



EU-China Trade Project

中国-欧盟世贸项目(二期)



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Impacts of China's GPA Accession and the Way Forward

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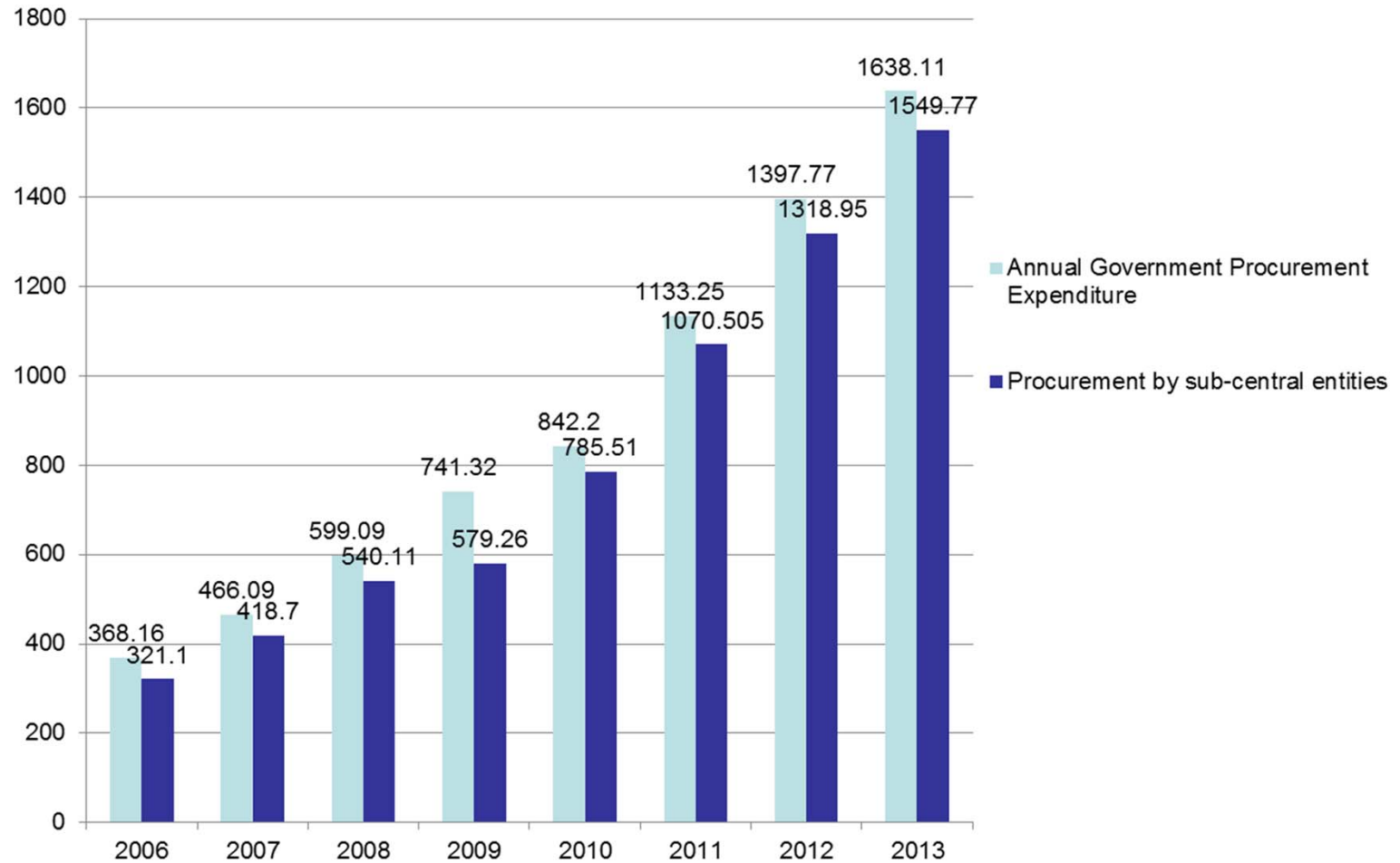
Support to China's Sustainable Trade and Investment System

支持中国可持续贸易和投资体系

Background

- The GPA accession context
- The domestic reform context
 - Consistent enlarging of government procurement market
 - Public procurement reform: evolving legal framework
 - Public service reform: outsourcing, PPP
 - Theme: enhanced role of market/competition; changing role of the government and public sector

Chinese Government Procurement Market



Sub-central government procurement market

•Note:

* The province is listed in China's Appendix I Annex 2 Group A

** The province is listed in China's Appendix I Annex 2 Group B

Provinces /Municipalities	2011	2012	2013
Jiangsu*	111.79	145.025	167.69
Guangdong*	104.054	123.269	170.4
Shandong*	84.699	107.342	124.891
Zhejiang*	77.791	83.563	98.376
Henan**	56.993	73.094	95.493
Anhui**	55.561	78.58	71.11
Guangxi	55.123	63.424	75.928
Hebei**	43.735	42.21	44.54
Shanghai*	40.06	43.32	50.77
Liaoning*	37.6		
Inner Mongolia	33.938	40.391	41.375
Chongqing*	33.4	58.8	66
Hubei**	30.6	34.1	40.2
Beijing*	30.16	34.346	
Fujian*	29.548		30.727
Sichuan	29.295		
Hunan**	26.098		43.5
Yunnan	24.79		28.848
Heilongjiang**	21.83	26.342	29.044
Guizhou	18.535		32.6
Jilin	17.576	20.27	
Tianjin*	17.55	17.42	22.73
Jiangxi**	14		44.519
Xinjiang	13.667	18.102	
Shanxi**	13.6		
Shaanxi	11.129	13.521	15.687
Gansu	7.105	7.94	8.145
Hainan**	3.942		
Qinghai	3.323		
Tibet	3.3		18.446
Ningxia	0.8		



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Market Access Opportunities

- Potential value of contract opportunities covered by the GPA: \$1.6 trillion
 - EU: 237 billion EUR
 - US: 178 billion EUR
 - Japan: 27 billion EUR
- **Actual contracts awarded** [EU (2007-09), shares of cross-border activities by total contract values]
 - Direct cross-border procurement: 3.5% (88% go to operators from other MS)
 - Indirect through affiliates: 13.4% (60% go to operators from other MS)
 - Indirect through subcontractors: 0.2%
 - Indirect through consortia: 0.1%
 - Indirect through wholesalers/distributors: 11.9%.

Trade Barriers regarding public procurement

- US:
 - Buy American Act
 - The Buy American provision in Section 1110 of the American Recovery and Reinvestment Act (ARRA) of 2009
 - “Little Buy American Acts”(excluded from GPA)
- EU: proposed “third country access to PP market” initiative- different from US measures, not as restrictive; but should be taken seriously
- Impact of China’s GPA accession
 - The lingering shadow of US restriction for national security
 - Huawei & ZTE case
 - Sanyo/Rolls case

Impact on Chinese export industry: case studies of high speed railway and nuclear power

- The strategy of “go abroad” and the pioneers
- Success: Boston subway project; Argentina nuclear project
- In pipeline: California HSR; HS2; Hinkley project.
- Failures: Mexico HSR; Polish Highway

Impact on Chinese export industry: case studies of high speed railway and nuclear power

- **Characteristics:**

- China's "go abroad" initiative encourages Chinese enterprises to expand from supplying equipment to exporting all aspects of the supply chain.
- Chinese enterprises compete vigorously in terms of price.
- Chinese companies do not resist but rather embrace the idea of local content, local production and transfer of technology- typical offsets under the GPA.
- The technology offered by Chinese SOEs is often those transferred to them from western companies such as Siemens for rolling stock and Westinghouse for nuclear reactor.
- Chinese SOEs have at their disposal designated financial support from Chinese state-owned banks. Chinese banks' offer to finance infrastructure in other countries is often contingent on awarding contracts to Chinese companies.
- Chinese SOEs have also at their disposal considerable political capital such as the salesmanship of the Premier.
- Chinese government has been instrumental in the creation of super SOEs in rail and nuclear sectors at the price of elimination of domestic competition



Impact on Chinese export industry: case studies of high speed railway and nuclear power

- Concerns:
 - “Go abroad” should not be equated with “production abroad”, impact on domestic industry and employment;
 - Long term sustainability of maintaining low price with increased cost;
 - Uncertainty regarding recoupment of financial investment, price sacrifice;
 - The true cost of transfer of technology;
 - Can financial backing always guarantee bidding success?
 - Can the financial and political resources be better spent elsewhere, e.g. R&D?
- The important role of GPA in addressing these concerns and the urgency
 - The prohibition of offset
 - Shall China be more proactive in GPA expansion?

Impact on Chinese Procurement Law and Practice

- Efficiency gains via cost saving and enhanced Administration
- Preserving and enhancing competition on procurement market and beyond
 - Impact on bid rigging
 - Impact on competition beyond procurement market: the confidence in going abroad implies confidence in opening up.
- Supporting Chinese public services (outsourcing, PPP) reform
- Providing momentum for the on-going battle against local protectionism
- Impacts on the fight against corruption
- Harmonisation of government procurement rules
- Improvement of Chinese Supplier Review System

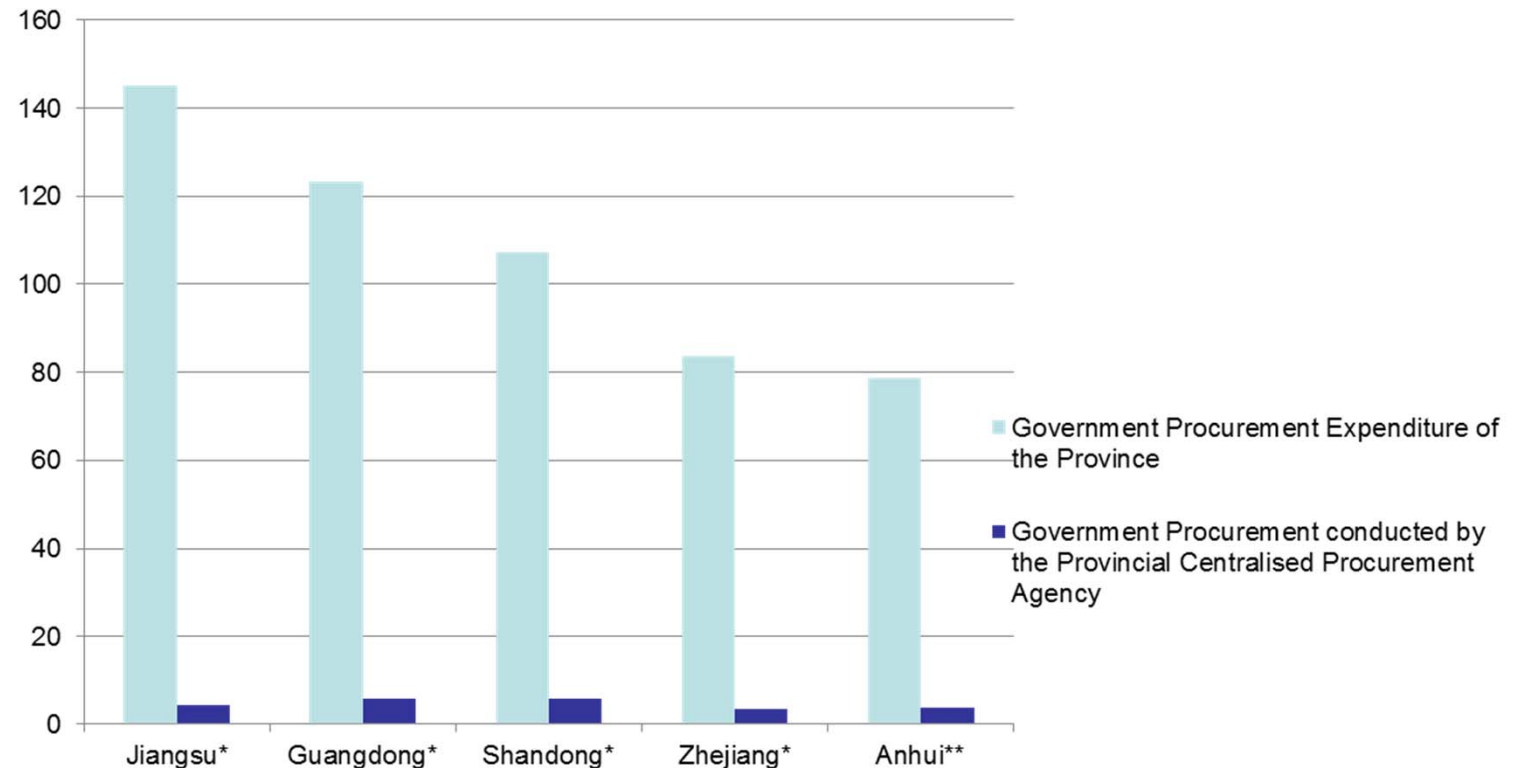
Impacts on pursuing horizontal/secondary policies through procurement

- Chinese practice and compliance analysis:
 - Eco-products lists (82% of procured goods)
 - Energy efficient products lists (86% of procured goods)
 - List=label?
 - The important requirement of “or equivalent”
 - Disclosure of assessment criteria?
 - The SMEs measure (76% contracts award)
 - Is small definitely beautiful?
 - The cost of set-aside
 - SMEs-fair or SMEs-facilitating
 - Is the derogation really necessary? (threshold applied in practice)
 - Finland, Sweden, Norway and Chinese Taipei have dropped the derogation regarding “important national policy”
 - The cost of management

Impacts on existing GPA Parties

- The merit of offer regarding sub-central procurement: the size of procurement by provincial level agencies is relatively limited.
- The difficulty in securing market access for GPA Parties' suppliers to future major infrastructure projects procured by newly created SOEs.
- Limited coverage of SOEs: 3 SOEs including two financial SOEs and China Post.
- General/imprecise description of implementation and transitional period: what does China really need? The continue need for offset.
- Impact of exclusion regarding intra-public sector procurement
- Define “special fund” in Annex 2: a retaliation against Buy America Act? Is it proportionate?

Comparison of Procurement of Selected Provinces and Procurement processed by their respective Provincial Centralised Procurement Agency (Unit: Billion Yuan, based on 2012 statistics)



Characteristics of Chinese SOEs' procurement

- Emphasis on centralised procurement
- Wide use of E-procurement
- Favours strategic procurement and mandatory supplier lists
- Wide use of framework agreements
- Preferential treatment of affiliated undertakings
- Using procurement to pursue national policy objectives/CSR
- Wide spread corruption

Relevant factors to be considered in offering Chinese SOEs for GPA coverage

- China's WTO accession commitment: SOEs procurement based on "commercial considerations"—does not equal to NT or MFN; no domestic implementation
- The exemption in the GPA 2012 of procurement of goods and services with a view for commercial resale or with a view to use in the production of goods or provision of services for commercial resale;
- The implication of AB "Canada Renewable Energy case": narrow definition of "for governmental purpose";
- competitive environment of Chinese SOEs: the need for international competition when domestic monopoly is created
- Chinese practice of setting up a new SOE for each major infrastructure projects;
- Chinese SOEs are not required to buy national in general, but there are identified incidents where SOEs favouring domestic suppliers or using offset
- The invisible hand of market is not sufficient in preventing corruption/inefficiency in SOEs procurement: should the visible hand of regulation, including GPA coverage be employed?



Concluding Remarks

1. China needs GPA more than GPA needs China.
2. Current obstacles in the accession negotiation can be resolved with a realistic approach
 - Coverage of SOEs will be quite symbolic but unlikely to have an immediate impact on domestic procurement market;
 - Some of the exclusions are not really necessary, e.g. those regarding intra-public sector procurement, SME set-aside, offset (the procurement projects that need offset are unlikely to be covered), centrally-funded local infrastructure project.

The way forward

Option 1: Listing certain SOEs mainly serving public interests in Annex 3

- Pros:

- Maturity in procurement rules and practice
- Available resources
- Attractiveness of their procurement
- Guarantee of GPA procedural rules

- Cons:

- ❑ Internal coordination--prolonged negotiation
- ❑ Reciprocity
- ❑ Adjustment of procurement rules

The way forward

Option 2: effective implementation of China's WTO commitment regarding procurement of SOEs.

oPros:

- Removal of a major obstacle in negotiation
- Prevention of possible WTO dispute

oCons:

- ☐ Commercial considerations v. NT& MFN--over implementation may be necessary—then what can China get in return
- ☐ Uncertainty, reliance on the extent of domestic reform
- ☐ Unavailability of GPA procedural guarantees