



**Openness in public procurement markets:  
A fair report of the results of the EU impact assessment  
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In March 2012, the Commission has tabled a proposal for a “*Regulation establishing rules on the access of third countries’ goods and services to the EU internal market in public procurement*”. If adopted, this Regulation would allow the EU to deny access to its public procurement markets to firms originating from countries with public procurement markets that the EU would feel less open than its own markets—the so-called “reciprocity” approach in public procurement matters.

The “impact assessment working study” [Commission 2012] on which this EU proposed regulation is based deserves thus great attention since its results have been widely quoted by European officials (from the Commission or the EU Member States) as justifying the need for this new Regulation and the reluctance to open immediately negotiations on preferential trade agreements with Japan.

This note is organized as follows. Section 1 shows that the main findings of the impact assessment are systematically distorted in the quotes of most EU officials. Section 2 provides the fair report of these findings. The undistorted report shows that the public procurement markets of the EU’s partners are as open as—not less than—the EU’s markets. In other words, the findings show no reason to delay the opening of the negotiations on a preferential trade agreement between Japan and the EU, and it weakens the case for reciprocity.

**A systematically distorted presentation of the findings**

The impact assessment working document (IAWD) consists in a cover text and 11 annexes. Annex 3 entitled “Problem analysis” is the key part of the IAWD since it presents the Commission’s estimates of the level of openness of public procurement markets in the EU as a whole (there is no estimate by EU Member State) and in twelve major EU trading partners.

Table 1 recapitulates the figures of Tables 3 and 7 of Annex 3.

- Column 1 presents the size (in billions of Euros) of the total public procurement markets above the thresholds set by the Government Procurement Agreement (GPA) signed at the end of the Uruguay Round (1995).
- Column 2 presents the potential *de jure* commitments that the EU would take under the new GPA under negotiations in the WTO if these negotiations were successful. The study provides no equivalent estimates for the EU's trading partners.
- Column 3 presents the Commission's estimates of the public procurement markets openness based on the legal international commitments taken by the EU and twelve countries under the 1995 WTO Government Procurement Agreement (GPA) or under existing preferential trade agreements. The *de jure* openness ratio is measured by the share (in percent) of the value of the markets considered as open *de jure* in the total value of public procurement markets above the GPA thresholds.
- Column 4 presents the Commission's estimates of the public procurement markets openness of the EU's partners on a *de facto* basis. A market is considered as open *de facto* if "*a country does not apply protectionist measures in the public procurement markets that are as not open de jure*" [Annex 3, methodological box 4]. The *de facto* openness ratio is measured by the share (in percent) of the value of the markets considered as open *de facto* in the total value of public procurement markets above the GPA thresholds.
- Column 5 presents the estimates of the commitments taken by the EU with respect to its twelve partners when one takes into account the "general notes or specific derogations." Specific derogations are targeted restrictions imposed by the EU "*because of the disparities in commitments*" [Annex 3 page 8]. For instance, "*[the] US has not been granted access to public works and services of contracts of local contracting authorities, Japan has not been granted access to urban transport entities procurement*" [Annex 3 page 8].
- Column 6 provides information on the current situation in terms of PTAs between the EU and the country at stake (this information is not provided by Annex 3).

**Table 1. Commission’s estimates of the openness of public procurement markets**

	Size of PP markets covered by GPA [a]	de jure [b] commitments		de facto [b] commitments		Status in terms of PTA between the EU's trading partners and the EU
		GPA 2011	GPA 1995	EU's partners	EU [c]	
		1	2	3	4	
<b>EU</b>	<b>370</b>	<b>95</b>	<b>85</b>	--	--	
USA [d]	559	na	32	47	46	ongoing joint study
Japan	96	na	28	72	70	Comm's request for opening negotiations
Canada	59	na	16	40	10	ongoing negotiations
Korea	25	na	65	80	82	PTA implemented
Israel	2	na	75	75	na	PTA implemented
Mexico	20	na	75	92	na	PTA implemented
China	83	na	0	24	0	no PTA under consideration
Russia	18	na	0	56	0	no PTA under consideration
India	19	na	0	70	0	ongoing negotiations
Brazil	42	na	0	38	0	ongoing negotiations with Mercosur
Turkey	24	na	0	25	0	PTA does not cover public procurement
Australia	20	na	0	63	0	no PTA under consideration
<b>Total non EU</b>	<b>967</b>	<b>na</b>	<b>25</b>	<b>na</b>	<b>18</b>	

Source: IAWD Annex 3, Tables 3 and 7. PP: public procurement. GPA: Government Procurement Agreement. [a] in billions of Euros. [b] in percent of total PP markets above the 1995 GPA threshold. [c] taking into account the specific derogations imposed by the EU in order to achieve “balanced” concessions; [d] an estimate of Euros 279 billion is reported in other texts of the Commission [such as Commission 2010], see below Table 2.

The figures shaded in columns 2 and 3 are those reported systematically by the European officials.<sup>1</sup> They deliver a very strong impression of asymmetry, the EU public procurement markets looking largely open while the partners’ markets look largely closed.

But, such a presentation of Annex 3 findings is highly biased because it systematically over-estimates the EU level of openness and systematically under-estimates the level of openness of the EU’s trading partners:

- Column 2 systematically over-estimates the EU openness because there is no figure comparable to the 95 percent estimated for the EU since the Commission’s study does not provide any estimate for the commitments that the twelve EU partners are ready to take under the new GPA under negotiation.

<sup>1</sup> As an illustration, among many others: “It is unacceptable that European public procurement markets are open to third countries and do not enjoy an equivalent access: 90 percent of the EU public procurement benefit from a transparent openness against 32 percent in the US, 28 percent in Japan, 16 percent in Canada and 0 percent in China, India and Brazil. This asymmetry must be stopped.” [Press release, September 3, 2012, [www.commerce-exterieur.gouv.fr](http://www.commerce-exterieur.gouv.fr)].

- Column 3 systematically over-estimates the EU openness because it does not take into account the restrictions (“specific derogations”) that the EU imposes on a bilateral basis because of the disparities in commitments. These specific derogations are equivalent to a nullification of the EU legal commitments. Column 5 shows that taking these specific derogations reduce significantly or drastically the true level of openness of the EU in all the cases but one. For instance, the EU degree of openness decreases from 85 percent (*de jure* under the 1995 GPA) to 70 percent in the case of Japan (specific derogations in urban transport entities) or to 46 percent in the case of the US (specific derogations in local public works).
- Column 3 systematically under-estimates the openness of the EU trading partners because the *de jure* estimates for these countries are systematically lower than the *de facto* estimates, as shown by comparing the figures of columns 3 and 4.

### **A fair report of the findings**

A fair report of the findings of the Commission’s study should compare what is comparable—that is, the *de facto* level of openness of the twelve EU’s trading partners (shaded figures of column 4) with the *de facto* EU level of openness once “specific derogations” are taken into account (shaded figures of column 5). This is because the specific derogations imposed by the EU mean that a substantial part of the EU *de jure* commitments has no real value.

Such a fair report leads to a remarkable result: the EU is not more open than its main partners. This result is radically different from the impression left by the usual quotes of the EU officials. And it is much more in line with the results provided by the more robust and exhaustive estimates of the level of openness based on National Accounts [Messerlin and Miroudot 2012].

A fair report of the findings of the Commission’s study has two crucial consequences in terms of EU trade policy:

- It shows that there is no basis for delaying the opening of the negotiations on a preferential trade agreement since Japan’s and EU’s level of openness are very similar.
- It weakens the case for a new EU Regulation introducing the reciprocity notion.

The “selective” presentation of the Commission’s findings by the European officials raises a last question that, strangely enough, no European official has raised. Are the findings they have been quoting plausible?

This question makes sense because, if these quotes were right, they imply that the European negotiators (from the Commission and the Member States) would have “badly” negotiated during the Uruguay Round. This is because, during the Uruguay Round, the GPA was not part of the global trade-off among all issues on the table (industrial tariff cuts, agricultural “tarification”, opening services markets, etc.). Rather, it was a stand-alone piece of negotiations because it was negotiated only among a dozen of “willing” countries, not by all the GATT Members (a “plurilateral” agreement). The logic of stand-alone trade negotiations imposes that, on the sole issue at stake (in this case, the opening of public procurement markets), every country balances the market access concessions it grants to its partners almost exactly with the market concessions it gets from its partners. The astounding asymmetry of the *de jure* results quoted by European officials suggests that such a careful balance of the concessions was very far to be achieved by the EU. Ironically, the quotes by the European officials raise thus serious questions on the ability of European officials (EU Member States and Commission) to apply the basic negotiating rule of balancing concessions in stand-alone negotiations.

The lack of plausibility of the quotes of the European officials is easier to notice when the estimated *de jure* commitments in public procurement markets are presented in billions of Euros rather than in percentages. This can be shown with the help of Table 2.

**Table 2. Estimates of EU and US public procurement markets, billions of Euros**

	EU	US [a]	US [b]
<b>A. Total PP market</b>	<b>2088</b>	<b>1077</b>	<b>na</b>
<b>B. Total PP market above GPA threshold</b>	<b>370</b>	<b>279</b>	<b>559</b>
<b>C. PP offered to GPA</b>	<b>312</b>	<b>34</b>	<b>179</b>
<b>D. ratio C/B (in percent)</b>	<b>84</b>	<b>12</b>	<b>32</b>

Sources: [a] Commission [2010], Table 12, page 54. [b] Commission [2012] Annex 3. Rows A, B and C are in billions of Euros, Row D is in percent.

Table 2 presents two sets of figures for the US—both drawn from Annex 3. The set [a] is based on the initial version of Annex 3 and the set [b] on its final version. The huge asymmetry between the size of the EU open public procurement markets and the size of the

US open markets in the case [a] looks highly implausible: how could the EU and EUMS negotiators have agreed on such a bad deal? The case [b] based on the rectified estimates for the US does not look plausible either since the US would have open only the equivalent of roughly 60 percent of the EU markets.

Indeed, the case of “asymmetry” is not supported by the available evidence on the GPA negotiations during the Uruguay Round. The experts who analyzed the 1995 GPA stressed the almost perfect balance of the negotiations between the two largest trading partners in terms of value of the markets opened, with US\$ 103.2 billion opened by the US side and US\$ 103.3 billion opened by the EU [Schott and Buurman 1994]. Indeed, for reaching such a balance, the US negotiators have had to bring at the table of negotiations 39 US States (including the five largest) and 7 US municipalities (among the 24 largest US towns) on the top of the federal public procurement markets.<sup>2</sup> Strangely enough, this information is never mentioned in the IAWD study which rather always refers to a lack of openness of public procurement markets at the level of the US States.

## References

European Commission. 2010. Commission Staff Working Document accompanying the Commission’s Communication on “Trade, Growth and World Affairs”. COM (2010) 612 and SEC (2010) 1268.

European Commission. 2012. Commission Staff Working Document. Impact assessment accompanying a proposal for a Regulation establishing rules on the access of third countries’ goods and services to the EU internal market in public procurement. COM (2012) 124 final and SWD (2012) 58 final. 21 March 2012.

Messerlin, P. and S. Miroudot. 2012. EU public procurement markets: How open are they? Mimeo. Available on <http://gem.sciences-po.fr>

Schott, J.J., and J.W. Buurman. 1994. The Uruguay Round. Institute for International Economics. Washington, DC.

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<sup>2</sup> These figures are those related to US commitments with respect to the EU.