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# Research on the Recognition of State-owned Enterprises as Eligible Procuring Entities: Focused on China's Bid to the GPA

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**ABSTRACT:** *This paper examines the criteria and pathways for recognizing state-owned enterprises (SOEs) as eligible procuring entities in China's bid to the Government Procurement Agreement (GPA). As China seeks to align its domestic procurement policies with international standards, the inclusion of SOEs in the GPA bidding list has become a focal point in negotiations. This study explores the key criteria under the GPA for determining procuring entities, specifically "government control or influence" and "for governmental purposes", and analyzes the classification of China's SOEs into public welfare SOEs, commercial SOEs, and strategic SOEs. The paper discusses the challenges and opportunities China faces in integrating SOEs into the GPA framework, with particular emphasis on the need for a clear delineation of the public factors involved. Through a detailed assessment of the existing legal frameworks, including the Government Procurement Law and its drafts, the study highlights the gaps and ambiguities in current regulations. The research further proposes a path for China's SOEs to meet the GPA criteria, while ensuring that sensitive industries and emerging sectors are safeguarded through targeted exclusions. This paper ultimately argues for a flexible and dynamic approach in China's GPA accession process, advocating for a pragmatic pathway that balances China's reform objectives, national interests, and international obligations.*

***Key words****: Bidding List, Eligible Procuring Entity, Government Procurement Law, State-owned Enterprises (SOEs).*

## 1. Introduction

China's accession to the Government Procurement Agreement (GPA) under the World Trade Organization (WTO) framework and its active participation in the international government procurement market are pivotal for advancing the domestic-international dual circulation development model and fostering high-quality economic growth. Such participation facilitates the internationalization and liberalization of government procurement practices. However, China's accession to the GPA faces significant challenges, with one of the key issues being the inclusion of state-owned enterprises (SOEs) in the bidding list.

To date, China has submitted seven bidding lists to the WTO. Notably, the sixth bid included three SOEs for the first time, and the seventh bid in 2019 expanded this inclusion to 16 SOEs. In addition, China committed to reducing the threshold price to align more closely with the majority of GPA Parties after the transition period. Despite these efforts, the seventh bid has not been accepted, as other GPA Parties have requested further expansion of SOE coverage in China's bid.

The Government Procurement Law, enacted in 2002 and revised only once in 2014, is increasingly inadequate to address the evolving economic and social landscape. Its misalignment with international norms has been a critical point of contention in China's GPA accession negotiations. In 2022, the Ministry of Finance of the People's Republic of China issued the Government Procurement Law (Revised Draft for Comment) (hereinafter referred to as the 2022 Draft for Comment), soliciting public input. Notably, Article 2, paragraph 2, and Article 12, paragraph 1 of the 2022 Draft introduced the concept of "other procuring entities" as eligible procuring entities. Furthermore, Article 12, paragraph 2, defined "other procuring entities" to

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include public welfare SOEs engaged in public utilities or operating public infrastructure and service networks for public purposes. The State Council was authorized to determine the specific scope of these entities and their procurement activities. This marked the first legal reference to "public welfare state-owned enterprises" in China's procurement framework (Yang & Ma, 2023). While the revised law extends the scope to include specific public welfare SOEs, the precise criteria for these entities require further clarification.

This paper aims to define GPA procuring entities, analyze the contentious issues surrounding the inclusion of China's SOEs in GPA negotiations, and establish criteria for determining the eligibility of China's SOEs as procuring entities. By examining the classification and functional positioning of China's SOEs, the research seeks to provide actionable guidance for revising the Government Procurement Law and aligning it with international standards.

## 2. The Procuring Entity Criteria in the GPA and Dispute over China's Bidding List

The inclusion of state-owned enterprises (SOEs) in the bidding list is closely tied to the definition of a "procuring entity". Article 1 of the 2012 GPA defines a "procuring entity" as "an entity covered under a Party's Annex 1, 2, or 3 to Appendix I," meaning that only the procurement activities carried out by entities listed in a Party's bid are subject to the Agreement's provisions. Article 2, paragraph 4, of the GPA further requires Parties to specify the scope of covered entities in detail across three annexes: Annex 1 includes "central government entities," such as ministries and government departments; Annex 2 encompasses "sub-central government entities"; and Annex 3 comprises "other entities" whose procurement policies are not substantially controlled by, dependent on, or influenced by central, regional, or local governments (Lian, 2024). These "other entities," a miscellaneous category, are defined as "entities which bear governmental features but are not governmental bodies as per the constitutional laws of each Party" (Reich, 1997). SOEs are generally categorized under Annex 3.

Despite its strengths, the GPA lacks a clear and legal definition of the "procuring entities" covered under the Agreement, leaving this determination to negotiations between member Parties. As a result, the specific scope of participating entities is shaped through bilateral negotiations and formalized in the form of a bidding list. While this approach provides flexibility for Parties to negotiate terms, it also leads to persistent disputes and creates significant procedural barriers for China's accession to the GPA.

Although the GPA does not explicitly establish criteria for including procuring entities in the bidding list, an implied uniform standard can be discerned from its various provisions. However, these provisions are inconsistent, and the offers of member Parties often reflect their interpretations of the relevant criteria. These dynamics play a critical role in determining the scope of China's SOEs as eligible entities under the GPA.

### *2.1. The Procuring Entity Criteria in the GPA*

The GPA 2012, a partially revised version of the GPA 1994, remains in use today. A comparison of the two versions reveals that the WTO Committee on Government Procurement has gradually developed two primary criteria for determining procuring entities: the "government control or influence" criterion and the "for governmental purposes" criterion (see Table 1).

**Table 1.** Comparison of relevant provisions of the GPA1994 & GPA2012.

| | **the GPA1994** | **the GPA2012** |
|---|---|---|
| Government control or influence | Government control or influence over the entity has been effectively eliminated | Government control or influence over the entity's covered procurement has been effectively eliminated |
| For governmental purposes | — | Covered procurement means the following procurement for governmental purposes |

#### *2.1.1. Government Control or Influence Criterion*

The GPA 1994 introduced an exit mechanism for procuring entities. Article 24, paragraph 6(b), stipulates that a Party may withdraw an entity from Appendix 1 if "government control or influence over it has been effectively eliminated." This provision implies that a listed procuring entity must possess the characteristic of being "controlled or influenced by the government." Consequently, this characteristic serves as a criterion for

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determining the inclusion of procuring entities in reverse - an entity may be included if it is subject to government control or influence.

The GPA 2012 retains this criterion but modifies the language to focus on procurement activities. Article 19, "Modifications and Reflections to Coverage," states that an entity may be withdrawn if "government control or influence over the entity's covered procurement has been effectively eliminated." The shift from focusing on "the entity" to "the entity's covered procurement" suggests an evolution in the application of the criterion.

While the GPA 1994 addressed "the entity," the GPA 2012 emphasizes "the procurement." This change has sparked discussion about whether the WTO Committee on Government Procurement intended to separate these concepts. However, a practical interpretation suggests that the revision was made to enhance the operability of the rules by shifting focus from the entity itself to its procurement activities. By using the behavioral element of "the procurement" as the judging criterion, the revised GPA aligns more closely with its goal of regulating procurement activities to ensure fair, open, and transparent competition in public procurement markets.

Despite this shift, the criteria for "the entity" and "the procurement" are intrinsically linked. If an entity is subject to GPA provisions because its procurement is controlled or influenced by the government, the entity itself must also be under government control or influence. Thus, the distinction between "the entity" and "the procurement" is unnecessary. Both contribute to the overarching criterion of government control or influence, ensuring internal consistency.

#### *2.1.2. For Governmental Purposes Criterion*

The GPA 2012 introduced a positive provision for the "for governmental purposes" criterion. Article 2, paragraph 2, clarifies that "covered procurement" refers to "procurement for governmental purposes." This provision further specifies that procurement for governmental purposes must be "non-commercial", defined as procurement activities "not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale."

This exclusionary provision implies that procurement activities for commercial purposes fall outside the GPA's scope. For example, if an SOE engages in market competition or commercial activities and its procurement is similarly commercial in nature, it should not be included in Annex 3 of the GPA bidding list (Guo & Wang, 2024).

Based on the GPA provisions, the criteria for including SOEs in the GPA bidding list involve "government control or influence" and "for governmental purposes". However, these criteria remain vague and abstract, lacking specific judgment rules to determine the eligibility of China's SOEs for inclusion.

### *2.2. Disputes over China's Entity Coverage of SOEs*

In bilateral negotiations between GPA Parties and China, the degree to which the public procurement market of China's SOEs should be opened remains a contentious issue. In 2010, the United States, Japan, and Canada jointly submitted a draft criterion to the WTO for determining whether an entity qualifies as a procuring entity under the GPA. This draft proposed that the 'government control or influence' criterion encompass factors such as legal basis, policy objectives, government voting rights and shares, participation in decision-making or business management, responsibilities to the government or treasury, receipt of government subsidies or support, and benefits from special government policies.

A joint statement from the United States, Japan, and the European Union (EU) argued that a significant number of Chinese SOEs fall within the scope of entity coverage under the GPA. They contended that China's conservative approach to opening its SOEs to public procurement could distort the competitive market order. As a result, these Parties have strongly urged China to expand the inclusion of SOEs in public procurement.

#### *2.2.1. EU's Criteria for Procuring Entities*

The EU defines a procuring entity using the criteria of being "subject to public law and non-market competition." GPA provisions apply to entities governed by public law and not engaged in market competition. The EU assesses eligibility based on a list of public authorities, including national, regional, and local governments, institutions governed by public law, and public or private enterprises. The status of an entity as an independent legal entity is a decisive factor. Publicly owned enterprises (POEs) are defined as

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"any enterprise in which public authorities exercise major influence through ownership or financial involvement," or where public authorities have significant control through full, majority, or qualified minority ownership (Yao, 2006).

The EU's criteria for determining "major influence" include: 1. Majority ownership of the company's subscribed capital; 2. Control of the majority of voting rights of the company's issued shares; 3. The ability to appoint more than half of the members of the company's administrative, managerial, or supervisory bodies.

EU Member States include extensive coverage of procuring entities in their bids, spanning industries such as drinking water, electricity, airport facilities, docks, railways, and road traffic (Hai, Li & Dai, 2012). The EU has asked China to reciprocate by matching its bid and including most large Chinese SOEs.

*2.2.2. United States' Position on Chinese SOEs*

The United States employs the "government control or influence" criterion for defining procuring entities, particularly at the state and local levels. Public institutions "not of an industrial or commercial nature" are included as procuring entities for government procurement. The United States asserts that many large Chinese SOEs meet this criterion based on two key arguments: 1. Personnel and decision-making power in large Chinese SOEs are under government control; 2. These enterprises maintain high levels of government participation and are required to report earnings and other operational information annually to the government.

The U.S. has presented China with a dilemma: either include a substantial number of government-controlled or influenced SOEs as procuring entities or ensure SOEs adhere to commercial independence, thereby subjecting them to WTO rules applicable to entities engaged in commercial activities. This creates a challenging situation for China's SOEs, placing them in a precarious position between government control and market competition.

To successfully join the GPA while avoiding being dominated by the demands of other Parties, China must proactively take the lead in shaping rules for its SOEs. By clearly defining whether and how public procurement provisions should apply to SOEs, China can avoid a reactive and passive stance in negotiations. Clarifying these rules would enable China to align its SOEs with GPA requirements while maintaining control over its policy decisions.

## 3. Classification of China's SOEs and Criteria Docking

China's SOEs span diverse sectors of the national economy and are characterized by extensive coverage and significant economic influence. However, the legislative classification of SOEs remains unclear, as their public service and market competition attributes are often intertwined, making their dual responsibilities difficult to delineate. In the latest round of SOE classification reforms, China has divided its SOEs into three categories: public welfare SOEs, commercial SOEs, and strategic SOEs.

The Government Procurement Law currently identifies "use of financial funds" as a criterion for determining a procuring entity. With amendments in 2020 and 2022, the scope of "financial funds" has been broadened, reducing constraints on procuring entities and aligning more closely with GPA criteria. The introduction of "public purposes" in the 2022 Draft for Comments further specifies procurement objectives, representing a more quantitative approach than the GPA's "for governmental purposes" criterion. This allows for an evaluation of different SOEs based on the degree of public factors, determining their eligibility as procuring entities and potential inclusion in the bidding list.

*3.1. Classification and Positioning of China's SOEs*

The recent classification reforms offer a strategic opportunity for China to define criteria for including SOEs in public procurement entities, facilitating China's alignment with GPA rules and promoting smoother integration into international procurement frameworks.

The Third Plenary Session of the 18th CPC Central Committee emphasized the need to "accurately define the functions of different SOEs." The Guiding Opinions of the CPC Central Committee and the State Council on Deepening the Reform of SOEs (Zhongfa [2015] No. 22) highlighted the importance of strengthening classification and assessment. In 2015, the Guidance on the Definition and Classification of SOEs (State-owned Assets Development Research [2015] No. 170) issued by the State-owned Assets Supervision and Administration Commission (SASAC), Ministry of Finance, and National Development and Reform Commission (NDRC) categorized SOEs into two types: commercial SOEs and public welfare SOEs, with the

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objective of advancing reform, development, supervision, and accountability. In 2016, the Implementation Plan on Improving the Functional Classification Assessment of Central Enterprises (State-owned Assets Development Comprehensive [2016] No. 252) added strategic SOEs as a separate category, recognizing their distinct role in critical industries. This classification divides SOEs into the following three categories:

1. Public Welfare SOEs: Public welfare SOEs primarily fulfill governmental public service functions, focusing on societal welfare, livelihood assurance, and the provision of public goods and services. Pricing for essential goods and services may be regulated by the government. These SOEs operate in industries critical to national security, such as nuclear energy, aviation, oil and gas, and telecommunications, and may be entrusted with government-mandated functions. While public welfare SOEs are encouraged to adopt market mechanisms to enhance efficiency, their primary goal remains public service rather than market competition.

2. Commercial SOEs: Commercial SOEs exhibit a blend of public and private attributes. These enterprises are expected to fully participate in market competition as independent market players but often retain political responsibilities. The reform trajectory for commercial SOEs focuses on market-oriented resource allocation. They are encouraged to implement corporate and shareholding system reforms to become vibrant, market-driven entities without assuming government functions.

3. Strategic SOEs: Strategic SOEs, a subset of commercial SOEs, operate in industries and key areas integral to national security and the national economy, often undertaking major special tasks. These enterprises possess a unique duality, combining public, scientific, and commercial functions, which are difficult to separate. Strategic SOEs are established primarily based on governmental objectives rather than market demand, reflecting strong government influence and control. They are typically maintained as state-capital-controlled entities, with the potential to transition into private enterprises or withdraw from market operations once government objectives are achieved.

The reforms reflect efforts to address ambiguities in SOE roles by linking classification with GPA criteria, such as "government control or influence" and "public purposes." The expanded scope of financial funds in the Government Procurement Law amendments further aligns with GPA principles, enabling a more structured approach to integrating SOEs into public procurement frameworks.

1. Operational Clarity for Public Welfare SOEs: Public welfare SOEs are well-suited for inclusion as procuring entities due to their public service focus and minimal commercial engagement, directly aligning with GPA provisions on non-commercial procurement.

2. Reform-Oriented Commercial SOEs: While commercial SOEs aim to operate independently in the market, their mixed attributes necessitate clearer rules to determine eligibility for inclusion in the GPA bidding list, based on the degree of government influence and public purpose in their operations.

3. Strategic SOEs and Dual Roles: The classification of strategic SOEs highlights their complex role as entities that serve both governmental and commercial functions. Their inclusion in public procurement must be assessed on a case-by-case basis, emphasizing transparency in their alignment with GPA standards.

By clarifying the classification and positioning of SOEs, these reforms lay the foundation for defining inclusion criteria for SOEs in the GPA bidding list, ensuring alignment with international procurement rules while safeguarding national interests.

### *3.2. Criteria for China's Procuring Entity*

Under Article 2, paragraph 2, and Article 15 of the Government Procurement Law, the provisions defining Chinese procuring entities are enumerated as state organs, institutions, and organizations. However, Article 2, paragraph 1, stipulates that government procurement must utilize "financial funds." Furthermore, Article 2, paragraphs 1-3, of the 2015 Regulations on the Implementation of the Government Procurement Law explicitly define "financial funds." This establishes "financial funds" as a de facto criterion for determining Chinese government procurement activities and indirectly for identifying procuring entities.

According to Article 2, paragraph 1, of the Regulations on the Implementation of the Government Procurement Law, financial funds refer to funds incorporated into budget management. However, Article 10, paragraph 1, of the Budget Law stipulates that "the budget for state-owned capital operations includes revenue and expenditure from state capital gains." This raises a debate on whether funds of SOEs constitute "financial funds" under budget management. Since the Government Procurement Law explicitly enumerates three types of procuring entities (state organs, institutions, and organizations), SOEs are ostensibly excluded.

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To align with GPA requirements and address gaps in the government procurement framework, the Ministry of Financeissued draft revisions for public comment in 2020 and 2022. These drafts introduced significant adjustments to the definition and scope of procuring entities while addressing ambiguities related to SOEs (see Table 2).

**Table 2.** Comparison of the Government Procurement Law (Revised Draft for Comments).

| | | |
|---|---|---|
| Definition of "government procurement" | Article 2, paragraph 2: Government procurement includes the use of fiscal funds or other public resources by state organs, institutions, organizations, and other procuring entities to obtain goods, projects, and services by contract for governmental purposes or public services, including purchases, leases, entrustments, and public-private partnerships. | Article 2, paragraph 2: Government procurement includes the use of fiscal funds or other state-owned assets by state organs, institutions, organizations, and other procuring entities to obtain goods, projects, and services by contract to perform duties or provide public services, including purchases, leases, entrustments, and public-private partnerships. |
| Determination of "other procuring entities" | Article 17, paragraph 2: Other procuring entities are defined as entities achieving governmental purposes and providing public goods and services. The specific scope of such entities and their procurement shall be determined by the State Council. | Article 12, paragraph 2: Other procuring entities include public welfare SOEs engaged in public utilities, operating public infrastructure, or public service networks for public purposes. The specific scope of such entities and their procurement shall be determined by the State Council. |

*3.2.1. Key Changes in the Draft Revisions*

The primary changes to the provisions regarding procuring entities in the 2020 and 2022 drafts include: 1. Introduction of "other procuring entities". Both drafts expand the scope of procuring entities and authorize the State Council to determine their specific roles and procurement scope; 2. Expansion of the "financial funds" criterion. The drafts include "other public resources" or "state-owned assets" in addition to financial funds, thereby reducing disputes about the applicability to SOEs; 3. Clarification of procurement purpose. The 2020 draft defines the purpose as "achieving governmental purposes or public services." The 2022 draft refines this to "performing duties or providing public services" for enhanced precision; 4. Specific inclusion of public welfare SOEs. The 2022 draft explicitly lists public welfare SOEs engaged in public utilities, operating public infrastructure, or public service networks as procuring entities.

*3.2.2. Alignment with GPA Provisions*

The revisions in the 2020 and 2022 drafts broaden the "financial funds" criterion, thereby weakening its constraints on procuring entities. At the same time, these changes better align with GPA provisions by: 1. Expanding the definition of government procurement to include a broader range of funding and public purposes; 2. Clarifying the scope of "other procuring entities" to incorporate SOEs with significant public welfare responsibilities; 3. Introducing precision in defining procurement purposes, enhancing compatibility with GPA's "governmental purposes" criterion.

In conclusion, these revisions represent a step toward harmonizing China's government procurement framework with international standards, paving the way for SOEs' inclusion as procuring entities under GPA rules.

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### *3.3. Docking of China's Criteria with the GPA*

The GPA provisions establish two primary criteria for determining procuring entities: "government control or influence" and "for governmental purposes." While SOEs in China can generally be identified as entities under "government control or influence," the key determinant for their qualification as procuring entities lies in the extent to which they serve "for governmental purposes."

China's ongoing SOE reforms aim to delineate government functions from enterprise operations, implementing classified reform, development, and supervision. These efforts strive to clarify the relationship between public functions and the commercial or scientific functions of enterprises, reduce excessive government intervention, and alleviate the pressures of political responsibilities on commercial operations. This clearer positioning not only strengthens SOEs' focus on their defined functions but also enhances their international competitiveness and innovation capacity (He & Liu, 2021; Miao & Xu, 2022). Such reforms are pivotal for addressing the challenges of including China's SOEs in GPA bids.

SOEs are classified into three categories - public welfare SOEs, commercial SOEs, and strategic SOEs - each bearing varying degrees of "public factors." In the optimal state of classification, all SOEs retain some level of governmental purpose, which underlines their adoption as operational entities. However, "for governmental purposes" is better understood as a matter of degree rather than a binary condition. The 2022 Draft for Comments introduces the concept of "for public purposes," which provides a more quantitative framework for assessing the degree of public factors. This nuanced approach allows for flexible interpretation in determining SOEs' eligibility as procuring entities under the GPA.

#### *3.3.1. Classification of China's SOEs and Public Factors*

The degrees of public factors vary across the three types of SOEs:

1. Public Welfare SOEs: Public welfare SOEs primarily provide public or quasi-public goods and services, meeting societal welfare needs related to national development, social stability, and citizens' basic rights and livelihoods. These enterprises often incur policy-driven losses and are required to operate as SOEs to extend governmental functions into the realm of public goods and services. The government maintains strong control and influence over their operations, resulting in significant public purposes and a high degree of public factors. Given their alignment with public purposes, public welfare SOEs qualify as procuring entities and should be included in the GPA bidding list.

2. Commercial SOEs: Commercial SOEs operate under market principles, focusing on competitiveness, profitability, and market-oriented resource allocation. Their structure often positions the government as an investor rather than an operator, similar to private enterprises. While these entities are controlled or influenced by the government, they perform minimal governmental functions and exhibit a low degree of public factors. Due to their limited alignment with public purposes, commercial SOEs do not meet the criteria for eligible procuring entities and should not be included in the GPA bidding list (Yang & Li, 2021).

3. Strategic SOEs: Strategic SOEs are integral to industries reflecting national strategic development priorities. These industries have traditionally included agriculture, steel, coal, and petroleum but now also encompass emerging sectors such as digital technology, energy conservation, new energy, biotechnology, and information technology. While strategic SOEs share commonalities with public welfare SOEs, they are primarily created to fulfill government objectives rather than market demand. Once government objectives are achieved, these enterprises may transition into commercial SOEs or private enterprises, or even exit the market entirely. Their public factors are dynamic and context-dependent, making their eligibility for inclusion discretionary. Negotiations on the GPA bidding list should focus on these entities, ensuring flexibility to adjust their inclusion as reform progresses. Some strategic SOEs may be included in the GPA bid; however, their participation should be reassessed periodically, with timely withdrawal based on their reform progress.

#### *3.3.2. Strategic Docking and Flexible Interpretation*

Determining the eligibility of SOEs as procuring entities hinges on assessing the degree of public factors (see Table 3). By adopting this approach, China gains the flexibility to interpret eligibility criteria in line with international rules while safeguarding its domestic interests. This flexibility serves as a strategic tool for navigating GPA negotiations, ensuring China can address the inclusion of SOEs in a way that aligns with its reform trajectory and international obligations.

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**Table 3.** Eligibility based on degree of public factors.

| Classification | Degree of public factors | Eligible / Ineligible? |
|---|---|---|
| Public welfare SOEs | High. | Eligible. |
| Commercial SOEs | Low. | Ineligible. |
| Strategic SOEs | Dynamic, context-sensitive. | Subject to negotiation and reform progress. |

In conclusion, while public welfare SOEs clearly meet the GPA criteria for procuring entities, the eligibility of commercial and strategic SOEs requires nuanced, case-by-case assessments. This tiered approach aligns China's SOE framework with GPA provisions, facilitating a pragmatic pathway for international integration.

## 4. Path for China's SOEs to Enter the GPA Bidding List

By analyzing the degree of public factors of different types of SOEs in China, we can judge whether they should be included in the GPA bidding list. In terms of how to include them in the bid, we need to further integrate the criteria of procuring entities in the GPA provisions on the basis of the classification of China's SOEs. China needs to state its position and attitude in a proactive and prudent manner, actively respond to challenges, seek progress while maintaining stability, adhere to the principle of reciprocity, and flexibly make use of the exit mechanism to make dynamic adjustments.

### *4.1. Response to Challenges: Higher-Standard Opening up*

Joining the GPA means opening up a huge international public procurement market, which is an important issue of national interest (Zhang, 2017). For large economies, the government procurement market is huge, with government purchases typically accounting for 15%〜20% of gross domestic product. Government procurement market is an important part of the domestic market, is an important position for the government to protect domestic enterprises and products, support emerging industries, and has a decisive guiding role in social investment, production and consumption. China is an advocate and practitioner of multilateralism and an important party in upholding multilateralism, hence joining the GPA is in line with China's consistent position and principle of multilateralism.

China's accession to the GPA is at a bottleneck stage, hampered in part by the coverage of SOEs in the bidding list. The Government Procurement Law does not treat SOEs as eligible entities, which seriously lags behind international government procurement rules. The 2022 Draft for Comments intends to include public welfare SOEs in the procurement entity is necessary and reasonable, but the specific coverage has yet to be determined by the discretion of the authorized authorities.

### *4.2. Progress upon Stability: Steady and Systematic Opening up*

Due to the large number and complex nature of SOEs in China, all types of SOEs cannot be fully included in the GPA bidding list, but should be judged according to the criterion of 'for governmental purposes' and the degree of public factors: Public welfare SOEs have a higher degree of public factors and should be included in the GPA bidding list; The public factor of commercial SOEs is relatively low, if they are included, it means that such market entities are forced to operate in accordance with fair, just and open government procurement rules, which undoubtedly reduces their adaptability and puts them at a serious disadvantage in market competition, so they should not be included in the bid; Strategic SOEs have not yet been fully marketized and are at risk of being included in the bidding list, depending on negotiation skills and strategies.

In addition, in view of the varying levels of development among countries, the GPA has established exclusions that allow countries to exclude certain procuring entities from the GPA on the basis of actual circumstances. China can make full use of the GPA's government procurement exception to safeguard strategic SOEs in China's particularly sensitive and infant emerging industries. The experience of some of the participants in the bid can be learned from: Korea included Korea Telecom in its appendix, but indicated that procurement of services provided by KEPCO was not covered; Japan lists Eastern Japan Telegraph and Telephone Company and Western Japan Telegraph and Telephone Company at the same time, noting that "public power telecommunications equipment and the procurement of security services related to telecommunications operations are not covered".

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China may, through negotiations with the Parties, list and annotate strategic SOEs in key areas and important industries such as coal, aviation, electric power, petrochemical and military industries, which are the lifeline of the national economy and which the State needs to maintain absolute control over, as well as emerging industries such as digital technology, energy conservation and environmental protection, new energy, biotechnology and information technology. Those industries should be excluded from the coverage of the GPA to avoid that China's special sensitive industries and emerging industries are swallowed up or put at a disadvantage in the face of fierce international competition.

*4.3. Principle of Reciprocity: Opening up on the Ground of Equivalence*

As one of the multilateral agreements within the framework of the WTO, the accession mechanism of the GPA determines whether the bidding list can be accepted or not depends on the outcome of negotiations with the member Parties. The varying degree of inclusion of SOEs in the bids of the Parties may be caused by the uneven number or nature of SOEs in different countries. The large number of SOEs in China does not directly mean that China should include more SOEs than other countries, and the United States, the European Union and other Parties should not make excessive demands. Their argument that almost all SOEs in China should be included in the bid according to their own criteria and based on their own interests is excessive.

The principle of reciprocity is the basic position that each Party should adopt in international negotiations, which refers to "the ideal of mutual changes in trade policy" (Marchetti, Roy & Zoratto, 2012) , or , more specifically, "the practice of making an action conditional upon an action by a counter part" (Hoekman & Kostecki, 2009) . According to the principle of reciprocity, China can equally open within the scope of the openness of the GPA Parties, and for industries not included in the bid by other countries, China's SOEs in this industry can also be excluded. Such equivalence may arise either among all the member Parties or in a one-on-one negotiation with one of them. Conversely, where China is not included in the bid, the corresponding industries of other Parties are also allowed not to be opened to China.

*4.4. Last Resort: Dynamic and Flexible Opening up*

The reform of China's SOEs is progressing gradually, and some SOEs may no longer fall under the coverage of the GPA for procuring entities after completing market-oriented reforms. The GPA provisions clearly state that an entity can withdraw when 'government control or influence over the entity's covered procurement activities has been effectively eliminated'. There are precedents for other member Parties, such as Japan's notification to the Government Procurement Board in 2001 of the withdrawal of East Japan Railway from Appendix 1 on the grounds of privatization; In the same year, the United States also notified the Government Procurement Committee to withdraw uranium mining companies from Appendix 1 on the same grounds (Weng, Niu & Liu, 2014).

Therefore, the status of China's SOEs included in the GPA bidding list is not fixed and permanent, but the bid is "living" and can be dynamically adjusted. The inclusion of China's SOEs in the bid should be in line with the direction of China's SOEs reform. With the acceleration of the market-oriented reform of SOEs, once SOEs with a high degree of public factors eliminate their public factors through reform, they can apply for withdrawal from the bidding list through the correction and modification procedures and are no longer bound by the GPA provisions. The reasonable exit mechanism set up by the GPA provisions can serve as the last line of defense, and to a certain extent, it can address China's concerns that the reform of SOEs is not synchronized with the process of joining the GPA.

## 5. Conclusion

The inclusion of China's SOEs in the bidding list has been a core issue in China's GPA accession process. It is worth noting that China's criteria for the inclusion of SOEs in the bid is not only a key step to break the deadlock in the GPA negotiations, but also an active declaration of China's position and attitude to the world as a great country, which must be considered repeatedly and carefully. We suggest that, based on the reform of China's SOEs as the classification positioning, the GPA provisons in line with the procurement entity criteria, according to different degrees of public factors of SOEs to determine the coverage of eligible procuring entities, so as to provide space for flexible interpretation of China GPA bidding list negotiations.

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