

# **Taiwan's Accession to the WTO's Agreement on Government Procurement**

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On 9<sup>th</sup> December, 2008, following six years of negotiations, the WTO committee for government procurement finally announced Taiwan's admittance to the Agreement on Government Procurement (GPA) as its 41<sup>st</sup> signatory.

However, currently Taiwan's accession to the GPA is still in the process of being ratified and the Agreement is not expected to come into effect in Taiwan until June 2009 at best.

The GPA is a plurilateral agreement, i.e. it is effective only amongst its signatories rather than being automatically binding for all the WTO members.

A first discussion of an agreement on government procurement took place during the so-called Tokyo Round of the trade negotiations, the result of which came into effect in 1981. The GPA aims at opening up the procurement markets among its signatories and preventing governments from giving in to political pressure to favour domestic suppliers over their foreign competitors. The GPA opens up new markets for the signatories' companies bidding for contracts and, in turn, ultimately leads to more cost-efficiency as the procuring governments have a greater number of bidders to choose from.

The GPA's current version was negotiated in parallel with the Uruguay Round; during these proceedings a major expansion of coverage was achieved. The amended version that came into power in 1996 for the first time included procurement by sub-central government entities, such as cities and municipalities, and extended the scope to service contracts (including construction services), which had not been covered before. The GPA consists of a general text binding upon all parties and of four Appendices, part of which are largely a result of the negotiations between the parties and thus vary from signatory to signatory. This means that the GPA does not automatically apply to all government procurement, but rather only to those entities and services and goods laid out in the Appendices for each respective WTO member.

The text of the GPA contains a framework of mutual rights and obligations universally valid for all its signatories. Many of these regulations concern the details of tendering procedures. The regulations contained in the text are strongly based on the GPA's cornerstone principles, non-discrimination and transparency.

Thus Article III of the GPA states that “with respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement” the Parties may treat the products, services, and suppliers of any other party “no less favourable” than their domestic products, services, and suppliers, or those of other parties. Article III also prohibits the parties to treat one locally-established supplier differently from another locally-established supplier “on the basis of degree of foreign affiliation or ownership”. Article II of the GPA further contains an interdiction of discrimination against domestic suppliers based on the fact that their goods or services are being produced in the territory of another state that is a signatory to the Agreement.

The principle of non-discrimination as a recurrent theme of the GPA is also contained in the regulations on tendering procedures and the qualification of suppliers. Thus Article VII of the GPA requires of the signatories that “the tendering procedures of its entities are applied in a non-discriminatory manner” and Article VIII calls for qualification procedures to be non-discriminatory.

An important means for avoiding discrimination is to require laws, regulations, procedures, and practices regarding government procurement to be more transparent; accordingly Art. XIX of the GPA demands of the parties to “promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure” regarding government procurement in a manner that allows the parties to become acquainted with them. The appropriate publications need to be listed in Appendix IV.

Art. XIX of the GPA further demands of the signatories to provide the competent committee with statistics and reports on its procurement on an annual basis as well as to explain to any other party its government procurement procedures upon request.

As Art. I of the GPA opens the scope of the Agreement up wide to almost any kind of government procurement, Appendix 1, which as mentioned before differs from signatory to signatory, allows for some modifications. Appendix 1 consists of 5 Annexes and contains details on the procuring entities, the goods and services to which the Agreement is applicable, as well as certain thresholds which have to be exceeded for the Agreement to come into action.

Annexes 1 to 3 of Appendix 1 contain a list of entities whose procurement actions shall be governed by the GPA. They also contain the threshold values which limit the applicability of the GPA according to the worth of the procurement contract, please see Attachment 1 to this article. Annexes 4 and 5 of Appendix 1 specify each signatory's covered services, including construction services. This list is based on the UN's *Central Product Classification (CPC)*. Among other services it contains legal and tax advice services, accounting, and architectural and construction services.

Exempted from the list of services governed by the GPA in Taiwan are, for instance, coinage, research and development, as well as services or production linked to national security.

A further modification of the GPA's scope is contained in its "General Notes". In Taiwan's case these hold further exemptions from the applicability for electrical generation, transportation and a number of electrical products. A somewhat complicated system then allows for exemptions from these exemptions which eventually permits certain countries to render or produce the afore exempted services and products after all.

With regard to the member states of the European Union and to Switzerland this leads to the result depicted in Attachment 2 of this article.

Due to some indirect obstacles, such as there being no requirement for publications to be published in English, or short bidding periods making it harder for foreign companies to enter bids on time, the procurement market might not be quite as open as one would hope for. However, despite there being room for improvement, Taiwan's accession to the GPA holds a range of possibilities both for Taiwan and the other signatories who will then all be able to profit by these newly opened procurement markets. Eventually the taxpayers will benefit from more transparency and cost efficiency.

## Attachment 1

**Taiwan GPA Thresholds****Thresholds for Public Procurement Tenders to be subjected to GPA requirements.**

| (TWD, EUR and CHF figures approximate, in million, per Dec. 2008) |              | TWD                  | USD <sup>†</sup> | EUR  | CHF  |      |
|---|--------------|----------------------|------------------|------|------|------|
| Central Government Entities                                       | Goods        | 6.5                  | 0.19             | 0.15 | 0.23 |      |
|   | Services     | 6.5                  | 0.19             | 0.15 | 0.23 |      |
|   | Construction | 249                  | 7.5              | 5.7  | 8.99 |      |
| Sub-Central Government Entities                                   | Goods        | 10                   | 0.3              | 0.23 | 0.36 |      |
|   | Services     | 10                   | 0.3              | 0.23 | 0.36 |      |
|   | Construction | 1 <sup>st</sup> Year | 747              | 22.4 | 17.1 | 26.9 |
|   |              | 2 <sup>nd</sup> Year | 498.             | 14.9 | 11.4 | 17.9 |
|   |              | 3 <sup>rd</sup> Year | 249              | 7.4  | 5.7  | 8.9  |
| All Other Entities  | Goods        | 20                   | 0.6              | 0.46 | 0.7  |      |
|   | Services     | 20                   | 0.6              | 0.46 | 0.7  |      |
|   | Construction | 1 <sup>st</sup> Year | 747              | 22.4 | 17.1 | 26.9 |
|   |              | 2 <sup>nd</sup> Year | 498              | 14.9 | 11.4 | 17.9 |
|   |              | 3 <sup>rd</sup> Year | 249              | 7.4  | 5.71 | 8.9  |

<sup>†</sup> IMF, SDR Valuation, Dec 10, 2008, [http://www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](http://www.imf.org/external/np/fin/data/rms_sdrv.aspx)

[http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

Government Procurement Agreement

## Attachment 2

**Goods and services to which the GPA applies for the service providers of the European Communities and Switzerland:**

|           |  |
|-----------|--|
| HS 8402   | Steam or other vapour generating boilers   |
| HS 8404   | Auxiliary plant for use with boilers   |
| HS 8410   | Hydraulic turbines, water wheels, and regulators   |
| HS 8501   | Electric motors and generators   |
| HS 8502   | Electric generating sets   |
| HS 8504   | Electrical transformers and converters   |
| HS 8544   | Power cables (including optical fibre cables)  |
| CPC 51340 | Power transmission line construction work  |
| CPC 51360 | Power plant and substation construction work   |
| CPC 51649 | Power transmission and distribution automation system construction work  |
| CPC 52262 | Power plant construction engineering work  |
| CPC 86724 | Power transmission, distribution and substation engineering design services  |
| CPC 86725 | Power plant engineering design services)   |
| CPC 86726 | Power transmission and distribution automation system engineering design services  |
| CPC 86739 | Integrated engineering services for power transmission and distribution turnkey projects   |
| HS 8608   | Railway or trainway track fixtures and fittings, mechanical (including electro-mechanical) signaling, safety or traffic control equipment for railways, roads, inland waterways, parking facility, port installations or airfields, parts of the foregoing |

**Goods to Which the GPA applies for the providers of the European Communities:**

|         |   |
|---------|---|
| HS 8601 | Rail locomotives, powered from an external source of electricity or by electric accumulators  |
| HS 8603 | Self-propelled railway or trainway, coaches, vans and trucks, other than those of heading.  |
| HS 8605 | Railway or trainway passenger coaches, not self-propelled, luggage van, post office coaches and other special purpose railway or trainway coaches, not self-propelled |
| HS 8607 | Parts of railway or trainway locomotives or rolling stock   |

**Goods and services exempted from the GPA for provides from the European Communities and Switzerland:**

|         |   |
|---------|---|
| HS 8532 | Power capacitors  |
| HS 8535 | Electrical switches, breakers, switch-gears (for a voltage exceeding 1,000 volts)     |
| HS 8536 | Electrical switches, breakers, switch-gears (for a voltage not exceeding 1,000 volts) |
| HS 8537 | switch boards, controller panels  |
| HS 9028 | Electricity supply meter  |

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