

EXPLORATION OF THE WTO GPA: ANALYSIS AND PREDICTION FOR A POTENTIAL MEMBER—CHINA

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ABSTRACT. This paper will critically assess China's accession process to the WTO GPA. The argument in this research is that the benefits of increased access to other WTO GPA parties' public procurement markets are outweighed by domestic challenges. Such consideration involves the internal tensions between central and local governments of China, as well as the difficulties Chinese SMEs encounter from further liberalization of its local market and unrestrained international competition. The paper presumes that given the current context of the Chinese government procurement system, the incentives for China's accession of the WTO GPA are still unclear and this could impede their accession process. Such context has its negative implications for China's economic development and system of governance, as well as the dynamic of the WTO GPA itself.

INTRODUCTION

'The World Trade Organization Agreement on Government Procurement (GPA) is functioning to develop its role as an instrument of global economic integration and good governance.' (Anderson, 2010) China has been in the process of negotiating to ratify the WTO GPA since 2007 and a fifth revised offer came out at the end of 2014 (World Trade Organization, 2015). While the fourth and fifth offers made by China are still being kept confidential by the WTO, original versions of the negotiated offers to the third were published. However, it appears that there was some progress made in the negotiations in

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that a large number of provinces, cities and departments were added in the third offer. In 2015, negotiations of China's accession to the WTO GPA are prolonged into their 8th year. From a very diffident initiation, the package of procurement that China will cover under the GPA has progressively extended (Jean, 2015).

The aim of joining the GPA by China, as the world biggest emerging economic entity and the so called 'world factory', is unclear. If one explores the position of current members of the GPA, most of their procurement contracts are awarded to domestic companies or suppliers and the same position obtains in China, given that the procurement market is not fully liberalised. One imagines that when China joins the GPA, the behavior of Chinese procuring market will be in a competitive situation with foreign companies, and this will change the procurement landscape. Meanwhile, Chinese domestic enterprises will have opportunities to participate in competition with other members' in open government procurement markets.

As with other GPA members, Chinese official entities are reluctant to give up the authority of procuring from local enterprises that are important to Chinese economic policy. Therefore, it is difficult to predict the purpose of China's accession to the GPA or whether the challenges will outweigh the benefits.

To investigate the negotiated offers that China has made, it is imperative to highlight that both the category and quantity of specific official departments have been increased from the initial offers. That success was a result of continued negotiation for a period of 8 years.

OVERVIEW

Rationale for Joining the WTO GPA

In general, joining the WTO GPA will enhance China's chances to access other markets. The government procurement market occupies 9 to 13 percent of a developing country's GDP (UNDP, 2003). For developed economies, the percentage is 15-20% (OECD, 2001, William, 2007). Meanwhile, lower governmental supervision leads to corruption and collusion in the field of procurement in most countries. Officials, who are working in the government procuring entities tasked with the duties of procurement, find it hard to accept bribes when stringent and transparent procuring laws have been promulgated or

passed. According to statistics of European Union, approximately 0.3-0.7% of GDP could be saved after the 12 signatories of EU joined the WTO GPA (Commission of the European Communities, 2003).

If China joins the GPA, the prospective saving expenditure of procuring activities could be estimated at about 72.52 billion US dollars (calculated with 2014 GDP) (The World Bank, 2015). So to ratify the GPA is to improve the competition and transparency of government (Bovis, 2005). The tendency of the world market is to seek to liberalize more government procurement systems in order to make the systems more transparent and competitive and thus achieve reform doing away with protectionism in public procurement.

Politically, when China acceded to the WTO, the Chinese government promised to join the WTO GPA and this would be a fulfillment of one of the commitments. Under the commitment, China promised to reform Chinese public procurement law system to contribute the more harmonious procuring market with the WTO GPA and giving the competitive opportunities to foreign enterprises in Chinese procurement market (Chou, 2006a). Moreover, China has the duty to limit the power of both central government and local departments to public procurement. It means the traditional principle of protectionism in the legal system ought to be radically changed. Due to the Chinese Procurement law and politics, local governments are responsible for local economy. When a local government has to procure goods or facilities, domestic corporations, especially local companies, have the priority to competition because of the government's buy local policy. Preferring local companies is a normal method to maintain economic growth of their own city or province, and this seeks to build the political achievements of specific officials in their careers. However, if local governments are constrained to implement central capital's decision of government procurement, it will arouse a complexity of conflicts. Therefore, accession to the GPA would probably stimulate some turbulence in Chinese domestic governance. So even though there are a variety of predictable advantages that China could gain by accession to the GPA, these drawbacks could not be ignored.

After 14 years of being a Member of the WTO, China has changed a lot. China's GDP has increased from 1.33 trillion in 2001 to 10.36 trillion in 2014 (World Bank Data, 2015). Countries keep providing natural resources and capital goods to support China's continuous

economic and industrial revolution (Sally, 2011). Progressively, China is heading to the accession of both international and regional organizations and treaties. During the last 10 years, China has gradually become the most powerful country in both military and economic fields in Asian countries, and it is the nearest power to United States. In the four countries of BRICS, 'China accounts for about 60 per cent of BRICS' output, two-thirds of its foreign- exchange reserves and exports, and one-third of its inward investment. China plays in its own league among emerging markets. The other BRICS play in an inferior league; they are still much bigger net importers of global orders.' (Sally, 2011) So China has the intention to join the WTO GPA, which can expand the market to fulfill their increasingly greater requirement of global market. And accession to the GPA can meet China's commitment when China joined the WTO.

Overview of the Literature

The literature of this topic is fragmentary. It includes Chinese domestic procurement laws, negotiated offers, organization's report and scholar's articles, etc. This research will focus on two of those materials, including Chinese domestic procurement legislation and the GPA accession protocol, because analyzing such original sources might create interesting outcomes and few scholars have concentrated on author's research perspective. Overall Chinese government's attitude to legislation of government procurement law and regulation is undoubtedly local protectionism (Chou, 2006b).

Pursuant to Article 9 of Chinese Government Procurement Law (2003), "government procurement shall be helpful to the realization of the state policy targets for economic and social development, including environment protection, support to the underdeveloped areas and areas of minorities, and promotion of development of small and medium-sized enterprises." (China's Government Procurement Law, 2003)

In Article 9, it noticeably states plan-economy target and SMEs protection. Even though SMEs protectionism is widely allowed by most GPA members, "helpful to realization of state policy" is comparatively controversial. Under Article 10, "Government procurement shall target at domestic commodities, engineering works and services, except in the following cases...". (China's Government Procurement Law, 2003) The definition of "domestic

commodities” in Article 10 is unclear and unrestricted. It does not merely mean the products that are produced by state-owned enterprises, and it may include corporations fully or partly owned by Chinese citizens. However, the stock rights of a corporation is unpredictably changeable and currently it is difficult to distinguish some corporations are domestic or not. From Skye Mathieson’s article, it can be interpreted as ‘SIEs’ (State-influenced Enterprises), but it still hard to distinguish them (Mathieson, 2010).

Local government can interpret the scope and definition of local commodities and it is easy to justify local enterprises and to favour local protectionism in the area of government procurement. In 2014, though the fifth version amendment of Government Procurement Law was executed (Mathieson, 2010), Article 9 and Article 10 have not been modified in every version. On the 1st March 2015, in spite of the newest Chinese Government Procurement Implement Regulation was promulgated and the regulation has improvements on the parts of supervision, accuracy and procedure (Ministry of Finance of the People’s Republic of China, 2014), after exploring the outlook of this Regulation, which is the basis on Government Procurement Law (2003), the stance has not been reformed. The opposite of protectionism is liberalism, and fair competition causes greater liberalism. Anderson mentioned that competition policy and trade liberalization could be supported by each other (Anderson and William, 2009). As a Chinese scholar’s opinion, Ping Wang states that, ‘Accession to the GPA will entail a number of benefits and in the long term the benefits of liberalizing government procurement should outweigh the costs of abandoning protectionist procurement,’ (Wang, 2009). If extreme liberalisation is implemented in practice, the profits of SMEs will be undermined and there is probably no proper method to support SMEs under the situation of fiercely competitive market. Tong Xinchao states that even liberalism is a common trend of international public procurement, procuring is an essential method of countries to intervene their domestic market (Tong, 2003). From his perspective, if government has the duty to protect SMEs, fair competition should be limited because it left uncontrolled, it would destroy SMEs that the government seeks to develop. Another scholar stated a view in 2003, Qin said, ‘Liberalization of investment policies has been the subject of multilateral negotiations for years, both within and without the WTO/GATT framework, but the efforts have thus far failed to produce a comprehensive investment agreement at

the multilateral level. (Qin, 2003) However this is probably out of date but still has value as it seeks to explain the motivation and situation of Chinese government. Another scholar, Bill K. P. Chou, writes that the Chinese government reforms on government procurement had nothing to do to enhance liberalization and integrating with international trade (Chou, 2006b). Generally, due to a somewhat wider field of this essay, scholars' views on different parts are diverse.

In summation, the question is what are the main challenges and benefits for China in joining the GPA and what are recommendations for both China and the WTO GPA negotiations. Challenges are probably focused on Chinese internal conflicts between central and local governments; and the tough circumstance of SMEs under a fairer competition. Moreover, China has to abandon a powerful tool which has been used for decades to intervene in its domestic economy. The main benefits of China's accession could be other members' public procurement markets. Nonetheless, the current domestic improvement of China's public procurement law system seeks to enhance better supervision mechanism which emphasizes on criminal penalties to related officials, not on transparency. Thus the incentive of China's accession to WTO GPA is still unclear.

CHINA'S PROCUREMENT REGULATION

Chapter Overview

Most of the countries, which have an efficient government procurement legal system, adopt a single basic Government Procurement law (Zhang, 2015). In addition, they set the way of bidding and tender in the legislation of public procurement. However, Chinese legislation takes a different approach which is more scattered. Due to complex reasons of history and practice, China's government legal procurement system comprises of a two tier basic laws system, Acts of parliament supplemented by numerous regulations, rules and regulatory documents. Currently, a series of laws make up Chinese public procurement law system, including Chinese Government Procurement Law (2003), Chinese Tenders and Bids Law (2000), Chinese Government Procurement Implement Regulation (2015), Government Procurement to Promote the Development of SMEs Provisional Measures (2011), etc. (Law-star, 2015) Additionally, most of the provinces in China have their own

local public procurement law. China's government procurement law system comprises more than 10,000 documents (including abolished laws) (Law-star, 2015). However, since Chinese government initially concentrated on the legislation of procurement, in 1996, only 17 years has passed. The question is what is the intention of the Chinese government in making numerous documents regarding the regulation of government procurement (Qin, 2003). Depending on the validity rank, the Chinese Government Procurement Law (2003) has the highest validity in China's public procurement legislation. Therefore, this chapter is going to illustrate China's domestic government procurement legal framework and will explore the connection and influence with the WTO GPA.

Reasons and Background for China's reform of Government Procurement system

In 1996, China processed the government procurement experimental unit in Shanghai (Shanghai Government Procurement Administrative Measures, 1999). That was the typical beginning of Chinese government's implementation of public procurement. After 1998, China's public procurement system and market have developed rapidly. As mentioned above, Chinese government procurement law (full title is Government Procurement Law of The People's Republic of China) entered into force in 2003 (Cai, 2002). Those facts were a favourable threshold of Chinese domestic procuring legislation. The incentive of China to start procuring experimental unit in 1990s was different to western's modifying government procurement market more internationalization and marketization (Cai, 2002). Firstly, China's motivation was not the difficult fiscal expenditure and the incentive was aimed at reforming the traditional plan economy (Tong, 2003). Secondly, as the purpose was to tackle the problem (shrinking market) of financial crisis in Asia, the Chinese government did not need the policy of fiscal austerity but with the purpose of using government spending to stimulate domestic demand. Additionally, even current, Chinese government approach still emphasizes that their economic strategy has to develop on the foundation of domestic demand. Therefore, for the reason of funding China's government procurement legislation, developing the market economy outweighed fiscal retrenchment or enhancing procuring efficiency.

Under the plan economy system, the budgetary revenues and expenditures in China was a unified state collection system. The national budget was arranged both centrally and locally with financial revenues and expenditure as well (Yang, 2011). Every department's duty was to calculate the expenditure into national plan and procuring under the plan. Local governments did not have the autonomy to procure. During the procedure of reform, some procedural policies had been executed as the transitional laws. For instance, one was that after central government's examination and approval, local governments had some limited autonomy on procurement but they had to take the responsibility of overspend, also they could keep the savings (Ding and Hu, 2001). Despite these kind of policies that had caused the problems for local finance and central government relatively has lower concentration, the policy fundamentally made local governments control their independent finance. Meanwhile, the procedural policies helped local government to divide the duty of different levels of government and to organize and arrange the usage of fiscal resources fully (Ding and Hu, 2001).

The unified collection system of the budgetary revenues and expenditures in China was a basic financial policy in China when China was under the period of plan economy¹. Under the policy, financial departments have to control the budget at every level and local departments. Every department plans an annual budget based on their departments' necessary of performing duty. After the plans are permitted, specific departments or the departments who made the plan can procure ordinary goods, projects and services. The control was only applied on luxurious consumer goods such as vehicles and air-conditioners (as they were expensive) (Ding and Hu, 2001). This expenditure management system is compatible with the planned economic system. Under these conditions, supplies are few and suppliers are single, and production and trading activities are relatively simple, so this system was also able to control spending. However, after implementing the reform and liberalizing (opening-up) policy and enlivening economy policy, on the one hand, economic development rapidly enlarges expenditure scale. On the other hand, after the enterprises independently operating, through diverse supply

¹ In this article, this is the period before 1996, because there is no accurate year when the economic policy changed and the reform of the policy in practice took a long time. In addition, it also depends on different processes in different areas

channels, a large range of prices emerged, and then low efficient procuring phenomena arose. With autonomy in expanding the usage of unfair competition in some official departments, phenomena of power abuse, trading power for money and corruption started happening in government procurement activities (Ding and Hu, 2001). The implementation of an integrated system of government procurement is essential because it enables Government to enhance efficiency of government procurement by way of integrating separate procurements of different departments to regulating unity purchase (Chinese procuring method at that time) (Ding and Hu, 2001). To achieve the requirement of reform and development, as what is mentioned above, China has processed the government procurement experimental regulation in Shanghai. This new procurement system does not completely change the circumstances of the procurement system in the past, and it is to settle something large and general-purpose materials centrally managed by one single procurement department (Zhang, 2006). The aim of this method is to accumulate a larger volume of procuring goods, and then government can ensure the quality of procuring goods, reduce the procurement costs, and prevent corruption and other issues that may arise in the process (Zhang, 2006). Although the new system of government procurement in China started late and procurement market was small at that time, this work was highly valued by every level of government and the authorities. It seeks effective promotion of the experimental project by gradually improving procurement rules and regulations, and annually to substantial increase the budget for government procurement. During the procedure of the China's reform and opening-up and economic development, as the reason that enterprises' autonomy has expanded and market competition is increasingly fierce, corruption arose. Some companies want to get the position of unfair competition by the way of bribery; and some officials who have power are pleased to receive that. In the government procurement market, the problem of bribery is common (Yang, 2005).

In summary, the reason of Chinese procurement law's reform can be concluded as follows: Firstly, it helps to achieve the purpose of reforming plan economy to market-oriented economy. Secondly, financial system of the government had changed and local governments could control their independent finance (Yang, 2005). Then the procuring activities of every department had to be coordinated with the new financial system. Thirdly, the experimental

policy of some cities such as Shanghai was successful, so the greater future of reform could be predicted. Fourthly, corruption is increasingly serious and new procurement law has the responsibility to limit and supervise officials' power and behavior in terms of potential corruption (Qin, 2003). Finally, reform of government procurement law is a way to cooperate with other countries and it is the tendency of internationalization and modernization.

Current Chinese Government Procurement Law System

As it is mentioned at the beginning of this chapter, Chinese government procurement legal system is two main basic laws supplied by a large amount of regulations, local rules and regulatory documents. For current circumstance of Chinese public procurement law, some of the articles or principles were made more than ten years ago but China has changed a lot in last ten years. So unlike in other jurisdictions, some of the policies or principles in Chinese government procurement law system appear like local protectionism.

Procurement through sealed bids in a tender process is a significant step towards improving procurement quality and reducing the cost of procuring goods services and works. China initiated the tendering and bidding system since the middle of 1980 (Dong, 2004). In the beginning, bidding was implemented in the field of construction, then this approach progressively expanded to machinery, electronic equipment, scientific projects and government procurement, etc. Currently, most of construction projects are implemented using the public tender system; tenders for procurement of ordinary goods has rapidly increased; Chinese emphasis subjects and national natural science fund projects tender was settled is other proof of the importance; In terms of export quotas, tender scope has extended each year since 1994. Every field's bidding practice basically has achieved the economic optimization and promoted the transformation of government functions. Additionally, those bidding practices have enhanced the competitiveness of enterprises and promoted the alteration of enterprise management mechanism, and preserved the economic market order.

Conflicts between Chinese Government Procurement Law and Bidding Law

Before the establishment of Chinese Government Procurement Law, Chinese bidding law was implemented on 1st January 2001, and

the Article 7 of bidding law states,

‘Tender and bid activities and the parties thereto shall be subject to supervision imposed according to law. Relevant departments for administrative supervision shall impose supervision on tender and bid activities according to law and investigate into and deal with any illegal act therein. Administrative supervision on tender and bid activities and the specific duties and powers of relevant departments shall be laid down by the State Council.’

Then for the purpose to connect Chinese bidding law, the Chinese government procurement law (2003), Article 4 states, ‘Where government procurement of engineering works takes the form of public bidding, the bidding law shall prevail.’

However, because of the undefined rules of function, in reality, various departments managed the fiscal construction projects. Chinese government procurement law aims to protect the domestic market and to support domestic commodities. However, the responsible authorities in public procurement law are the financial departments, and financial departments are unable to supervise most of the construction projects. However, in Chinese bidding law, there are no provisions of limiting import or supporting domestic commodities, so the supervised departments do not care domestic protection. Moreover, in those two basic laws, the definitions of public funds have conflicts. In Chinese bidding law, Article 3 states,

‘The following construction projects in the territory of the People's Republic of China, including surveying and prospecting, design, engineering and supervision of such projects as well as the procurement of major equipment and materials related to the construction of such projects, must be subject to tenders: ...2. Projects which are, completely or partly, invested by the State-owned funds or funded through State financing; and ...’

Otherwise, in Chinese government procurement law, Article 2 has the rule of public funds,

Government procurement within the territory of the People's Republic of China shall be governed by this Law. Government procurement mentioned therein refers to behaviors of state organs at various levels, undertakings and social organizations that procure with fiscal funds commodities, engineering works and related services within the catalogue

made for centralized procurement according to law or procure them in excess of their quotas.

In practice, these two laws lead to different standards of results of implementation and enforcement. In addition, the ways of procuring are different in these two laws. For Chinese government procurement law, Article 26 expresses that government procurement forms shall include: public bidding; invitation for bid; competitive negotiation; unitary source purchase; inquiry; and other forms as may be approved by the government procurement supervisory and administrative department under the State Council in charge of government procurement. While in Chinese bidding law Article 10, tenders only include public tenders and invitational tenders. Thus the ways of procuring have different scopes in Chinese bidding law and government procurement law (Ding and Hu, 2001). Even in 2012, after the Chinese Bidding Implementation Regulation was established and in 2015 the Chinese Government Procurement Implementation Regulation was executed, the conflicts still continued.

Protectionism in Chinese Government Procurement Law

Chinese current Government Procurement Law was executed in 2003. This law comprises 9 chapters which include the following, General Provisions, Government Procurement Party, Forms of Government Procurement, Government Procurement Contract, Query and Complaint, Supervision and Inspection, Legal Responsibilities and Supplementary Provisions. In this part, writer is not going to explore the details of every chapter and provision but the following paragraphs with emphasis on the attitudes, policies and principles of protectionism in the laws. In Chinese Government Procurement Law (2003), Article 7 states,

Government procurement may be conducted in combination of centralized and scattered ways. The scope of centralized procurement shall be determined on the basis of the catalogue for centralized procurement published by the people's government at the provincial level or above.

For those to be procured by government under central budget, the catalogue for centralized procurement of them shall be determined and published by the State Council; for those under local budget, the catalogue for centralized procurement of them shall be determined and published by the governments of province, autonomous region

and centrally administered municipality or organizations with their authority. Items included in the catalogue for centralized government procurement shall be procured in a centralized way.

The Article 7 regulates a feasible provision of the authorized department of procuring catalogue. However, due to the reality of Chinese procurement market, scattered catalogue might seek to favour local protectionism. Even scattered procuring is functional in some countries like Singapore (Find law, 2016), Chinese officials are probably not as incorruptible as Singaporean officials. Thus scattered procurement possibly encourages local government's excessive power and corruption (Find law, 2016). Local procurement departments' corruption simply causes corrupt protectionism, which is surrounded by bribery and collusion. Therefore, a good rule ought to fit the facts of the country. Lawmakers perhaps want to combine the widely used centralized and scattered procuring ways, but depending on Chinese legal practice, it is probably better to examine the local governments' annual procuring catalogue. If China joins the WTO GPA, this provision might cause local governments' conflict with central government because the local procuring catalogue could be tailored for local industries. Thus depending on the Chinese procuring circumstances, the stronger supervision will not be enough to prevent corruption. In China, since January 2006 to October 2006, 23% of commercial criminal cases (8010 in total, 23% is 1842) were related to public procuring corruption (China Tendering & Bidding Association, 2015).

There is a phenomenon that state policy is usually mentioned in Chinese legislation. Article 9 of Chinese Government Procurement law raises other concerns which have caused significant arguments and debate.

Article 9 reads, 'Government procurement shall be helpful to the realization of the state policy targets for economic and social development, including environment protection, support to the underdeveloped areas and areas of minorities, and promotion of development of small and medium-sized enterprises.'

Article 9 proves the apparent plan-economy target and SMEs protection. The concept of SMEs is well known, and protectionism, which is widely allowed by most countries, however the phrase, 'helpful to realization of state policy' is comparatively controversial. 'State policy' is an unclear phrase and there is no definition or

interpretation of it in Chinese Government Procurement Law (Lin, 2004). In addition, policy is changeable and flexible. It can be argued that when China becomes a member of the GPA, if a local government does not cooperate with the foreign companies in the tendering and bidding process, the government could use state policy as an excuse for non-compliance (Lin, 2004). Another provision of protectionism in Chinese Government Procurement Law is Article 10. Article 10 must be the most controversial provision in Chinese government procurement law. Article 10 states,

Government procurement shall target at domestic commodities, engineering works and services, except in the following cases: (1) Where commodities, engineering works or services to be procured are not available or cannot be obtained under reasonable commercial conditions within the territory of China; (2) Where such items are to be procured for use outside China; and Domestic commodities, engineering works and services aforementioned shall be defined in accordance with the relevant regulations of the State Council. (Chinese Government Procurement Law, 2003)

The scope of 'domestic commodities' in Article 10 is indistinct and unlimited as well as the same condition as 'state policy'. It probably does not simply mean the products that are produced by state-owned enterprises (SOE), it may involve corporations of Chinese citizens. Otherwise the stock right of a corporation is unpredictable and changeable, and currently it is difficult to determine whether some corporations are domestic or not. From Skye Mathieson's article, it can be interpreted as 'SIE' (State-influenced Enterprises), but it is still difficult to distinguish them (Mathieson, 2010). Moreover, the last sentence of Article 10 says the 'domestic commodities' shall be defined in accordance with the relevant regulations of the State Council. Otherwise, when we are exploring the definition of 'domestic commodities' in the website of China's State Council, only a document established on 2006 and called 'Assent of State Council about the formulation of implementing rules for Package policy for the Implementation of the National planning outline of the Medium and Long Term Plan for the Development of Science and Technology', but unfortunately, the context of this document only states that the definition of the domestic commodities' judging standards in Government Procurement is undetermined (The State Council of the

People's Republic of China, 2006). Therefore, Article 10's context would totally arouse local and even national protectionism on the field of public procurement. Additionally, there is no limitation to restrict it because of the unclear and imprecise terminology. If China is under the restriction of the WTO GPA, this Article 10 acts completely contrary to the GPA's target. From this perspective, the question arises: how does one distinguish or predict the policy and preference for domestic commodities, and how does one tackle the conflicts between the GPA's rules and Chinese domestic Government Procurement Law. The most feasible method might to amend Chinese domestic procurement law, particular in the provisions which have the intention of procuring local or domestic products and without clear definition.

In 2014, even though the fifth version amendment of Government Procurement Law was executed (The State Council of the People's Republic of China, 2006), Article 9 and Article 10 have not been modified in every version. On the 1st March 2015, even though the newest Chinese Government Procurement Implement Regulation was signed and the regulation has improvements on parts of supervision, accuracy and procedure, The unified collection system of the budgetary revenues and expenditures in China was a basic financial policy in China when China was under the period of plan economy². After exploring the outlook of this Regulation, which is the basis on Government Procurement Law (2003), the stance has not been reformed.

There is an extraordinary instance that has to be mentioned in here. In 2008, after the global financial crisis, Chinese government established series of investment plan of government procurement. The fund of the plan is 4 trillion CNY, and 29.5% from central government and 70.5% from others including local governments' fiscal budget, policy loans and private investments, etc. Then there was a project of procuring 25 turbines of wind power on 2009. The world's biggest three wind power companies (Vestas, General Electric and Suzlon) (Xia and Song, 2009) participated in this 5 billion EUR tender on May 2009. However, they lost the tender on first round because of Chinese government excuse that the prices for turbines

² In this article, this is the period before 1996, because there is no accurate year when the economic policy changed and the reform of the policy in practice took a long time. In addition, it also depends on different processes in different areas

were high. After that, on 4th June, 2009, 9 of China's commissions of ministries³ (Policy Release, 2009) issued a joint document called "Opinions on the implementation of the decision to expand domestic demand and promote economic growth and plan to further strengthen the supervision of the construction bidding work", and stated that where government investment is involved, government procurement has to procure domestic products because of Chinese Government Procurement Law's rules (Sina Finance, 2010). Therefore, the government actually adopted the Article 10 in Chinese Government Procurement Law and explained the provision by the government self. Additionally, in this case, due to the big budget and wide affection, Chinese government had to establish the document mentioned-above and tried to explain the reasons to the losing bidding participators. From this perspective, there could have been more cases which were not as significant as this one but did not attract media attention, hence could not be reported.

Nontransparent governance of government procurement raises the problem of corruption, lower efficiency and protectionism. Thus the nontransparent Chinese government procurement system acts a tool to prevent foreign companies coming to Chinese domestic government procurement market. The transparency problem in Chinese government procurement system is a significant issue of China, which is argued by the GPA as well. The WTO Accession Protocol require Chinese government to open its tenders to the public and establish the catalogue of tenders as the way of official journal lists or website pages for foreign enterprises. From this perspective, Chinese government has published some parts of the procuring list. However, some of the provinces' website pages of procurement were empty such as Guizhou and Tibet (Chou, 2006a). Additionally, some local departments only advertise their procurement lists on local newspapers or the website of the local government simply has Chinese version of the language, so it is difficult to access or distinguish the procuring requirement for foreign companies.

For the liberalism, in reality, it is difficult for the parties to take priority of encouraging liberalism in their government procurement

³ Including National Development and Reform Commission, Ministry of Industry and Information Technology, Ministry of Supervision, Ministry of Housing and Urban Construction, Ministry of Railways, Ministry of Water Resources, Ministry of Commerce and State Council Legislative Affairs Office.

market, to achieve the requirement of WTO integration (Evenett and Hoekman, 2005). Otherwise, the complaint and criticism should not be made against China only, because other GPA parties are maintaining the same condition as China and every signatory has its purpose to support its own country's economy (Oh, 2013). Government procurement acts as a tool of government to control national and local economy for a long period (Oh, 2013). Moreover, most of states do not have enough passion to take effort of founding an international integrated trade environment, so China was no exception as well (Chou, 2006b).

Conclusion

In summary, Chinese domestic public procurement law system involves more than ten thousands of laws, rules and regulations but mainly including two basic laws, Chinese Government Procurement Law and Chinese Tender and Bids Law. This special system was developed as a result of the distinct Chinese historical experiences, economic reforms and market changes. In the last few decades, China was under a plan economy regime and China did not open its domestic market to the world. The idea of founding and reforming government procurement system came towards the end of 1990s, so China's procurement market is not as mature as some developed countries (Huang, 2005). Meanwhile, as the content in this chapter shows, China's domestic law is not precise and the role of Chinese government procurement law aims to be a tool to control local and domestic economy. Thus protectionism was prevailing during the period of government review of procurement law. In practice, the purposes of the two basic laws conflict and the scope of the laws are unclear. This conflict is clearly demonstrated in the interplay between Chinese Government Procurement Law, the protection of domestic commodities and state's market. In practice, foreign companies find it difficult to get the contracts of government supported projects because government is both legislator and participator, and even supervisor. Then how to cooperate, join and adopt with the WTO GPA is a difficult question for China. The following Chapter will concentrate on the comparison and analysis of comparing. The outcome of how they negotiated will be analysed and then the question might be resolved.

IMPACT OF CHINA ENTERING THE WTO GPA – LEGAL OBLIGATIONS

China started the GPA negotiations in 2007 and currently China has submitted the Sixth offer of accession to the GPA on 22nd December 2014 (China Public Procurement News Website, 2015). During last 7 years since China started negotiation with the WTO GPA, 6 offers have been submitted. So it could be foreseen that China's negotiation on the accession to the GPA would not keep a long time. In this Chapter, the part of contexts of Chinese Government Procurement Law and the GPA (2012) will be compared. Then the differences and conflicts will be illustrated. An analysis of the extent of problems will be argued. After that, the context of China's negotiated offers will be compared because from the initial offer to the Sixth offer, the context has changed radically. Every change impacts the further negotiation and reflects the attitudes of China's government. Finally, the summarized exploration will be listed to connect with the next chapter.

Differences between Chinese Government Procurement Law and the GPA

The differences between Chinese Government Procurement Law and the GPA include Basic Target, Scope, Method and Procedure, Query and Complaint and Supervision. However, the last two parts will not be compared because it is unnecessary to compare the supervision or query and complaint in a domestic law with an international plurilateral agreement. They have different supervision approaches and disputes settlements. Thus the comparison of basic target of the GPA and Chinese Government Procurement Law will come to the first.

Differences of Basic Target

The basic aim of the GPA is to achieve world trade liberalization. In the GPA Preamble, 'Recognizing that measures regarding government procurement should not be prepared, adopted or applied so as to afford protection to domestic suppliers, goods or services, or to discriminate among foreign suppliers, goods or services;' Specifically, it is through the establishment of an effective legal framework of government procurement, including rules, procedures and measures of rights and obligations; and adopting the ways of bilateral and multilateral negotiations to open signatories' domestic

public procuring market; and gradually eliminating the deep-rooted trade barriers of public procurement in order to achieve integration and liberalization of the world trade. Then a set of open, transparent and non-discriminatory government procurement legal framework could maximize the expansion of government procurement in the field of competition, and improving the efficiency. There are three basic principles in the GPA, transparency, efficiency and non-discrimination (Anderson, 2008).

However, the purpose of Chinese Government Procurement Law is to regulate public procuring activities and enhance procuring efficiency; and protect national and public interests and the legal rights of procuring parties; and improving uncorrupted governance.

Article 1, 'This Law is hereby enacted in order to standardize the government procurement behavior, improve the efficiency of use of government procurement funds, safeguard the state interests and public interests of society, protect the legitimate rights and interests of government procurement parties, and promote the building of an honest and clean government.' Article 3, 'Government procurement shall be conducted in line with the principles of openness, transparency, fair competition, impartiality and honesty.'

From those perspectives, the principles of China's public procurement legislation, openness, fairness and impartiality, are accordant with the principles of the WTO GPA. In addition, both emphasize on the more efficient environment of government procurement. Otherwise, the legislation of both still has differences.

Firstly, the WTO GPA underlines the fullest and fairest competition. The core attention of the WTO GPA may not be the domestic system of government procurement, it is the extent of opened government procurement market, the transparency of members and offered competition opportunities from members to suppliers (World Trade Organization, 2012). The tendency of the WTO GPA is to insert government procurement market into the global economy. However, China's domestic government procurement legislation concentrates on regulating the activities of government procurement (Anderson, 2008). Meanwhile, China's government procurement law does not have the related provisions of the fullest competition, while it only involves the word 'fair competition' (Anderson, 2008). It reflects the law takes attention on state's policy target. For instance, as this work illustrated in Chapter 2, Article 9 of Chinese Government Procurement

Law regulates government procurement shall assist to achieve the policy target of national economy and social development, including environment protection and protection of SMEs (Chinese Government Procurement Law, 2003). Article 10 states government procurement shall procure domestic commodities, construction projects and services.

Secondly, the principle of non-discrimination is excluded in Chinese Government Procurement Law. According to Article 10 of Chinese Government Procurement Law, ‘...(1) Where commodities, engineering works or services to be procured are not available or cannot be obtained under reasonable commercial conditions within the territory of China; (2) Where such items are to be procured for use outside China; and (3) Where other laws and administrative regulations prescribe otherwise for such procurement...’ It means Chinese domestic public procurement market is not opened unless under a special condition. This provision is contrary with the non-discrimination principle of the WTO GPA.

Thirdly, in the field of transparency, there is disparity between Chinese Government Procurement Law and the WTO GPA. In the GPA Article XVI, Transparency of Procurement Information, ‘1. A procuring entity shall promptly inform participating suppliers of the entity’s contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVII, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier’s tender.’ (World Trade Organization, 2012) Other detailed provisions of ways of information notification and the ways of publishing information are provided as well. For Chinese Government Procurement Law, Article 3 rules that,

Government procurement shall be conducted in line with the principles of openness, transparency, fair competition, impartiality and honesty’. However, it is only a principle provision and there are no more accurate terms of transparency in Chinese Government Procurement Law except Article 63. Article 63 of Chinese government procurement law states, ‘The procurement standards for government procurement items should be made public. If the forms of procurement stipulated by this law are adopted, the procurement party shall, after completion of procurement activities, announce the

result of procurement to the public.’ (Chinese Government Procurement Law, 2003)

Due to Chinese Government Law Article 4, tenders and bids shall adopt Chinese Tenders and Bids Law. While for the transparency provisions in Chinese Tenders and Bids Law, only Article 16 provides that,

A tenderer who adopts the public tender method shall issue a tender announcement. The tender announcements of projects subject to tender according to law must be issued in newspapers, periodicals, information networks or other media designated by the State. A tender announcement shall clearly contain such particulars as the name and address of the tenderer, nature of the project subject to tender, quantity, place and time of implementation and methods to acquire the tender documents.’ (Chinese Tenders and Bids Law, 2001)

It is apparently a brief and principled provision. So, both legislative acts of Chinese Government Procurement Law and Chinese Tenders and Bids Law do not have the detailed provisions of transparency. Therefore, in conclusion, for the principles of Chinese procurement law, the rules are not practical, and they are short of accurate, detailed and practicable rules. In the GPA 2012, according to the part of Domestic Legislation,

‘4. Each Party shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by its procuring entities, with the provisions of this Agreement. 5. Each Party shall inform the Committee of any changes to its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.’ (World Trade Organization, 2012)

Thus during the next few years of China’s accession to the WTO GPA, China’s domestic legislation of government procurement shall not only be drafted to satisfy the Chinese interests, but also to adopt the principles of the WTO GPA.

Differences of Scope

The scope of government procurement laws acts a core factor when the system is functioning. Definitely, Chinese government

procurement law has a different scope when compared to the GPA Agreement, but the issue is to investigate whether there are conflicts and barriers or not. Article 2 rules that, this Law shall govern government procurement within the territory of the People's Republic of China. Government procurement mentioned therein refers to behaviors of state organs at various levels, undertakings and social organizations that procure with fiscal funds commodities, engineering works and related services within the catalogue made for centralized procurement according to law or procurement in excess of their quotas.

The catalogue and quota for centralized government procurement shall be set forth within the limit of authority as prescribed herein. Procurement mentioned herein refers to the behavior of obtaining compensated commodities, engineering works and related services, including purchase, lease, consignment, employment, etc. by means of contract. Commodities mentioned herein refer to substances of different kinds in all forms, including raw and semi-finished materials, fuels, equipment, products, etc. Engineering works mentioned herein refer to construction projects including the construction, reconstruction, extension, fitting, removal, repair of buildings and component parts. Services mentioned herein refer to all objects other than commodities and engineering works under government procurement.' (Chinese Government Procurement Law, 2003) Thus the definition of procurer standards in China's government procurement law is mainly on the found of companies, and it means the qualification of procurer. The consequence of this standard is to protect the state-owned enterprises and state holding enterprises, which can be out of the competition under Chinese government procurement law. However, the GPA tries to cover as much as possible government entities (e.g. Central entities, sub-central entities and state-owned enterprises) in the signatories (Anderson, 2008). In addition, the Article XIV of the WTO GPA is the provision of Electronic Auctions, while Chinese government procurement law still doesn't have any terms of electronic auctions. Nevertheless, according to the information of China's Sixth offer to access the WTO GPA, China has showed its sincerity to join it and extended both central and local government departments. (Jean, 2015)

Differences of Method and Procedure

For the part of method and procedure, the GPA submits more accurate and specified provisions than Chinese Government Procurement Law. Chinese Government Procurement Law, Article 26

'Article 26 Government procurement shall take the following forms:(1) public bidding;(2) invitation for bid; (3) competitive negotiation; (4) unitary source purchase; (5) inquiry; and (6) other forms as may be approved by the government procurement supervisory and administrative department under the State Council in charge of government procurement Public bidding should be taken as the main form of government procurement.' One should be mention in here is that Chinese Government Procurement Law rules the priority of public opening of tendering, as same as the WTO GPA. The GPA's method of tenders includes public opening of tendering, inviting method of suppliers and limited tendering.' (Chinese Government Procurement Law, 2003)

The differences between Chinese Government Procurement Law and the GPA have profound influence to the China's accession to the WTO GPA. Revise this sentence China's current government procurement law is a storehouse of problems. To compare with the rules of the GPA, many parts of Chinese domestic government procurement law are unclear, inaccurate, unjustified and impracticable. However, China's domestic procurement market is attractive to the GPA members, so China's negotiation presents a smooth process. Moreover, China has to modify its domestic government procurement law to appropriate levels for future membership of the GPA and opening its market to the world.

Conclusion

In summary, the differences between Chinese domestic government procurement law and the GPA Agreement do not require China to modify a completely same context of the GPA Agreement. Differences are acceptable because every state's legislation has its own peculiarities or characteristics. However, if the existing problems cause conflicts or undermine the harmonization of the plurilateral agreement's implementation, China will have to modify its legislation. China's government procurement law system has its drawbacks and these disadvantages will not only impact China's own public procurement market and Chinese domestic legal implementation but

also affect the interaction of China and the GPA. Consequently, China has to improve domestic government procurement law to enhance the liberalism and transparency of government procurement.

China presents as a positive participator of negotiation with the WTO GPA. From the comparison and exploration of 6 negotiated offers, China's enthusiasm and sincerity has been apparently proved. It could be foreseen that China will be a member of the GPA Agreement in next few years and China implements the Agreement from 15 years of the Initial offer to 3 years of the six offer. The reform of China's economy and alteration of government's strategy might encourage the improvement of changes. Moreover, due to increasingly economic growth, government's estimation and valuation of domestic suppliers' competitive power might be enhanced. Thus China now has more pronounced desire to adopt the GPA Agreement than at the time when China committed to join the GPA on 2001. Nonetheless, despite the clear motivations of both China and GPA members for the need of China's accession, there are challenges and benefits for China, which could not be ignored articulated in the next Chapter.

CHALLENGES AND BENEFITS FOR CHINA

There are challenges and benefits for China when China joins the WTO GPA. In spite of the fact that China is the second largest economy in the world, the per-capita income of China in 2011 was around 5000 US dollars (World Bank, 2013) and the ranking (World Bank of per-capita income of countries) of China was after 100. So statistically, China is not a rich and developed country and some of African countries are richer than China (on the data of capita income) such as South Africa, Namibia, Angola, Botswana and Mauritius, etc. Additionally, even though Chinese manufacturing industry is developed and China acts the role of world factory, the high technology industries such as software and automobile fall behind some of developed countries. Thus China has to figure out how to deal with the challenges that will confront it in future. However, it can be argued that China will gain some benefits from accession to the WTO GPA. For instance, China's accession can improve the development of both international and Chinese domestic public procuring market, and perfect the construction of an incorruptible government. Meanwhile, adopting the WTO GPA is a measure to help Chinese companies to expand the international government

procurement market and create opportunities for domestic enterprises, and stimulating the domestic companies to enhance their competitive force. In this Chapter, the context will concentrate on the analysis of the merits and drawbacks of China's accession to the WTO GPA.

Challenges

Effects on domestic regime

The effects of the GPA on the domestic regime will be dealt with mainly by way of amendment of domestic government procurement law to comply with the prescriptions of the WTO. Particularly, in China, due to the former mentioned differences between Chinese government procurement law and the WTO GPA, the main effects will be on procuring entities, the way of procurement and dispute settlement. Once China signs the WTO GPA, the Chinese related procurement entities comprised by the GPA will regulate the GPA. Meanwhile, as an essential part of domestic market, changes to rules of public procurement will reform the rules of Chinese domestic market.

Negative Effects on China's Economy

Some of the Chinese weak domestic industries will suffer market shock in light of external competition, such as software industry and automobile industry. These kinds of high technology industries might be sustained to a certain extent of competitive pressure from foreign companies. Otherwise the WTO GPA (2012) has the provisions for developing countries such as those in Article V "Developing Countries".

In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries collectively referred to hereinafter as 'developing countries', unless specifically identified otherwise, recognizing that these may differ significantly from country to country. As provided for in this Article and on request, the Parties shall accord special and differential treatment to:

- (a) least developed countries; and

- (b) any other developing country, where and to the extent that this special and differential treatment meets its development needs.....'

Article V 6 states 'After this Agreement has entered into force for a developing country, the Committee, on request of the developing country, may:

- (a) extend the transition period for a measure adopted or maintained under paragraph 3 or any implementation period negotiated under paragraph 4; or
- (b) approve the adoption of a new transitional measure under paragraph 3, in special circumstances that were unforeseen during the accession process.' (World Trade Organization, 2012)

Accession to the GPA will affect balance (import and export balance) of China's trade in the government procurement market. Adopting the WTO GPA is a process of giving Chinese companies a license to enter international government procurement market. Nonetheless, whether Chinese 'domestic commodities' (Chen and Whalley, 2011) can win the tenders in foreign markets of other states' procurement market or not is not certain, as that will depend on their competitiveness. In general, Chinese companies' advantages are labour intensive products and service procuring, but those types of procurement occupy a little proportion in government procurement market (Chen and Whalley, 2011). Moreover, even in this China's advantaged field, some of the developed countries' products and services are better than China's. Therefore, once China signs the WTO GPA, the balance of import and export will be regularly affected.

The risk of economic and social instability will be increased when weak domestic enterprises go down and job losses occur. For example, the Chinese government has started to dispose of government second hand vehicles from 2014 and arguably as a prelude to procuring new vehicles from the domestic manufacturer. This phenomenon has rarely been seen in last few decades because most of the vehicles were still in a perfect condition and sold at low prices. Conversely, if it is connected to the Chinese accession of the WTO GPA, this phenomenon might be a preparation of domestic automobile industry from protection. In addition, due to vehicles' retirement life, the new procured cars will maintain a long period until they are retired. So, in this governmental vehicle selling activity by

Chinese government, this activity is not a waste of public funds, it extends the time of the vehicles market's saturation and supports domestic vehicle industry.

Benefits

After China adopts the WTO GPA, it will enhance the development of Chinese public procuring market, and improve the construction of a transparent, efficient and incorruptible government of China. Joining the WTO GPA means China has to comply with the requirement of non-discrimination, transparency, etc. China's so-called Socialist Market Economy will completely change to market economy (Zhang, 2010). In addition, the interaction of China and the WTO GPA will not only help China to develop Chinese government procurement law system but strengthening the WTO GPA's influence and other countries which are not the GPA members might follow China's step and join the WTO GPA (Zhang, 2010).

Joining WTO GPA can support China to boost the efficiency of public management, services and rational utilization of national financial resources. On the one hand, opening the government procurement market can release the limitation of Chinese domestic commodities' preference. Governments have the right to access better foreign products, services and projects, and the quality of Chinese governmental management and public facilities might be improved (Anderson, 2007). On the other hand, due to predictable fiercer competition of procurement market, the importation of technology and standards will be improved, as better technology leads to a more rational usage of public funds. Moreover, domestic competition will be more intense than in the past as well, and then the domestic enterprises' development would be in a better environment. From this perspective, the GPA's membership will help Chinese companies to expand the international government procurement market and create more opportunities for domestic enterprises. The international government procurement market occupies a majority proportion of international trade (Anderson, 2007).

Under an international procurement market, Chinese companies will be stimulated to enhance their competitive force. From this perspective, a strengthened competitive force seeks a higher economic welfare position, and relates to the possibility of enhanced international and domestic competition and improved governance in

the acceding country's own procurement markets. The Agreement facilitates increased competition and improved governance in procurement markets in at least three main ways (Anderson, 2007). Firstly, as what was mentioned above, that the WTO GPA delivers a tool to process the parties' domestic and international competition by the way of enforceable agreement, especially the non-discrimination principle in the GPA Agreement. In the second place, concepts in the GPA Agreement, which are used in various fields including information disclose to potential suppliers, contract awards, qualification of suppliers and other elements of the procurement procedure comprise a legal system designed to influence and supply a more transparent, efficient and non-discriminatory environment for not only China but also other parties of the GPA. This environment will improve the internal and external government procurement market for China, make it more liberalized and transparent. The third but not the last, the Agreement's content will affect Chinese domestic law through establishment of domestic review procedures and the disputes settlement system of the WTO will help China to enforce and resolve disputes with other signatories (Harpaz, 2007).

The dispute settlement mechanism of the GPA Agreement is invaluable for China to adopt to settle the disputes on international government procurement field. Article XX of the GPA Agreement is Consultations and Dispute Settlement, it states, 'Each Party shall accord sympathetic consideration to and shall afford adequate opportunity for consultation regarding any representation made by another Party with respect to any matter affecting the operation of this Agreement.'(World Trade Organization, 2012) Meanwhile, it is continued to 'where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of...'. (World Trade Organization, 2012) So if China gets the membership of the GPA, international procurement disputes will enhance its capacity and capability and ensure the effective, efficient settlement of China's disputes with other states.

Moreover, China's accession will draw attention of other countries because the potential of Chinese procurement market is gigantic. Thus the membership of the GPA will help China to raise the position in the WTO and to strengthen Chinese government bargaining power

in future bilateral and multilateral negotiations (Anderson, 2008).

Conclusion

China will undoubtedly emerge with a complexity of challenges after it joins the GPA Agreement. The regime and economy of China cannot escape from the influence of the WTO GPA. The changes to China's government procurement law will impact both the central departments and local departments. Furthermore, the chain reaction of effects might be presented gradually, but it is unpredictable to tell whether the effects are merits or drawbacks. Moreover, economic challenges are anticipated to easily appear. The lower competitiveness of domestic industries might suffer a market shock in light of external competition. The balance of import and export earnings of China may suffer unprecedented change upon accession to the GPA because of changes of government procurement. The risk of economic and social instability might be increased when weak domestic enterprises go down and job losses occur. Thus China has to prepare for the possible challenges that may emerge. Arguably, China could gain more benefits from a GPA membership. As what was presented in this Chapter, the main benefit of China's accession to the GPA is that it will develop and improve the Chinese public procuring market, and enhance the construction of a transparent, efficient and less corruptible government of China. Meanwhile some of the perceived disadvantages could turn out to be advantages such as fiercer competition could stimulate Chinese development of domestic companies' such as the automobile industry. Therefore, benefits and challenges will be felt at the same time. In general, from this paper's perspective, the benefits completely outweigh the challenges, while the fact of how to tackle the problems that arise will depend on the government of China.

CONCLUSIONS

China's negotiation on accession to the WTO GPA will not take a long time. Additionally, in its Chinese Sixth revised offer of accession to the WTO GPA, China decreased its delay of implementation of the GPA from five years to three years. So once China joins the WTO GPA, the delay of implementation will not be maintained for a long time like the initial offer (15 years) (Jean, 2014). Then China and the WTO GPA parties have to face the emerging problems. China has to tackle the

challenges which are mentioned in the Chapter 4, including the effects on domestic regime and negative effects on economy. Meanwhile, the benefits of China's accession to the WTO GPA ought to be used efficiently by China to achieve its aim of a more transparent, efficient and liberalized procurement market. To combine with the GPA's target, China's more transparent and liberalized procurement market could influence the environment of international procurement market. The WTO GPA parties will have the opportunities to compete in China's domestic government procurement market and confronting the competition from Chinese companies. This chapter will submit the recommendations for China and the WTO GPA parties and conclude this paper.

As what was mentioned in Chapter 2, China's domestic government procurement law system comprises two fundamental laws, Chinese Government Procurement Law and Chinese Tenders and Bids Law. This legal framework was produced under the special background and period necessity. Otherwise, the legal framework of China's government procurement is not functioning excellently (Wang, 2009). In spite of various laws, regulations and local rules that were established as the supplements of the two basic laws the controversies and conflicts continued to exist (Lin, 2004). Protectionism has wildly affected China's domestic government procurement market for a long period. Even for internal competition, provinces prevent other area's suppliers by local regulations and rules as well. Efficiency, transparency and liberation of government procurement in China have been severely compromised. Corruption, bribery and collusion in government procurement were prevailing in this field. In this market, China is a freshman to reform government procurement system to achieve the clearer and more efficient governance (Vagstad, 1995). However, one of the GPA's targets is to pursue liberalized procurement market in the world, while complete competition may raise a series of problems and could scare developing countries to participate in the GPA Agreement.

Therefore, the advice firstly should include the functional connection of Chinese Government Procurement Law and Chinese Tenders and Bids Law. In fact, Chinese scholars state various views in this field. Some scholars maintained that China should reform those two laws of public procurement system to a one law system as same as other legislations (Harpaz, 2007). This view is separated as the

cancellation of Chinese Tenders and Bids Law (Wang, 2009) or combining Chinese Tenders and Bids Law with Chinese Government Procurement Law (Wang, 2009). This paper's view is in agreement with the opinion of Xinghou Yuan. He maintains that Chinese Tenders and Bids Law could be the substantive law and Chinese Government Procurement Law could be the procedural law (Rothery, 2003). In Chinese legislation, bidding law and government procurement law could resolve the conflicts as the ways of following part. Revise this part Firstly, for the procurement projects of public funding arranged, regardless of which department to charge, must comply with government procurement procedures. When the projects come to bidding, it adopts bidding law to implement. Secondly, Chinese Government Procurement law and Chinese Tenders and Bids Law have a principled distinction; the adjusting of these two law's objects is different (Anderson, 2007). The Chinese Government Procurement Law can be a substantive law and the Chinese Tenders and Bids Law can be the related and supply procedural law for the Government Procurement Law. In that conceivable legal framework, due to a substantive law, Chinese Government Procurement Law regulates the content of public procuring subjects, public procurement methods, public procurement contracts and legal responsibilities. Meanwhile, government procurement law ought to include the procedures which are not contained in the Chinese Tenders and Bids Law. Chinese Tenders and Bids Law will only adjust the bidding procedures. Chinese Tenders and Bids Law will be a simply procedural law. For example, construction procurement projects ought to comply with the procedure of Chinese Tenders and Bids Law, and comply with the related provisions in Chinese Government Procurement Law at the same time. The projects cannot comply with Chinese Tenders and Bids Law only but with both legislative acts. Therefore, in China's legislation, Chinese Government Procurement Law cannot be used in place and instead of Chinese Tenders and Bids Law and vice versa.

Other legal reforms for China is to revise Chinese Government Procurement Law by the approach of removing or harmonizing the conflicts between China's domestic government procurement law and the WTO GPA. In this paper, Chapter 3 presented or discussed the differences of the WTO GPA and Chinese domestic government procurement law. It is an ordinary phenomenon that there are differences and even conflicts. However, China has to follow the most essential target of the WTO GPA, which should contain the principles

of non-discrimination, efficiency and transparency, and following the aims of liberalism.

In addition, other modifications of China's legal framework in the field of government procurement are significant in two parts. In the first place, Chinese government might want to enhance the fiscal control and the punishment in the usage of public funds. Secondly, the reform of Chinese government procurement law reflected China's authenticity and capacity in implementing China's commitment to integrate with the international economy. In addition, the integration of China and the world have an implication on Chinese domestic public governance. Moreover, as what was mentioned in the introduction that there might be conflicts between the central government and local government, if China joins the WTO GPA, the Chinese local governments should hand over some parts of their authority in terms of government procurement, especially the decisions to protect local companies. For China's central government, it has to give up some certain sovereignty, such as a certain extent of political function of government procurement, in order to integrate Chinese public procurement with global economy. For the WTO GPA, other members shall be sensible to recognize the market and emerging competition of China's accession. Meanwhile, in reality, even in the WTO GPA members, partial protectionism still exists. It could be explored from the different level of offsets and thresholds applied by the parties of the WTO GPA.

In summation, the China's accession to the WTO GPA has both benefits and challenges for China and the WTO GPA members. From this paper's perspective, overall, the advantages outweigh the disadvantages of China's accession to the WTO GPA. For China, it has to suffer the emerging difficulties from the signatories of the WTO GPA, especially from some developed countries, which have advanced technology and thorough procurement experience. Those difficulties comprise fierce competition, conflicts of legislations and impact on the domestic regime. Once China joins the GPA, the previous role of economic controller of government procurement has to give the priority to liberalisation of international procurement (Chou, 2006a).

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