

CHAPTER 13 : GOVERNMENT PROCUREMENT

ARTICLE 13.1 : GENERAL

1. The Parties reaffirm their rights and obligations under the GPA and their interest in further expanding bilateral trading opportunities in each Party's government procurement market.
2. The Parties recognize their shared interest in promoting international liberalization of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXIV:7 of the GPA and on procurement matters in APEC and other appropriate international fora. The Parties shall also actively cooperate to implement the WTO Doha Ministerial mandate related to the negotiation of a multilateral agreement on transparency in government procurement.
3. Nothing in this Chapter shall be construed to derogate from either Party's rights or obligations under the GPA.
4. The Parties confirm their desire and determination to apply the APEC Non-Binding Principles on Government Procurement, as appropriate, to all their government procurement that is outside the scope of the GPA and this Chapter.

ARTICLE 13.2 : SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party regarding government procurement.
2. For purposes of this Chapter, **government procurement** means a procurement:
 - (a) by an entity specified in a Party's Schedule 1 to Annex 13A;
 - (b) of any combination of goods and services specified in a Party's Schedule 2 to Annex 13A;
 - (c) by any contractual means, including those listed in Article I:2 of the GPA and any build-operate-transfer contract; and
 - (d) in which the contract has a value not less than the relevant threshold set out in Schedule 1 to Annex 13A.
3. Except as otherwise specified in Annexes 13A and 13B, this Chapter does not cover non-contractual agreements or any form of governmental assistance, including:
 - (a) cooperative agreements;
 - (b) grants;

- (c) loans;
 - (d) equity infusions;
 - (e) guarantees;
 - (f) fiscal incentives; and
 - (g) governmental provision of goods and services to persons or governmental authorities not specifically covered under the Schedules to Annexes 13A and 13B of this Chapter.
4. Singapore shall not exercise any control or influence, including through any shares that it owns or controls or its personnel selections to corporate boards or positions, in procurement conducted by government enterprises, as defined in Article 12.8 (Definitions).
5. In accordance with Article III:3 of the GPA, the provisions of this Chapter do not affect the rights and obligations provided for in Chapters 2 (National Treatment and Market Access for Goods), 8 (Cross-Border Trade in Services), 10 (Financial Services), and 15 (Investment).
6. (a) To ensure comprehensive coverage, this Chapter covers government procurement of digital products, as defined in Article 14.4 (Definitions), that are transmitted electronically and are created, produced, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party.
- (b) For greater certainty, digital products do not include digitized representations of financial instruments. In addition, the obligations on digital products under this Chapter shall not apply to the procurement of broadcasting services.
- (c) For greater certainty, a Party's obligations relating to the government procurement of digital products are addressed only in this Chapter.

ARTICLE 13.3 : INCORPORATION OF GPA PROVISIONS

1. The Parties shall apply the provisions of Articles II, III, IV:1, VI-XV, XVI:1, XVIII, XIX:1-4, XX, the Agreement Notes, and Appendices II-IV of the GPA to all government procurement. To that end, these GPA Articles and Appendices, the notes to the Appendices, Notes to Annexes 1 to 5 of Appendix I, ¹³⁻¹ Singapore's General Note, and U.S. General Notes 1-4 are incorporated into and made a part of this Chapter, *mutatis mutandis*. For greater certainty, Article VI is not intended to preclude a Party from preparing, adopting, or applying technical specifications to promote the conservation of natural resources.

¹³⁻¹ For greater certainty, nothing in this Chapter shall be construed as incorporating U.S. General Note 8.

2. For purposes of the incorporation of the GPA under paragraph 1, the term:
- (a) “Agreement” in the GPA means “Chapter;” except that “countries not Parties to this Agreement” means “non-Parties” and “Party to the Agreement” in GPA Article III:2(b) means “Party”;
 - (b) “Appendix I” in the GPA means “Annex 13A”;
 - (c) “Annex 1” in the GPA means “Schedule 1.A”;
 - (d) “Annex 2” in the GPA means “Schedule 1.B”;
 - (e) “Annex 3” in the GPA means “Schedule 1.C”;
 - (f) “Annex 4” in the GPA means “Schedule 2.B”;
 - (g) “Annex 5” in the GPA means “Schedule 2.C”;
 - (h) “from other Parties” in GPA Article IV:1 means “from the other Party”;
 - (i) “any other Party” in GPA Article III:1(b) means “a non-Party”; and
 - (j) “among suppliers of other Parties or” in GPA Article VIII shall not be incorporated.

3. If the GPA is amended or is superseded by another agreement, the Parties shall amend this Chapter, as appropriate, after consultations.

ARTICLE 13.4 : EXCEPTIONS

1. Nothing in this Chapter shall be construed to prevent either Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order, or safety;
- (b) necessary to protect human, animal, or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to products or services of handicapped persons, of philanthropic institutions, or of prison labor,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

ARTICLE 13.5 : MODIFICATIONS AND RECTIFICATIONS TO COVERAGE

1. Where a Party proposes to modify or make minor amendments or technical rectifications of a purely formal nature to its Schedules to Annex 13A, it shall notify the other Party. If the other Party does not object to the proposed modification, minor amendment, or technical rectification within 30 days of the notification, the modification, minor amendment, or technical rectification shall enter into force immediately.
2. If a Party objects to the proposed removal of an entity from Annex 13A on the grounds that government control or influence over that entity has not been effectively eliminated, that Party may request further information or consultations with a view to clarifying the nature of such government control or influence, if any, and reaching agreement with the other Party on the entity's status under this Chapter. If the Party removing an entity from Annex 13A reaches agreement with the other Party that government control or influence over the entity has been effectively eliminated, the other Party shall not be entitled to compensatory adjustments.
3. A Party may modify its Schedules to Annex 13A for reasons other than the elimination of government control or influence only in exceptional circumstances. In such cases, it shall propose to the other Party appropriate compensatory adjustments in order to maintain a level of coverage comparable to that existing prior to the modification. In considering proposed modifications and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence. The modification shall take effect on agreement by the Parties that the proposed adjustments will maintain a comparable level of coverage.

ARTICLE 13.6 : DEFINITIONS

For purposes of this Chapter:

1. **APEC** means Asia Pacific Economic Cooperation;
2. **broadcasting services** means a series of text, video, images, sound recordings and other products scheduled by a content provider for audio and/or visual reception, and for which the content provider has no choice over the scheduling of the series;
3. **build-operate-transfer contract** means any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, an entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for, the use of such works for the duration of the contract; and
4. **GPA** means WTO Agreement on Government Procurement.

ANNEX 13A**SCHEDULE 1****COVERED ENTITIES***For the United States:***A. Central Government Entities**

All entities included in United States Appendix I, Annex 1 of the GPA, for procurement covered by that Annex.

Thresholds:

for all goods and services (except construction services): US\$ 56,190, to be adjusted every two years in accordance with the formula specified in Annex 13B; and

for construction services: US\$ 6,481,000, to be adjusted in accordance with the United States' Appendix I, Annex 1 of the GPA and the procedures set forth in that Agreement, converted into U.S. dollars.

B. Sub-Central Government Entities

All entities included in United States Appendix I, Annex 2 of the GPA, for procurement covered by that Annex.

Thresholds:

for all goods and services (except construction services): US\$ 460,000; and

for construction services: US\$ 6,481,000.

These thresholds are to be adjusted in accordance with the United States' Appendix I, Annex 2 of the GPA and the procedures set forth in that Agreement, converted into U.S. dollars.

C. All Other Entities

All entities included in the United States' Appendix I, Annex 3 of the GPA, for procurement covered by that Annex.

Thresholds:

for all goods and services (except construction services): the SDR equivalent of US\$ 250,000 or US\$ 518,000 (400,000 SDRs) in accordance with the respective lists in U.S. Appendix I, Annex 3; and

for construction services: US\$ 6,481,000.

These thresholds are to be adjusted in accordance with the United States' Appendix I, Annex 3 of the GPA and the procedures set forth in that Agreement, converted into U.S. dollars.

For Singapore:

A. Central Government Entities

All entities included in Singapore Appendix I, Annex 1 of the GPA, for procurement covered by that Annex.

Thresholds:

for all goods and services (except construction services): S\$ 102,710, to be adjusted in accordance with the formula specified in Annex 13B; and

for construction services: S\$ 11,376,000, to be adjusted in accordance with adjustment of thresholds under Singapore Appendix I, Annex 1 of the GPA and the procedures set forth in that Agreement, converted into Singapore dollars.

B. Sub-Central Government Entities

Not applicable for Singapore.

C. All Other Entities:

All entities included in Singapore Appendix I, Annex 3 of the GPA, for procurement covered by that Annex.

Thresholds:

for all goods and services (except construction services): S\$ 910,000; and

for construction services: S\$ 11,376,000.

These thresholds are to be adjusted in accordance with adjustment of thresholds under Singapore Appendix I, Annex 3 of the GPA and the procedures set forth in that Agreement, converted into Singapore dollars.

SCHEDULE 2**COVERED GOODS AND SERVICES***For the United States:***A. Goods**

This Chapter applies to all goods covered under the United States Appendix I of the GPA, as well as the products covered by Federal Supply Code 58 (Communications, Detection & Coherent Radiation Equipment), except for the Department of Defense, and subject to the exclusions set out in United States Appendix I for specific entities.

B. Services (Other than construction services)

This Chapter applies to all services in the Universal List of Services, as contained in document MTN.GNS/W/120 of the WTO, procured by the entities specified in Schedule 1, excluding the following services:

- (1) all transportation services, including Launching Services (CPC Categories 71, 72, 73, 74, 8859, 8868);

Note: Transportation services, where incidental to a contract for the procurement of supplies, are not subject to this Chapter.

- (2) dredging;
- (3) all services purchased in support of military forces overseas;
- (4) management and operation contracts of certain government or privately owned facilities used for government purposes, including federally funded research and development centers (FFRDCs);
- (5) public utilities services;
- (6) basic telecommunications network and services listed in paragraph 2C(a) to (g) of document MTN.GNS/W/120 of the WTO, such as public voice and data services. This exclusion does not include information services, as defined in 47 U.S.C. 153 (20).
- (7) research and Development; and
- (8) printing Services (for GPA Annex 2 entities only).

C. Construction Services

This Chapter applies to government procurement of all services covered under Appendix I, Annex 5 of the GPA.

For Singapore:

A. Goods

This Chapter applies to all goods covered under Singapore's Appendix I, Annex I of the GPA.

B. Services (Other than construction services)

This Chapter applies to all services in the Universal List of Services, as contained in document MTN.GNS/W/120 of the WTO, excluding the following services:

- (1) research and development services;
- (2) police, public order, public safety and security services and compulsory social security services;
- (3) radio and television services, including transmission services;
- (4) exam Services;
- (5) asset management and other financial services procured by MOF (Ministry of Finance) and MAS (Monetary Authority of Singapore) for the purpose of managing official foreign reserves and other foreign assets of the Government of Singapore;
- (6) urban planning and landscape architectural services;
- (7) real estate services (excluding consultancy services, agency services, auction and valuation services);
- (8) supply of potable water for human consumption;
- (9) social services;
- (10) printing of Government legislation and gazette; and
- (11) sale and distribution services for government debt.

C. Construction Services

This Chapter applies to government procurement of all services covered under Singapore's Appendix I, Annex 5 of the GPA.

ANNEX 13B**INDEXATION AND CONVERSION OF THRESHOLDS**

1. The calculations referenced in Annex 13A of this Agreement shall be adjusted in accordance with the following formula:

$$T_0 (1 + \delta_i) = T_1$$

in which:

T_0 = threshold value on January 1, 2002

δ_i = accumulated inflation rate for the i^{th} two-year period

T_1 = new threshold value

and the accumulated inflation rate (δ_i) is measured by:

for the United States, the producer price index for finished products published by the U.S. Bureau of Labor Statistics; and

for Singapore, the consumer price index published by the Singapore Department of Statistics.

2. The first adjustment for inflation, to take effect on January 1, 2004, shall be calculated using the period from November 1, 2001 to October 31, 2003. All subsequent adjustments shall be calculated using two-year periods, each period beginning November 1. The adjustments shall take effect on January 1 of the year immediately following the end of the two-year period.

