

Given the nature of these recommendations, the Board asks DG MARKT and TRADE to submit a revised version of the report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Strengthen the problem definition and clarify the intervention logic. The rationale for the proposed initiative should be more clearly and coherently presented throughout the report. First, the analysis of the problem should clarify what the main issues are and discuss their relative significance in view of the size of national procurement markets and their current and potential level of penetration (taking into account the evidence from the EU single market and the constraints imposed by existing market access commitments). In order to establish more firmly the continued relevance of the identified problems, the report should also provide a more robust baseline scenario clarifying all powers at the EU's disposal to influence the degree of openness of third countries markets and considering alternative outcomes for on-going trade negotiations. Building upon this strengthened analysis of the problems, the report should then clearly spell out what the intended effects are in terms of the accessibility of EU and third countries' public procurement markets, the degree of Single Market integration and environmental and labour standards.

(2) Better present and design options. The report should simplify the presentation of the existing policy options, clarify their content and explain how they would address the identified problems. The report should also consider a wider set of alternatives and possible combinations of options. These should include envisaging notification when allowing access for third country providers (as opposed to limiting access), more forcefully targeting third countries' procurement markets in the context of existing trade negotiations, considering specific tools to address abnormally low bids (or other instances of unfair competition), and envisaging ad hoc changes in the context of the on-going revision of the EU public procurement directives (for instance, extending the provisions of Art. 58 and 59 beyond the utility sector or better exploiting strategic procurement provisions to complement value for money considerations when awarding contracts). The report should explain the reasons why any of these additional options may be discarded without an in-depth analysis.

(3) Improve the analysis of impacts. First, the report should better explain the nature of some of the impacts considered, such as those on the supply chain and public finances. Secondly, it should improve the analysis of several impacts, more extensively discussing social and environmental effects, better assessing economic impacts on consumers, competition and sector competitiveness, and comprehensively analysing all the administrative cost impacts of the preferred option on enterprises, contracting authorities and Commission services. While following these recommendations, the report should provide a more user-friendly explanation of the underlying methodology and assumptions.

(4) Discuss more extensively the case for the preferred option. Against the background of a strengthened intervention logic, a wider set of policy options and a more robust baseline scenario, the report should discuss in greater detail the effectiveness and efficiency of the preferred option both relative to the other options and in terms of its likelihood to substantially increase access to third countries' procurement markets for EU enterprises. In order to do so, the report should take into due account the reasons for the

current asymmetries in openness, provide practical examples of the ways in which greater leverage in international trade negotiations would be achieved and explain whether there would be any risk of violation of international agreements. It should also better justify the hypotheses made concerning the risk of retaliation and show whether different assumptions on this would affect the choice of the preferred policy options. In this context, the report should assess the extent to which the threat of a substantial reduction in access to EU markets would be credible given the advantages of (unilaterally) open markets and should also clarify how third countries that already deny any access to their procurement markets could effectively retaliate.

(5) Better present and take into greater account stakeholders' views. Although the annexed summary of stakeholders' views is rather transparent, it should be improved by incorporating the views expressed during the consultation of European social partners in February 2011, presenting separately the opinions expressed by trade unions and NGOs and explicitly indicating the percentage of stakeholders with the same view. Most importantly, the report should reflect stakeholder opinions more systematically throughout and should explain the reasons why it does not share the views of the majority of stakeholders on major issues such as the problem definition and the preferred policy option.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation.

The text of the report should be shortened and considerably simplified. All sections and annexes should use the same formatting (LegisWrite). Tables and figures should be systematically explained and data sources and measurement units explicitly indicated. A complete table of content should be included. The report should also seek a better balance between the main text and its annexes, in particular with regard to the significant amount of background analysis on the level of access of various procurement markets which is not always directly relevant and/or proportionate to the arguments developed in the main text.

Given that the Impact Assessment Steering Group was not fully consulted on the draft report submitted to the Board, the Steering Group should be allowed to comment on the revised report before this is resubmitted to the Board.

(E) IAB scrutiny process

Reference number	2011/MARKT/011
External expertise used	No
Date of Board Meeting	23 November 2011