable outcome and would take into account the other possible non-procurement related factors that might be at work. How much of the evidence actually offered meets this standard? Many of the arguments that are frequently put forth are in fact anecdotes about episodes of procurement reforms dressed up as quantitative evidence (Box 1).

**Table 4: Business people's perceptions of procurement practices in developing countries, 2001**

Non-OECD economy	The composition of government spending in your country (1=is wasteful, 7=provides necessary goods and services not provided by the market)	Government decisions on the procurement of advanced technology products are based on (1=price alone, 7=technology and encouraging innovation)	When deciding upon policies and contracts, government officials (1=usually favor well-connected firms and individuals, 7=are neutral among firms and individuals)	New governments honor the contractual commitments and obligations of previous regimes (1=not true, 7=true)	How commonly do firms in your industry give irregular extra payments or bribes connected with public contracts/investment projects (1=common, 7=never)
Argentina	2.2	2.9	2.7	5.0	3.1
Bangladesh	2.7	3.0	2.1	4.1	2.1
Bolivia	2.5	2.4	1.9	2.9	2.8
Brazil	2.7	3.9	3.0	4.2	4.0
Bulgaria	3.2	3.5	2.8	4.3	4.4
Chile	3.9	3.8	4.0	5.3	5.3
China	3.3	4.6	3.4	5.1	3.9
Colombia	2.3	3.4	2.3	3.9	3.7
Costa Rica	2.9	3.8	3.3	4.5	4.2
Dominican Republic	2.7	3.4	1.9	3.2	3.9
Ecuador	2.0	2.6	1.9	3.3	3.2
Egypt	3.9	3.6	3.8	4.9	4.4
El Salvador	3.5	3.1	2.8	4.0	3.7
Estonia	3.6	4.5	3.3	4.8	4.4
Guatemala	2.2	2.7	1.7	2.2	3.1
Honduras	2.2	2.4	1.8	3.6	3.2
Hong Kong SAR	5.5	4.4	4.5	6.3	6.1
India	3.2	3.8	3.4	5.1	3.4
Indonesia	3.1	4.0	2.6	3.8	3.0
Israel	3.7	4.5	4.1	6.1	5.9
Jamaica	3.2	3.9	2.6	4.6	4.4
Jordan	4.3	3.9	3.8	5.4	4.8
Latvia	3.2	4.0	2.9	3.7	3.8
Lithuania	2.6	3.4	3.3	3.5	5.7
Malaysia	4.2	4.4	3.0	4.6	3.5
Mauritius	4.1	3.4	3.4	5.4	3.4
Nicaragua	2.3	3.1	2.2	3.2	3.2
Nigeria	2.7	3.7	2.0	3.7	2.3
Panama	3.2	3.3	2.3	3.7	3.4
Paraguay	1.7	2.7	2.6	2.9	2.6

Non-OECD economy	The composition of government spending in your country (1=is wasteful, 7=provides necessary goods and services not provided by the market)	Government decisions on the procurement of advanced technology products are based on (1=price alone, 7=technology and encouraging innovation)	When deciding upon policies and contracts, government officials (1=usually favor well-connected firms and individuals, 7=are neutral among firms and individuals)	New governments honor the contractual commitments and obligations of previous regimes (1=not true, 7=true)	How commonly do firms in your industry give irregular extra payments or bribes connected with public contracts/investment projects (1=common, 7=never)
Peru	2.8	2.7	2.9	3.9	4.2
Philippines	2.8	3.4	2.7	4.8	3.0
Romania	2.5	3.3	3.7	3.2	4.1
Russia	2.5	3.6	3.7	4.0	3.8
Singapore	5.9	5.7	5.1	6.3	6.4
Slovenia	3.3	4.2	3.5	4.5	4.1
South Africa	3.8	3.9	3.1	5.6	4.4
Sri Lanka	2.6	3.5	2.7	4.1	4.3
Taiwan	4.3	5.1	3.9	3.6	5.6
Thailand	4.3	4.0	3.5	4.9	3.7
Trinidad and Tobago	4.1	4.0	2.7	4.8	4.2
Ukraine	2.1	3.9	2.1	2.5	2.9
Uruguay	2.9	3.8	3.6	5.4	4.4
Venezuela	2.2	3.1	2.6	3.9	3.5
Vietnam	3.1	4.0	3.0	3.7	3.5
Zimbabwe	1.4	3.3	1.9	4.1	2.5
Mean for these developing countries	3.1	3.6	3.0	4.3	3.9
Mean for the OECD economies	4.0	4.4	4.2	5.5	5.3

Source: *The Global Competitiveness Report, 2001-2002*. Interview responses to questions above by business people familiar with a given economy.

Notes:

**number in italics** signifies the reported value is less than the average for those developing countries reported here  
**number in bold** signifies the reported value is more than the average for the OECD countries surveyed

### **Box 1. Examples of cost-savings under transparent procurement systems**

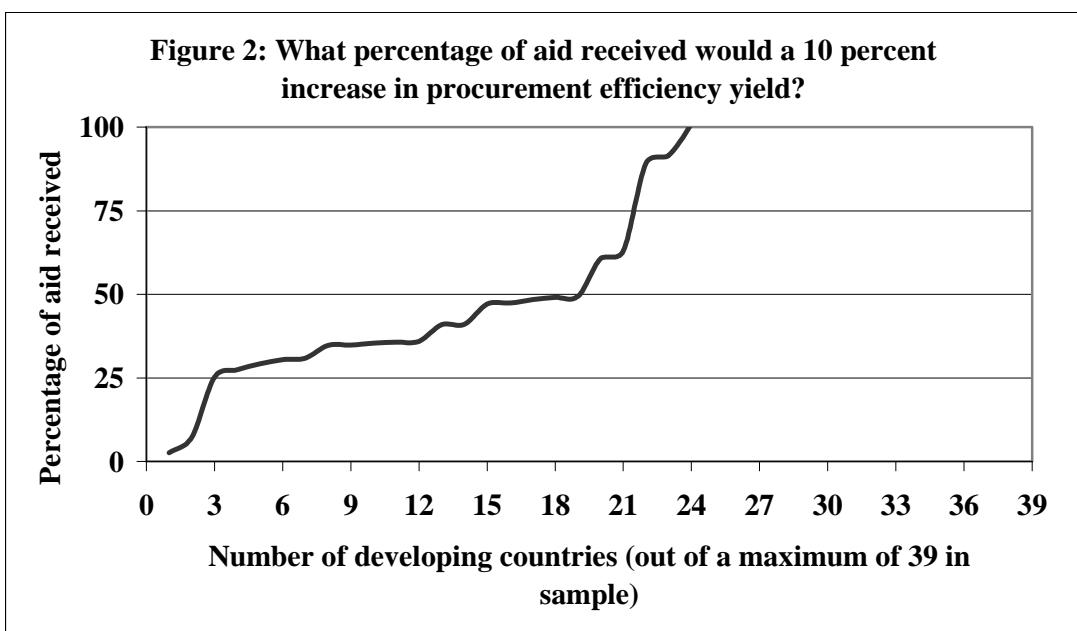
- Through the strengthening of transparency and procurement procedures including, for example, eliminating any tender specifications that favor a particular tender, Guatemala's Ministry of Health reports savings of 43 percent on the purchase of medicines.
- The Colombian Ministry of Defense reports generating 47 percent savings in the procurement of military goods through improvement of transparency and procurement procedures.
- Nicaragua had been spending about 17 percent of its health budget on pharmaceuticals. High drug expenditure had resulted from a lack of pricing and drug information and non-transparent procurement procedures. With the establishment of a transparent procurement agency, accompanied by the effective implementation of an essential drug list, the government was able to reduce drug costs significantly. Within one year of introducing these measures, the government had reduced its pharmaceutical budget from \$21 million in 1992 to \$13 million in 1993.
- In Pakistan, an open and transparent bidding process has resulted in savings of more than Rs 187 million (US \$3.1m) for the Karachi Water and Sewerage Board.
- After introducing transparent procurement procedures in the energy sector, Bangladesh was able to reduce electricity prices to less than US \$0.03 a kilowatt-hour, roughly half the price of directly negotiated deals in Indonesia.

*Source:* OECD (2003).

It turns out that, on close inspection, the sources for the Bangladeshi, Columbian, Guatemalan, and Pakistani cases do not provide sufficient data to demonstrate the claims made. The study supporting the claims made about Nicaraguan pharmaceuticals is not on Worldwide Web, and therefore is not easily verifiable. Even if it were available, a critical policy analyst would want to know how much of the reported reduction in drug costs was due to implementing a transparent procurement agency and how much due to implementing an “essential” drugs list. These are two quite distinct measures and the effects of each should not be conflated with one another. It would seem that at least four of the five examples of reforms showcased by the OECD cannot withstand such straightforward forms of scrutiny. The point here is not to criticize the authors of the study but to note that more and better studies of reform experiences are needed.

Other information is more quantitative in nature and yet offers some circumstantial evidence that is suggestive of the sizeable gains from procurement

reforms. Using the OECD (2002a) data on the size of national procurement markets in 1998, one can calculate the dollar value of the savings that would result if procurement reforms yielded a 10 percent reduction in the prices paid by the government on its existing purchases. This gain can then be compared to the amount of aid a given country received in 1998, providing an “equivalent” percentage of aid that would free up the same amount of resources as the procurement reform specified above. This calculation will provide a sense of how large self-help (that is, domestic procurement reform) compares to current levels of assistance from abroad.



For 39 of the 106 developing countries in the OECD (2002a) study data on aid receipts was found in the *World Development Indicators Online*. Figure 2 plots the cumulative distribution of the aid “equivalent” of a 10 percent reduction in state expenditures brought about by a potential procurement reform. The findings are quite striking as in all but two developing countries the expansion in aid that would free up as much resources as the stated procurement reform was over 25 percent. In over half the sample of 39 developing countries, the equivalent aid expansion was over 50 percent. In short, these calculations (for that is all they are) suggest that the benefits of a modest procurement reform could be sizeable compared to one frequently discussed source of funding for development; namely, aid. Of course, the critical word in the last sentence is

“suggest.” Indeed, the calculations above do not demonstrate that procurement reforms will generate a 10 percent reduction in the prices paid by the states; nor do they shed any light on what needs to be reformed and how. Nevertheless, by giving some sense of the relevant magnitudes, such calculations may be more credible than the anecdotes often reported in official reports, academic publications, and the like

Another type of evidence that is suggestive of the benefits of procurement reform focuses on a positive change in some procurement-related outcome that follows the implementation of a reform. An example of this type of evidence is found in Lemke’s (2003) account of Polish experience after its Public Procurement Law came into force on 1 January 1995. This law mandated the announcement of certain state contracts in a newly created *Bulletin of Public Procurement*, which is now distributed to potential bidders in paper and in electronic form. Table 5 reports for the years 1996-2001 the number of announcements in this *Bulletin* and the average number of offers made by contractors for each announcement. The fact that the number of offers rises over time (from 3.6 in 1996 to 5.5 in the first half of 2001) might be thought to support the hypothesis that the increased transparency (the publication of announcements) resulted in more bidders for state contracts. Unfortunately, to conclude this one needs to know that some other factor was not responsible for the increased propensity to bid for state contracts. For example, overall economic reforms could have resulted in an across-the-board increase in the number of firms competing in the market, including trade liberalization resulting in greater imports.

**Table 5: Bidders for Polish government procurement contracts, 1996-2001**

Item	1996	1997	1998	1999	2000	2001 (first half only)
Number of announcements in the <i>Bulletin of Public Procurement</i>	34136	44657	53147	55262	70234	37983
Value of contracts announced in the <i>Bulletin of Public Procurement</i> , (US \$ billion)		13.6	17.5	17.7	23.0	11.1
Mean number of offers for each announcement (that resulted in the selection of an offer.)*	3.64	4.16	4.70	5.40	5.15	5.50

*Note:* \* Approximately 20 percent of announced procurements were “invalidated”

*Source:* Lemke (2003, page 119).

Moreover, this evidence alone cannot explain why the average number of bidders for services and supplies contracts fell after 1999—even though the additional transparency brought about by the publication is presumably unchanged (or possibly enhanced if the published announcements became more precise over time.) Furthermore, even if the hypothesis is to be believed, this evidence does reveal by what percentage (if at all) the prices paid by the state fell as a result of more firms bidding for public contracts. Without such estimates of the resulting savings one cannot compare these benefits with the costs of publishing announcements about procurement opportunities and the costs of verifying their accuracy.

To summarize: the objective of the discussion above has not been to criticize any one study or attempt at procurement reform. Rather it was to point out just how unsatisfactory the available empirical evidence is for policymaking purposes, and also to indicate what types of questions on procurement practices in developing countries need to be addressed.

The available literature is a little stronger on the factors that impede national reform initiatives on public procurement. For the most part, this strand of literature makes no claims to be quantitative and so the concerns raised in previous paragraphs do not arise. The first theme of such literature is that developing countries differ markedly in their starting points for procurement reforms (Hunja, 2003), and this can have a considerable bearing on the types and strength of the prevailing vested interests. The transition economies, for example, have had to create from scratch procedures for purchasing from their (often recently developed) private sectors. Other developing countries—with longer traditions of private sector involvement in their economies—have attempted to modernize their procurement practices. The legacy of the past plays a different role in yet another group of developing countries: those former colonies that inherited procurement regimes from their respective former rulers and that now seek to update and revise these practices.

Differences in initial conditions also interact with competing influences and pressures to shape the reform process, if any. Typically, domestic initiatives are influenced by international standards (such as the UNCITRAL Model Law on

Procurement). External partners and membership of regional trading agreements played an important role in the reforms to the procurement legislation and practice in many Eastern European nations (Hupkes, 1997). This experience raises the general question of whether international guidelines on procurement or regional procurement rules are appropriate for the development needs of low and middle-income countries.<sup>10</sup> This has a direct bearing on the WTO debate and on the outstanding the research agenda—see below.

Turning to the success or otherwise of procurement reform initiatives in developing countries, the experience has been decidedly mixed. Hunja (2003) identifies three major impediments to successful reform: (1) deeply vested interests and the lack of political will to overcome them; (2) paucity of technical knowledge and capacity; and (3) the complexity of the substantive issues involved. Faced with these obstacles, some have argued that a necessary condition for reform is strong support from senior political leaders. Others have stressed noted the role that across-the-board, rather than procurement-specific, measures to improve governance can play. The former can introduce improvements to procurement indirectly as they do not single out specific entities or procurement officials for special attention (Rose Ackerman 1999).

As noted in Table 1, there is a modest but growing literature on national experience with procurement practices and reforms. Such literature is undoubtedly important in establishing the factual record and relevant institutional set up. However, there has been little attempt to synthesize the lessons learned for policymakers in other developing countries. The fact that the few illuminating cross-country synthesis papers—such as Hunja (2003)—do not motivate their analyses or their recommendations with explicit references to national experience is telling.<sup>11</sup>

Technological developments have added a new dimension to potential procurement reforms in both developing and industrial economies. The combination of greater computing power and cheaper internet-based communication has given rise to so-called e-procurement or electronic procurement regimes. It is an open question how and

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<sup>10</sup> For a stimulating contribution on this matter see Schooner and Yulkins (2003).

<sup>11</sup> In his analysis of the measures taken to reduce corruption in procurement regimes, Anecharico (2003) does. Unfortunately, this analysis only applies to selected OECD member states.

to what extent state procuring entities can reap the benefits from recent innovations (Segal and Taylor 2001)—much will depend on the extent of the “digital divide” and the quality and cost of the underlying telecom infrastructure in a country. E-procurement certainly offers great promise of cutting costs and simplifying administrative procedures, especially for repetitive transactions and relatively homogeneous products. Promising and innovative mechanisms that revolve around e-procurement have been implemented in countries such as Brazil (Ozorio de Almeida, 2004). In the Brazilian case the move in this direction has reportedly led to significant cost savings and a great increase in transparency and accountability of government bodies. Thus, E-procurement can support better statistical reporting, enhanced transparency, and more bulk buying (Wiseman 2000). Yet, implementing these innovations will entail costs—for infrastructure and for training. It will also require complementary reforms depending on country circumstances—e.g., telecommunications regulation, privatization, etc. Concerns have also been raised about privacy and the protection of confidential business information, and the capacity to store data over long time periods. All of these issues are wide open for further research and analysis.

To conclude the discussion in this section, it is not much of an exaggeration to argue that the literature on procurement reform in developing countries is in an embryonic state. The qualitative literature is useful in describing reform initiatives and existing practices—but much more needs to be documented before convincing general (that is, cross-country) lessons are likely to emerge. The current quantitative literature is at best suggestive of the benefits of procurement reforms, but would not pass serious scrutiny or convince a well-trained skeptic of the benefits of reform. Finally, the literature has only begun to address some of the newer challenges in state contracting such as electronic procurement and pressures to comply with external international rules on procurement practice (contained in regional trading agreements and existing WTO rules.)

## **V. Towards increased transparency on public procurement**

Remedying the deficiencies identified above requires a substantial increase in the ‘transparency’ of policies. More research can play only a part in correcting these deficiencies. As argued below, greater efforts by governments to cooperate by

exchanging information and sharing experiences on the efficiency and efficacy of different types of procurement practices in attaining national objectives could do much to improve outcomes. What follows is a description of a research program that would markedly add to the evidentiary base, and a discussion of some options for international voluntary cooperation to enhance transparency. These two elements are mutually reinforcing as the research program would help improve understanding of the role, if any, that “hard” international rules can play in encouraging the reform of state procurement practices in developing countries, and voluntary cooperation would facilitate the exchange of information and the adoption of best practices.

### ***A research agenda on public procurement***

The development-oriented research needed in this area has many elements, ranging from institutional and data-collection matters to rigorous analyses of actual practices and the impacts of policy reforms: Eight priority areas can be identified:

1. First, a comprehensive analysis of what policy instruments fall under the label of “public procurement policies.” This may seem rather obvious to procurement experts, but to more generalist policymakers it would be helpful to clarify which governmental measures are part of public procurement policy, which measures are not, and which state agencies (in central government, in local government, and in the directly state-run industries) are supposed to implement these policies. This analysis would also be useful in delineating the scope of public procurement reform (by identifying the policy instruments that might altered) as well as providing a clear basis upon which to compare the essential features of national procurement regimes; a point developed in 2. below.
2. Second, assemble a publicly-accessible compendium, for as many developing countries as possible, of their public procurement laws, major pieces of implementing documentation, and lead agencies responsible for administering the relevant laws. This compendium would also include key features of national procurement regulations—such as thresholds for state contracts above which competitive tendering must be used. Furthermore, the nature (if any) of any administrative or judicial oversight would be specified. Such a compendium would facilitate quick cross-

country comparisons about the key aspects of national procurement law and its implementation.

3. Drawing upon the experiences of selected developing countries, detailed descriptions and analysis of the manner in which national public procurement systems fit into the overall public expenditure and financial management systems. Strong and effective financial control and accountability systems may allow simpler procurement systems if incentives are created for efficient purchasing practices by government entities, making detailed “command and control” process guidelines/requirements redundant. For example, procurement disciplines—including transparency-related ones—may be second best if not redundant if market forces apply to the activities of public entities. In general, the greater the extent to which public entities operate in a competitive environment and are subject to hard budget constraints, the less likely are inefficient purchasing decisions.
4. Analyses and guidelines for good practices in the design of laws and implementation methodics. Assessments of the specific procedures that are applied in different countries and mapping (comparing) these to the existing guidelines that are imposed by the major international bodies such as the World Bank and UNICITRAL. This type of analysis should identify key elements (desirable features) of laws and procurement process—including reliance on standards and norms that apply to procedures along the lines that has been developed for construction in South Africa (see Watermeyer, 2004a, b). Related to this, a critical assessment of the costs and benefits of existing guidelines that are applied by institutions such as the major development banks would be very useful. What do these achieve? Are they outdated given the rise of the Internet and the potential for government to business portals to introduce market forces into the procurement process through real-time reverse auctions and the like? Does it make sense to differentiate in procedures between consulting services and other types of services and goods?
5. Assembling the factual record on outcomes from procurement regimes in developing countries (including the number of contracts put out to tender, indicators of the use of selective or limited tendering, the use of preference margins in contracts, the number

of firms submitting bids for a contract, the propensity to award a contract to the lowest bidder, and the propensity to source from abroad or from domestically favored groups). Of course, countries differ markedly in the amount of data that they collect and make available publicly, but with the growing use of computers in procurement systems, more developing countries are assembling such data. Subject to any concerns about confidentiality and the like, bringing these data together would be available for policy analysis. Data on the observed outcomes from state procurement could be complemented by information obtained from surveys of business people and others' perceptions of the "fairness" or otherwise of national procurement systems.

6. Given the role that discriminating between suppliers for state contracts plays in many nations' procurement regimes, more research is needed that identifies the costs and benefits of such discrimination, especially as it relates to set-aside policies and international trade. Opinion is divided as to the merits of such discrimination—especially in the area of set-asides. A balanced analysis and account of the pros and cons of such measures that draws upon available empirical research would help both policymakers and policy analysts. A key question to be addressed is what are the most efficient ways of attaining industrial and equity type of objectives—is public procurement the appropriate (first best) tool available?
7. Quantitative studies on the effects of individual reform episodes in developing countries. After characterizing the legal and institutional nature of the reform in question, empirical analysis needs to center on the consequences of reform. For example, to what extent does the publication of tenders increase the number of firms willing to bid for state contracts, taking into account the other factors that might determine the propensity to bid? The goal here would be to quantify the likely effect of a reform measure. Where possible, data on the fiscal outlays associated with the reform and data on any resulting fiscal savings would be presented. Ideally, at least one study should focus on a significant reform whose goal was to improve transparency, another on the effects of reducing preferences when evaluating bids, another on the procurement of goods and services that the poor are highly dependent on, and one on the strengthening the rights of firms to challenge the decisions of

procurement officials. It should be stressed that the focus here would be on the quantitative impact of reforms, not on the political economy (the topic of 9. below).

8. Drawing again on actual experiences in developing countries, a series of studies on the linkages between procurement policies and other government policies would enhance understanding of the linkages between the procurement reforms and other directly related governance matters. Such studies would examine the links between procurement and corruption; the implications of the growing number of prosecutions of bid-rigging cases in developing countries; and the role and relative merits of regional trading agreements, international trade agreements, and international norms (such as the UNCITRAL Model Law) in shaping procurement reform. The need here is not for a synthesis of existing knowledge but for new documentary research of practices in developing countries. Given the focus on transparency in the WTO debate, the linkages between transparency-related reforms and practices and corruption should be considered explicitly.
9. Finally, country-studies (or sub-national studies) of the impediments to procurement reforms and the political-economy strategies that have been deployed to overcome those obstacles would be very useful. Research on this front would explicitly recognize the opposition to reform and investigate what strategies were used to mitigate, ameliorate, or circumvent that opposition—including participation in international (trade) agreements that cover procurement. The question here would be whether these have more general application.

#### ***International Cooperation on Procurement: The WTO and Transparency***

In principle, international cooperation can help improve public procurement by providing focal points for good practice and a mechanism through which governments can make binding commitments to pursue certain practices. Historically, cooperation on regulatory areas has tended to be voluntary—so-called ‘soft law’—in that norms were not binding. Examples of specialized institutions that have been created to address specific issues abound—the International Labour Office, the International Telecommunications Union, the Organization for Economic Cooperation and Development, the Bank for International Settlements and the World Customs Organization (Hoekman, 2004a). Such bodies

develop consensus standards on technical issues that members agree constitute good practice, but participation and implementation is left to individual decisions by countries. There is generally limited scope for or efforts to make implementation mandatory, and in most cases no mechanism to enforce norms through binding dispute settlement. This is a major difference with recent multilateral trade agreements, where disciplines are binding and subject to binding dispute settlement.

The focus in the WTO has traditionally been on market access. Public procurement is not subject to the GATT discipline of national treatment—members are therefore free to discriminate against foreign firms if they desire to do so. The same is true of services—the GATS excludes services procurement (Art. XIII). Only signatories to the plurilateral GPA are subject to a variety of disciplines, for both goods and services procurement, including national treatment, MFN, transparency-related provisions and dispute settlement.<sup>12</sup> Most developing countries have not signed the GPA, for reasons that will not be explored here.<sup>13</sup> One result of this resistance to joining the GPA was a shift in strategy on the part of several high-income countries—turning away from an explicit market access focus towards pushing for rules for greater transparency in government procurement. Although as of the time of writing it appears that procurement may be kept off the table during the Doha round, the issue is unlikely to disappear, if only because many regional trade agreements contain disciplines in this area.

The Chairman of the WTO Working Group on Transparency in Government Procurement Practices, established after the Singapore Ministerial, identified the following twelve issues around which discussions on procurement matters at the WTO have been organized:

- definition and scope of government procurement;
- procurement methods;
- publication of information on national legislation and procedures;
- information on procurement opportunities, tendering and qualification criteria;
- time-periods;
- transparency on decisions on qualification;
- transparency on decisions on contract awards;
- domestic review procedures;
- other matters related to transparency;

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<sup>12</sup> Coverage of services is a function of the GATS commitments GPA members have made.

<sup>13</sup> For a discussion of this matter, see Hoekman and Mavroidis (1997).

- information to be provided to other governments (notification);
- WTO dispute settlement procedures; and
- technical co-operation and special and differential treatment for developing countries.<sup>14</sup>

The proponents of more multilateral rules on transparency in government procurement include the European Communities and its Member States, the United States, Japan, Korea, and Canada. Sceptics have included Hong Kong (China), India, and Malaysia. The published minutes of the Working Group record significant disagreements on almost each and every point, with little evidence of a convergence in views across a wide range of matters (Evenett 2003). For example, the following extract from the minutes of the 29 May 2002 meeting of the Working Group highlights the divergence of view as to the coverage of any general disciplines on transparency in government procurement:

“The representative of the European Community, joined by the representative of the United States, said that, in the absence of lists of covered entities which provided certainty about the scope and coverage of rules, a definition of government procurement was especially important in a transparency agreement. His delegation considered that, although the contours of a definition remained a matter for further discussion, any definition which was eventually arrived at should be as broad as most Members could agree to. The representative of India, joined by the representative of Malaysia, said that a wide divergence remained in the Group on the question of definition. The study phase should be used for a better understanding of the various issues related to definition. This issue should be resolved through discussions in the Working Group rather than through negotiations” (WTO 2002, page 5-6).

The matter of coverage, including potentially services and works, is important as it raises the question as to whether WTO disciplines should regulate domestic policies in ways that go well beyond market access considerations. If a broad approach to coverage were taken—i.e., general transparency disciplines applying to all procurement of goods and services, whether domestic policies imply that foreign firms have access or not—this would extend the reach of the WTO further ‘behind the border’.

Moreover, a broad definition of coverage could have precedent-setting effects in the more general debate on where to draw the boundaries of the WTO. A broad approach

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<sup>14</sup> Successive chairmen of this Working Group have issued and updated a document titled “List Of The Issues Raised and Points Made,” from which the above 12 bullet points have been extracted.

to coverage for procurement might allow a case to be made for transparency disciplines in other policy areas—labor, environment, health, education, taxation, etc.<sup>15</sup> Whether this is desirable depends on the preferences of members regarding the value (payoff) of extending the reach of the Dispute Settlement Understanding (DSU), as well as the effectiveness and capacity of the WTO to develop and enforce transparency disciplines. On the latter point, it is worth noting that the DSU is unlikely to be effective if there are no (or few) “export” interests that perceive it is worth their while to bring potential cases to the attention of their governments. In the case of transparency in government procurement, in contrast to other Singapore issues such as investment or competition, there will be fewer, if any, negative spillovers imposed on foreign firms from non-compliance with negotiated disciplines (Evenett and Hoekman 2004). Instead, domestic stakeholders will have the greatest incentives to contest violations—suggesting domestic enforcement mechanisms will be important for effective enforcement.

### ***Beyond transparency...or is transparency enough?***

Many of the arguments in favor of general transparency disciplines revolve around public governance objectives, in particular reducing the scope for bribery and corruption. A potential benefit arising from transparency and accountability provisions is that they may constrain rent-seeking activities.<sup>16</sup> Although the issue of corruption extends beyond procurement, rent seeking in the public purchasing context is particularly prominent because the amounts involved are often significant. Case studies have demonstrated the cost of corruption to be high, leading to excess costs per project in the 25-50 percent range (Wade, 1982; Rose-Ackerman, 1995a). The result of corruption and rent-seeking is a reduction in the economy's growth performance as the most efficient, conforming (qualified) suppliers are not allocated contracts, resource allocation is distorted, and governments impose excess tax burdens or more commonly, pursue deficit/monetary financing (Mauro, 1995; Bardhan, 1997).

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<sup>15</sup> If members were to move down this path, the WTO acronym might come to stand for World Transparency Organization. It would appear there is some support within the Commission for moving in this direction. For example, the EC Commissioner for trade, Pascal Lamy, is on record in calling for an effort towards building a “broad coalition of interests” in support of an “explicit anti-corruption agenda in the WTO.” See “EU wants WTO to tackle corruption,” *Financial Times* January 9, 2004.

<sup>16</sup> What follows draws on Hoekman (1998).

Abstracting from differences in cultural norms across countries, effective anti-corruption strategies must reduce the magnitude of the benefits that can be granted by officials, increase the costs of bribery for the private sector, and limit the market power of officials (Rose-Ackerman, 1999; Bardhan, 1997). Transparency has a role to play but by itself is not sufficient. *If* the objective is a reduction in corruption, action needs to go further. Of the various strategies and suggestions made in the literature, the following are particularly relevant for procurement: effective deterrents through *ex post* punishments that exceed the gains realized (including banning firms caught in attempts to engage in bribery from bidding for contracts for a number of years); the creation of external monitoring devices and institutions (including encouragement and protection of "whistle blowers"); public transparency-enhancing mechanisms (published audits by independent auditors; a free press); privatization and hard budget constraints; requirements to use standardized products and/or goods that have well-established market positions; and use of general retail/wholesale market prices for goods similar to those to be procured as comparators.

Not only will transparency have to be complemented by a variety of other actions and policies, to be effective any transparency norms need to be enforceable. Of particular importance here are domestic challenge procedures and the costs and benefits of multilateral dispute settlement. To be effective, domestic challenge mechanisms need to provide firms with an opportunity to protest before the procurement process is completed, as well as thereafter (Alam, 1995). In the procurement context, the set of losers is usually small. In discretionary, non-transparent procurement systems losing firms have little incentive to protest against irregularities because of the power of procuring entities to black list them. In general, given the sunk costs of participation in the bidding process there is only an incentive to protest if expected returns outweigh expected costs of protesting. In the absence of effective compensation, and thus limited returns to, and incentives for, individuals bringing cases, there may be a need for public action to enforce norms and penalties that are strong enough to be of deterrent value. An Ombudsman, an activist and free press, and surveys of the type discussed above are all potential complementary mechanisms to ensure accountability.

The foregoing discussion suggests that procurement reform ought not to be limited to improving transparency—there is a plethora of complementary actions that will generally be needed on the part of governments and stakeholders. In short, from a development perspective, it is necessary to go beyond transparency. But this poses something of a problem in the context of trade negotiations where the natural extension of any negotiations—into the market access realm—is precisely what many WTO members are opposed to. If progress, therefore, is unlikely at the WTO, what alternatives exist for international cooperation on procurement reform?

### ***Voluntary cooperation: ‘soft law’ as a first step (or an end point?)***

Given the uncertainty regarding the returns to multilateral rule making, one alternative way forward might be to explore the scope for *more extensive* voluntary cooperation between nations.<sup>17</sup> One option could involve the creation of a mechanism through which countries exchange information on procurement policies, reforms, and their effectiveness on a voluntary basis. Such an approach would have several possible payoffs: (i) increase awareness of what has worked elsewhere (for example, as what types of complementary reforms may be needed, etc.); (ii) increase the accountability of governments to their citizens; and (iii) help identify where there are significant international policy spillovers that could justify international action (rules). Increased transparency involving monitoring of what governments actually do could also help mobilize support from domestic constituencies for reforms. Such monitoring or review activities should extend to the effectiveness of procurement policies in attaining the industrial development and equity-related objectives that are often spelt out in procurement legislation.

There are many options that can be pursued in operationalizing voluntary cooperation and greater transparency of procurement performance. One model is the Global Competition Forum that operates under OECD auspices. This brings together competition law enforcement officials from OECD and non-OECD countries to share

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<sup>17</sup> It would be incorrect to suggest that voluntary cooperation and norm formation in the area of government procurement is new. One prominent initiative is the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction, and Services. An overview of that Model Law, including a comparison to the obligations of the current GPA, can be found in Evenett (2003). Another prominent international initiative on government procurement involves including provisions on procurement matters in preferential trading agreements. The latter are discussed in OECD (2002) and Evenett (2003).

information, learn from national experiences and identify good practices. APEC provides another model along these lines that extends to trade and finance officials, with links to technical expertise and financial assistance resources. The International Competition Network is another example, which differs from OECD/APEC in that the cooperation involves primarily competition stakeholders (enforcers, private practitioners), and is not inter-governmental. Here also the focus is on a cooperative effort to improve national policies and converge, where appropriate, on common standards that are applied on a voluntary basis.<sup>18</sup>

Another possibility for “soft” cooperation would be a multilateral monitoring effort. The World Bank and its partners in the wider donor community have invested substantial resources in assessing the performance and quality of public procurement systems in many borrower countries. The instrument used is a Country Procurement Assessment Report (CPAR), which provides a diagnostic assessment of the strengths and weaknesses of the procurement systems in individual developing countries. The CPAR has led to recommendations and financing of action plans to modernize or reform an existing governance system. The impact of this work on the performance of national public procurement systems has not been well documented, although it has contributed to enactment of better legal frameworks and developing new institutions to manage procurement. CPARs could be used as an input or model for an international collaborative effort by governments to monitor their performance on the procurement front. Such a monitoring exercise could extend to the collection of some of the information that is already required on the part of current GPA members: the share of procurement that is below a minimum threshold value and the share of contracts that are awarded directly without competitive bidding.

The up- and downsides of such voluntary cooperation are well known.<sup>19</sup> A plus is that the pace with which countries adopt policies that conform to recommended principles will vary. The ‘learning’ or ‘focal point’ models that underlie voluntary cooperation help ensure that when implemented, policy changes are more likely to have

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<sup>18</sup> See Chayes and Chayes (1995), Abbott and Snidal (2000) and Sabel and Reddy (2002) for discussions of soft law in international relations, and Abbott (2001) for an analysis of international efforts to address corruption using this approach.

<sup>19</sup> See Hoekman (2004b) for more detailed discussion of soft law options in the WTO.

national ownership – i.e., there are constituencies that support adoption or changes in existing practices. A downside of the voluntary approach is that insofar as there is political economy resistance to adopting national welfare-enhancing reforms, it may not happen. The same is true of policies that create negative spillovers – the incentives for countries to take the interests of partner countries into account will be weak.

In the case of procurement the weakness of the evidentiary base is such that it is hard to tell just how important these potential downsides are. In many instances the terms-of-trade externalities associated with procurement regimes are likely to be limited, due to the small size of developing countries. In which case, the primary rationale for them to engage in international cooperation will be national: improving domestic policies and performance. Even if this is not the case, a voluntary approach to specific issues that includes explicit analysis and assessment of policies will help generate information on the size and distribution of the costs and benefits of the status quo, as well as the likely net payoffs of reform. This in itself may help change a given political economy equilibrium. It should also reduce the uncertainty regarding the possible repercussions of a subsequent engagement to negotiate binding commitments.

Information and analysis are important inputs into a well-functioning trading order. Greater monitoring and assessment of the impacts of policies would allow more informed and proactive engagement by civil society (think tanks, non-governmental organizations, consumers and taxpayers) in the policy formation and negotiation process. If more is done to determine on an objective basis the effects of prevailing policies in achieving stated national objectives, countries (stakeholders) can assess their efficacy and efficiency and, if needed, adjust them.

## **VI. Concluding remarks**

Efficiency in government procurement is of fundamental importance in ensuring that the best value for money is obtained by public entities. Procurement practices also figure prominently in the way potential investors and civil society at large views a country. Ensuring transparency of the procurement process is an important determinant of efficiency insofar as it enhances the contestability of the procurement market (by giving all qualified potential suppliers a chance to bid). If procurement procedures are opaque and discretionary, the incentive for firms to enter into a market may be quite low. The

same problem arises if it is possible for firms to obtain “preferred status” through bribery of officials and potential entrants do not “play by the rules of the game”.

Many developing countries have adopted procurement legislation and regulations that require public entities to source goods and services through an open and competitive process. To what extent actual practice is consistent with the formal rules and principles is often difficult to determine, in part because the incentives to contest violations of the formal rules of the game are often small. A WTO agreement could provide an international mechanism through which governments credibly commit themselves to transparent procurement regimes.

Whether this makes sense for individual developing countries is something that will need to be determined on a case-by-case basis. Discussions to date in the WTO Working Group have revealed that many governments have doubts that there is much to be gained from further binding multilateral rules. Many are also concerned about the possible downside risks in terms of implementation costs and the implications of extending the DSU to procurement. There is also a systemic question insofar as the objective is limited to transparency only. Whether binding (enforceable) rules should extend to cover all procurement or only that share which is internationally contestable under existing national law is a question that has implications for the WTO more broadly.

Decisions on whether or not to extend the WTO rules to cover more elements of public procurement must be based on data and analysis. More information on both policy and outcomes in developing countries is a critical starting point towards identifying the scope for (net payoffs to) international rules. The extant literature is rather limited and does not provide enough information to help policymakers identify how best to deal with the procurement challenges. Development-focused research that considers the institutional environment that prevails in specific developing countries and links procurement concerns to the broader development agenda (priorities), complemented by a mechanism that encourages the exchange of information on outcomes and alternative policy options could do much to generate an informed decision-making process in the future. A voluntary ‘soft law’ type of multilateral cooperation that aims to enhance the understanding of both applied policies *and* outcomes in individual (developing) countries could do much to mobilize the support needed for procurement reform. Such a process

would also help identify the appropriate complementary policies that are needed to make reforms work.

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**Appendix 1 Government procurement ratios in non-OECD countries, by regions**

Regions	Final Consumption Expenditure (FCE)				Total Expenditure (TE)			GDP 1998 US\$ Billion
	FCE	ex. Com	ex. Def.	ex. C&D	TE	ex. Com	ex. C&D	
<b>Africa</b>								
Benin	12.59%							2.32
Botswana	27.10%							4.98
Burundi	17.36%							0.98
Cameroon	10.22%							8.70
Ivory Coast	16.76%	4.32%			20.39%	7.96%		11.10
Egypt	9.45%							82.71
Ghana	11.88%							7.17
Kenya	16.27%	3.16%	14.43%	2.75%	19.17%	6.06%	5.66%	10.37
Lesotho	17.06%							0.37
Madagascar	8.25%							3.75
Malawi	15.31%							1.69
Mali	14.91%							2.65
Mauritius	11.73%	3.23%	11.37%	3.07%				4.20
Morocco	16.59%							36.12
Mozambique	20.18%							3.82
Namibia	29.33%	9.89%			35.78%	16.34%		3.00
Niger	17.24%							2.01
Nigeria	3.89%	1.23%						36.14
Reunion	27.35%							7.25
Rwanda	21.28%							2.04
Senegal	13.26%							4.86
Seychelles	28.75%		24.98%					0.56
Sierra Leone	7.56%							0.65
South Africa	19.74%				21.77%			116.73
Swaziland	20.80%							1.18
Uganda	9.10%							6.06
Tanzania	8.29%		6.74%					8.09
Tunisia	16.29%	3.55%			21.60%	8.86%		20.02
Zambia	19.33%							3.35
<b>Americas</b>								
Anguilla	13.83%							0.09
Bahamas	14.06%	3.42%	13.47%	3.27%	14.62%	3.98%	3.83%	4.12
Barbados	19.75%							2.33
Belize	19.47%		18.24%					0.67
Bermuda	12.70%		12.48%					2.31
Bolivia	12.45%	1.84%						7.96
Brazil	16.46%	7.21%						776.94
Cayman Island	14.67%							0.93
Chile	9.54%				11.51%			74.32
Colombia	10.27%	1.55%	9.06%	1.02%	13.48%	4.75%	4.19%	90.41
Costa Rica	16.75%				18.36%			10.42
Dominica	20.16%							0.25
Dominican Rep.	4.23%							16.04
Ecuador	9.33%	4.21%	8.05%	3.63%	13.23%	8.11%	7.53%	19.30
El Salvador	9.74%				11.14%			11.86
French Guiana	34.54%				48.75%			1.50
Grenada	19.73%							0.31
Guadeloupe	30.35%				39.25%			3.50
Guatemala	6.34%				8.37%			19.01

Appendix 1 (continued) Government procurement ratios in non-OECD countries, by regions

Regions	Final Consumption Expenditure (FCE)				Total Expenditure (TE)			GDP 1998 US\$ Billion
	FCE	ex. Com	ex. Def.	ex. C&D	TE	ex. Com	ex. C&D	
<b>Americas (continued)</b>								
Peru	7.94%				9.87%			64.06
Puerto Rico	14.12%							50.51
Suriname	26.27%							0.82
Trinidad-Tobago	16.44%	2.59%						6.14
Uruguay	13.70%							20.95
Venezuela	8.60%	2.31%			10.28%	4.00%		95.02
<b>Asia</b>								
Azerbaijan	19.86%	4.24%	11.73%	2.11%				4.10
Bahrain	26.07%							5.35
Bangladesh	13.95%		12.53%					41.42
Bhutan	21.58%							0.36
China	12.84%							960.79
Cyprus	17.81%		13.49%					8.88
Fiji	17.44%							2.33
Hong Kong, China	8.69%	2.49%			11.00%	4.81%		166.45
India	10.54%	3.44%	7.42%	1.74%	13.29%	6.18%	4.46%	420.31
Indonesia	9.20%							215.00
Iran	11.06%	2.63%	8.00%	1.90%				187.42
Iraq	30.82%							4.60
Israel	25.95%	10.01%						91.32
Jordan	23.74%							7.45
Kuwait	37.30%							26.45
Kyrgyzstan	20.04%	11.74%			21.60%	12.88%		1.87
Malaysia	13.75%		10.76%					67.48
Maldives	21.97%							0.40
Nepal	8.72%							4.48
New Caledonia	33.02%							3.56
Oman	27.34%							14.96
Pakistan	12.87%	6.61%			16.29%	10.03%		64.13
Papua New Guinea	23.24%							3.71
Philippines	9.85%	2.94%			14.29%	7.38%		82.24
Qatar	34.44%							11.70
Saudi Arabia	33.86%							125.84
Singapore	9.35%							84.38
Sri Lanka	13.17%	5.57%	10.03%	4.24%	17.42%	9.82%	8.48%	15.70
Syrian Arab R.	14.34%							64.93
Thailand	9.67%	3.08%			17.31%	10.72%		117.04
United Arab Emirates	17.01%							47.23
Uzbekistan	22.71%							14.19
Vanuatu	28.24%	16.86%						0.25
Viet Nam	15.93%							24.60
Yemen	27.42%							5.33
<b>Europe</b>								
Albania	10.20%							3.03
Belarus	19.15%	10.54%	10.54%	5.62%	21.27%	12.65%	7.74%	14.28
Bulgaria	8.08%							12.06
Estonia	16.62%	8.06%	15.96%	7.75%	21.05%	12.50%	12.18%	5.11
Latvia	14.70%	7.79%			17.09%	10.18%		6.19
Lithuania	15.68%							10.69
Malta	17.56%	4.24%	15.20%	3.67%	21.87%	8.55%	7.99%	3.99
Romania	13.77%		8.49%					41.70
Russia	17.39%		12.70%					283.82
Slovenia	19.62%							19.99
Ukraine	15.77%	7.95%	9.33%	4.72%	18.15%	10.33%	7.10%	42.70

Notes:

Com=Compensation of state employees

Def.=Defense expenditures

C&D=Total of compensation of state employees and defense expenditures