

# Government procurement:

## ActionAid's concerns and recommendations

Working group on Transparency in Government Procurement Practices, the GPA & GATS

**Government procurement accounts for around 20 per cent of global GDP – more than the total value of global exports. Rich countries, backed by powerful companies, are hoping to prise open access to foreign procurement markets by introducing multilateral rules on procurement based on the “national treatment” principle. As with the MAI, access to national procurement contracts would be opened up to foreign firms, who would be given the same, or better, rights as local companies. Both the EU and USA are treating the WTO's current work on transparency in government procurement as a route to the subsequent multilateral liberalisation of procurement markets. This may have serious consequences for developing and least developed countries.**

**G**overnments are the largest purchasers of goods and services in the world, with their spending spanning every sector, from health through to transport, education, construction and telecoms. Globally, government procurement accounts for around \$6 trillion a year, and as much as 40% of national wealth in many developing countries. With Northern companies and TNCs eyeing up billions of dollars of potential business in foreign procurement markets, developing countries are likely to come under intense pressure at Seattle to commit to future negotiations to liberalise their government procurement markets.

The liberalisation of government procurement would concentrate gains for powerful commercial interests in the North, since it is almost exclusively Northern and transnational companies that are ready and waiting to move in to exploit new procurement markets abroad. In poorer countries, local businesses would be squeezed out by larger foreign firms, and governments would be forced to let go of what chances they have to use public purchasing to support local commercial and social development. The introduction of multilateral rules to liberalise government procurement would undermine developing countries' ability to manage government procurement to better support development and poverty eradication.

### ActionAid believes that developing countries must:

- **preserve their ability to use government procurement to support development**
- **secure firm and detailed commitments to effective capacity-building for the implementation of new rules on transparency before signing any transparency agreement**
- **reject any “review clause” in a potential transparency agreement, which would hook developing countries into follow-on negotiations on multilateral procurement liberalisation.**

### ActionAid believes that rich countries must:

- **not seek to expand the WTO government procurement agenda beyond transparency**
- **ensure that poor countries have sufficient support and capacity to implement any agreement on transparency before seeking a transparency agreement, and help to build the capacity of developing countries to use domestic procurement effectively to support development objectives.**

ActionAid is an international development agency that works with some of the poorest communities to overcome poverty and secure lasting improvements in the quality of their lives. ActionAid's programmes reach over five million people in more than 30 countries in Africa, Asia, Latin America and the Caribbean.

“The procurement market accounts for up to 15% of GDP in most developed and many developing countries. EC companies have limited guaranteed access to this market. The EC’s long term objective therefore remains to bring procurement within the WTO framework.

The EC must press for a high degree of transparency in procurement coupled with a phased programme of gradual market opening. It may be possible at the Seattle Ministerial itself to register progress on transparency, but this would need to be substantive and should be combined with an agreement to pursue negotiations to progressively liberalise the government procurement markets.<sup>i</sup>”

European Commission, “The EU Approach to the Millennium Round” July 1999

“Public procurement law is the most flagrantly violated category of EU law, both by member states... and by contracting authorities.”<sup>ii</sup>

European Commission,  
“The EU Approach to the  
Millennium Round”  
July 1999

## Hypocrisy of the rich countries’ agenda on government procurement

**Rich countries are pushing the multilateral liberalisation of government procurement through the WTO in the full knowledge that poorer countries have little hope of accessing Northern procurement markets.**

- After joining the WTO’s voluntary Government Procurement Agreement (GPA), domestic firms in the EU, Japan and the USA maintained their hold over national government procurement, but domestic firms in the smaller countries lost out over time as foreign companies moved in.
- Government procurement rules in the EU mirror the GPA, and yet public purchasing remains the most protected area of the EU Member States’ national economies, and the most poorly implemented area of the European Single Market. While public procurement accounts for 11 per cent of the EU’s GDP, only 3 per cent of contracts go to companies from other EU countries.<sup>iii</sup>

- No OECD country has signed up to the voluntary GPA without attaching a long list of exemptions to its participation. As with the MAI, the USA and other rich countries would probably try to hold onto sweeping exemptions from any future multilateral agreement on government procurement so that they can continue favouring their own domestic companies in awarding contracts.
- Rich countries’ concern to protect their own procurement markets is reflected in their failure to untie development aid to LLDCs. Aid tying impacts negatively on poorer countries, distorting and constraining their national economic and commercial development.\* In Nicaragua, for instance, around 45 per cent<sup>iv</sup> – and in Haiti as much as 70 per cent – of government projects are financed by bilateral assistance, much of which is provided on the condition that supplies or services are purchased from the donor country, rather than locally.

“The work this year to improve and expand the coverage of WTO rules on government procurement can facilitate U.S. efforts to improve our access to the lucrative infrastructure projects now planned or under way in the rapidly growing regions of the world. We estimate that Asia alone will provide opportunities for up to \$1 trillion in business for such projects over the next decade.”<sup>v</sup>

Testimony of Ambassador Charlene Barshefsky, US Trade Representative,  
Before the House International Relations Committee, 10 June 1997

\*See Jeffery Chinnock and Sarah Collinson, *Purchasing Power: aid untying, targeted procurement and poverty reduction*, ActionAid, London, September 1999. See also Jeffery Chinnock, *In Whose Benefit? The case for untying aid*, ActionAid, London, April 1998.

# Purchasing for development

**T**he way in which governments spend their money has a significant impact on the economic and social development of a country. In a world of dwindling development aid and escalating levels of poverty, the key task for all governments is to use their purchasing power to best support development and poverty eradication. Development and poverty reduction should be at the heart of all international discussions on procurement.

The challenge is to reorient and rethink the “value for money” concept to encompass the crucial positive and negative impacts that procurement and contracting can have on social development. In its 1998 communication on public procurement, the European Commission argued that “the best value for money objective in public procurement does not exclude taking environmental, social and consumer protection considerations into account”<sup>v</sup>

A new ActionAid report, *Purchasing Power*,\* draws on a range of experience and best practice, illustrated by case studies, to demonstrate how public procurement and contracting can be best oriented to foster local economic development and pro-poor economic growth.

In most EU Member States, government procurement purchases are estimated at 10-15 per cent of GNP. In 1994, public spending on goods and services within the EU was equivalent to the combined economies of Belgium, Denmark and Spain, or half Germany’s GDP.<sup>vi</sup> Meanwhile, government procurement represents around 20 per cent of Latin America’s GDP, and between 20 and 40 per cent of East Asian countries’ GDP.<sup>vii</sup>

Most countries grant at least some preference for national suppliers. In Brazil, for example, locally manufactured telecommunications products have received preferential treatment in government procurement, and foreign firms have only been able to bid to provide technical services if there are no qualified Brazilian firms.<sup>viii</sup> Preference for domestic firms in government procurement supports local commercial development, and protects national balance of payments by preventing foreign firms siphoning-off profits that would otherwise remain within the national economy.

Public sector purchasing is widely used as an instrument of targeted economic and social policy, such as the promotion of small and medium-sized enterprises (SMEs), equal opportunities, minority employment, and improved environmental and labour standards.

## ActionAid recommends that:

- Rich Countries should enhance the efforts and help build the capacity of poorer countries to use government procurement effectively and positively to support development and other national social, economic and environmental objectives.
- Governments should insist on making the commitment to development and environmental goals central to the activities and outputs of the Working Group on Transparency in Government Procurement. Governments should refuse to sign any transparency agreement that is not focused on achieving development objectives.
- Governments and concerned multilateral and development organisations should continue to tackle corruption and pursue more transparent and stronger procurement systems which support national development objectives.
- Governments and development organisations should share experience and learning, and invest resources into researching how government procurement can be used as an effective development resource. Southern governments should aim to improve their existing procurement practices to enhance the growth and development of local and regional producers, manufacturers and consultants within a pro-poor framework.
- Governments and development organisations should invest resources in strengthening and improving procurement systems and practices, especially in poorer countries.
- Governments should rethink and re-examine the concept of “value for money” in government procurement so that strategic development and environmental policy objectives can be supported transparently by government spending.

## Existing WTO work on government procurement

- At the 1996 Singapore Ministerial Conference, Ministers agreed to “establish a working group to conduct a study on transparency in government procurement practices, and... to develop elements for inclusion in an appropriate agreement”. The Working Group on Transparency in Government Procurement Practices has been the main focus of the WTO’s work on procurement over the last few years. Among the working groups established at Singapore, this is the only one which has been charged not only with examining the issue concerned, but also with developing elements for a multilateral agreement.
- Although there is some developing country participation in the Working Group, no poor countries have the capacity to engage effectively in the Working Group’s activities. Participation of sub-Saharan African countries is minimal. Those developing countries that do participate largely support efforts to study transparency and tackle corruption in government procurement, but most oppose any expansion of the Working Group’s mandate beyond transparency issues.
- A commitment to liberalise procurement in services under the GATS has become largely subsumed within a broadened agenda on procurement liberalisation since the conclusion of the Uruguay Round, as rich countries are now pursuing the liberalisation of both services and goods through the WTO.
- The WTO’s current plurilateral (voluntary) Government Procurement Agreement (GPA) entered into force in January 1996, following significant expansion of an earlier 1981 agreement during the Uruguay Round. Parties to the Agreement (26 in total) include the European Community and its fifteen Member States, the USA, Canada and Japan, but no developing countries. A 1998 World Bank study points to serious economic constraints that mean that poorer countries have no interest in signing up to the GPA. Most poor countries cannot hope to get anything out of “free” access to OECD procurement markets since their comparative advantage lies elsewhere.

### EU and USA approaches to procurement in the run-up to Seattle

- The EU and the USA are both pursuing a two-stage approach to government procurement liberalisation at Seattle and beyond. They hope, first, to secure a multilateral agreement on transparency in government procurement, based on the current work of the transparency working group. The transparency agreement is intended as a first step towards subsequent multilateral liberalisation.
- While the USA favours eventual multilateral liberalisation through an expansion of the existing GPA, the EU favours the inclusion of procurement in a new round of comprehensive trade negotiations, with the aim of securing a new, more flexible, multilateral procurement agreement to replace the GPA.
- Developing countries will come under intense pressure at Seattle to sign a transparency agreement and/or accept an expansion of the procurement agenda. A Draft Agreement on Transparency in Government Procurement Practices was issued in early November 1999, ahead of the Seattle meeting.
- The USA is likely to press developing countries to sign a transparency agreement at Seattle before the Ministerial meeting closes.
- The EU, meanwhile, is likely to press developing countries to accept an extension of the mandate of the Working Group on Transparency in Government Procurement. Post-Seattle, the EU is likely to push them to accept the inclusion of an unspecified “review clause” in a transparency agreement to be signed in 2000.
- The inclusion of a review clause in the transparency agreement would hook WTO members into follow-on negotiations on multilateral procurement liberalisation.

**T**here would be no clear benefits for developing countries from the introduction of multilateral rules on government procurement through the WTO, and poorer countries currently have no capacity to negotiate or implement effectively any agreement in this area. African and other developing countries have made it clear that they do not want to see any extension of WTO activity in this area beyond the current limited work on transparency.

Opening up government procurement markets to international competition is not the key to successfully tackling corruption in national procurement markets, particularly when the introduction of multilateral rules would further overstretch developing countries' limited capacity in these areas. Nor are multilateral rules on procurement a necessary precondition for governments to seek efficiency and value-for-money in procurement by procuring internationally, where this is seen as appropriate.

“ *The present mandate of the Working Group on Government Procurement is to Study the elements of transparency in procurement processes... there should be no attempt to expand the scope of the Group's mandate beyond transparency... there should be no negotiations for multilateral disciplines in the area.* ”

**The Second SEATINI Workshop for African Trade Officials, March 1999**

## → At Seattle:

→ **Developing country governments should maintain authority to decide on their national procurement priorities, and they should not agree to any negotiations or plans for multilateral disciplines in this area. Governments should reject the introduction of “national treatment” for foreign firms in government procurement.**

→ **Governments should reject any expansion of the mandate of the Working Group on Transparency in Government Procurement Practices apart from strengthening the commitment to development and environmental goals in the Working Group's activities and in any potential agreement on transparency in government procurement.**

→ **Governments should refuse to sign any transparency agreement that is not focused on achieving development objectives.**

→ **Governments should secure firm and detailed commitments to effective support and capacity-building for the implementation of new rules on transparency before signing any transparency agreement. Before seeking signature of a transparency agreement, rich countries should ensure that developing and least developed countries have sufficient support and capacity for its implementation.**

→ **Governments should reject the inclusion of any “review clause” in a potential agreement on transparency in government procurement that would hook them into follow-on multilateral negotiations to liberalise government procurement.**

→ **Governments should reject any multilateralisation of the GPA.**

→ **Governments should oppose the introduction or negotiation of any investment measures that would effectively undermine national public procurement preferences.**

→ **Governments should insist on strengthened social development exemptions from the General Agreement on Trade in Services (GATS).**

# WTO Institutional issues

**There is a need to address the fact that currently poorer countries lack the capacity and resources for informed and full participation in WTO negotiations.**

## → Meaningful capacity building for developing and least developed countries

This has to go beyond providing technical assistance to implement agreements and the provision of often highly paid Northern consultants to advise governments. There is a need for capacity building from the local level up to enable effective engagement in the multilateral trading system.

In this respect developed country governments should:

- Replenish the WTO trust funds for technical co-operation (all funds had been used up as of July 1999);
- Commit financial support (enforceable under the WTO) for developing countries to meet the cost of implementing the AoA;
- Provide support for capacity building in developing and least developed countries as laid out in the integrated framework for trade-related technical assistance to least developed countries. Twenty-one LDCs have expressed an interest in having roundtables under the integrated framework but only two country meetings have taken place; and
- Provide a funding mechanism that will allow poorer countries to maintain a presence in Geneva and participate in WTO negotiations.

## → Increased civil society participation in the WTO process

There is a need for greater transparency about the policy making process at the national level, increased parliamentary scrutiny and increased participation of civil groups in the WTO process.

Amongst other measures, member governments should mandate the WTO secretariat to:

- Establish an accreditation process for NGOs to the WTO in line with that operational in the UN;
- Publish the timetables and agendas for WTO meetings sufficiently in advance to enable more meaningful public debate; and
- Ensure rapid de-restriction of official documents.

- i European Commission, *The EU Approach to the Millennium Round*, Communication from the Commission to the Council and to the European Parliament, Brussels, July 1999.
- ii The Economist Intelligence Unit, *European policy analyst: key issues and developments for business*, 2nd quarter 1998, London.
- iii European Commission, *Public Procurement in the European Union: Exploring the Way Forward*, Green Paper, COM(96) 583 final, Brussels, 27.11.1996, p.5.
- iv SMEs and Public Procurement, op cit., p.16. See also Jeff Chinnock and Sarah Collinson, *Purchasing Power: aid untying, targeted procurement and poverty reduction*, ActionAid, London, September 1999.
- v *Public Procurement in the European Union*, 1998, op cit., p.25. (European Commission, *Public Procurement in the European Union*, Communication from the Commission, COM(1998) 143 final, Brussels, 11.03.1998)
- vi *Public Procurement in the European Union: Exploring the Way Forward*, Green Paper, p.3; and European Commission, *Public Procurement in the European Union*, 1998.
- vii The Enterprise Research Institute, *SMEs and Public Procurement: Lowering Transaction Costs to Increase Participation*, (undated), p.3.
- viii SMEs and Public Procurement, op cit., p.15.