

**Understanding on Government Procurement
Between the Separate Customs Territory of
Taiwan, Penghu, Kinmen and Matsu
and the United States**

Delegations representing the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the United States held a series of bilateral consultations in the context of Chinese Taipei's accession to the World Trade Organization (WTO) Agreement on Government Procurement (GPA). These consultations were intended to clarify: (1) provisions of Chinese Taipei's laws and regulations relating to implementation of GPA requirements, and (2) Chinese Taipei's proposed modifications to its market access offer for accession to the GPA.

On the basis of these consultations, the United States and Chinese Taipei have reached the following understandings. The measures referred to in these understandings will be implemented upon Chinese Taipei's accession to the WTO, unless specifically noted otherwise. Both sides understand that the United States' final acceptance of the terms of Chinese Taipei's GPA accession will be subject to U.S. review and acceptance of Chinese Taipei's final and complete Appendix I market access offer.

Laws and Regulations Relating to Government Procurement

1. Chinese Taipei shall ensure that, for all contracts covered by its GPA commitments, its procuring entities will not: (1) require any U.S. supplier to participate in local industry or business associations as a condition for that supplier to participate in a tendering process, and (2) will not consider a supplier's participation or lack of participation in such associations in the assessment of tenders and decisions on contract awards. Following the award of such a contract, Chinese Taipei agrees that any requirements for suppliers to join a local industry or business association and any requirements imposed on the members of such associations shall be applied on a non-discriminatory basis, and, other than reasonable membership fees, shall not constitute an obstacle to trade. These measures will be implemented by December 31, 2001.

2. Chinese Taipei confirms that the application of sub-paragraph 13 of Paragraph 1 of Article 22 of the Chinese Taipei Government Procurement Law (which refers to "other circumstances as prescribed by the responsible entity") to a procurement that is covered by the GPA shall be limited to circumstances permitted under Articles XV

and XXIII of the GPA.

3. Chinese Taipei confirms that decisions relating to a supplier's qualifications (including those related to financial, commercial and technical capacity) shall take into account that supplier's global business experience, and shall not be limited to consideration of contracts or other activities that supplier has previously performed in Chinese Taipei, including for Chinese Taipei's government entities, public schools or government-owned enterprises. These measures will be implemented as of the date of signature of this Understanding (hereinafter referred to as "date of signature").

4. Chinese Taipei shall ensure that its procuring entities include appropriate standard contract clauses from Chinese Taipei's "Essential Requirements for Procurement Contracts" in all contracts covered by Chinese Taipei's GPA commitments. Chinese Taipei will formally notify its procuring entities of this requirement prior to the entry into force of its GPA commitments and will, at the same time, provide a copy of this notification to the United States.

5. Chinese Taipei shall ensure that its procuring entities include the text of Articles 20 and 24 of Chinese Taipei's "Essential Requirements for Procurement Contracts" in all contracts covered by Chinese Taipei's GPA commitments. Chinese Taipei will formally notify its procuring entities of this requirement prior to the entry into force of its GPA commitments and will, at the same time, provide a copy of this notification to the United States.

6. Chinese Taipei shall ensure that its procuring entities do not require suppliers to participate in joint tendering for procurement contracts. In addition, Chinese Taipei shall ensure that its procuring entities do not unreasonably reject any U.S. supplier's request to participate in joint tendering for GPA-covered contracts with other U.S. firms, with firms from Chinese Taipei, or with firms from other GPA Parties, where such request meets the requirements of Article 25 of Chinese Taipei's Government Procurement Law and is submitted pursuant to Article 41 of the same Law. If a procuring entity denies any U.S. supplier's request to participate in joint tendering, Chinese Taipei shall ensure that its procuring entity promptly provides such supplier with a detailed written explanation of the reasons for denying the request.

7. Chinese Taipei shall ensure that its procuring entities set any bond requirements, including bid and performance bonds, at levels that are consistent with international practice for contracts covered by Chinese Taipei's GPA commitments. In particular,

Chinese Taipei's procuring entities shall set:

a) bid bonds at no more than 5% of the budget value or the estimated value of the relevant contract, but not to exceed NT\$ 50 million; and b) performance bonds at no more than 15% of the budget value or the estimated value of the procurement contract.

These measures will be implemented as of the date of signature.

8. Chinese Taipei confirms that under contracts covered by its GPA commitments, a supplier's delay or failure to perform due to an event of "force majeure" will not constitute the basis for the termination of the contract for default, forfeiture of any performance security, or imposition of liquidated damages. Where, due to an event of force majeure, the procuring entity proposes to terminate the contract for convenience, the entity shall negotiate a settlement agreement with the supplier. The term "force majeure" means an event, situation, or circumstance beyond the control of the supplier that is not foreseeable, is unavoidable and does not involve the supplier's fault or negligence. Events of "force majeure" include acts of commission or omission of Chinese Taipei or the procuring entity, wars and revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes. These measures will be implemented as of the date of signature.

Procedures for Reviewing Challenges Relating to Tendering and Contract Awards

9. In the event of a complaint by a U.S. supplier that there has been a breach of the GPA, Chinese Taipei shall, in accordance with the provisions of GPA Article XX:7, take such reasonable steps as are necessary to preserve the relevant commercial opportunities pending the completion of its complaint review procedures.

10. Chinese Taipei shall ensure that, for any complaint relating to a GPA-covered contract that a U.S. supplier files with a procuring entity in accordance with published laws and regulations, that procuring entity does not award a contract before the procuring entity has made a determination on the merits of the complaint and has informed the interested supplier in writing of its determination, unless that entity:

- a) determines that overriding adverse consequences, including to the public interest, require that the procurement award proceed without delay; and
- b) provides the supplier that filed the complaint with a written explanation of the

overriding adverse consequences that require the entity to award the contract before making its determination on the merits of the complaint.

c) Post-Award Mediation of Contract Disputes

11. Chinese Taipei shall ensure that the Complaint Review Board (CRB) accepts any request by U.S. suppliers participating in tendering procedures for GPA-covered contracts for CRB mediation of disputes relating to the performance of such contracts. Chinese Taipei shall encourage procuring entities to make use of CRB mediation procedures, and to cooperate fully when such procedures are invoked. These measures will be implemented as of the date of signature.

Chinese Taipei's Offer of Accession to the GPA

12. Pursuant to the existing Note 6 to the "Notes to Annex 3" of its GPA accession offer (July 1999 offer), Chinese Taipei confirms that Chunghwa Telecom will procure in accordance with the provisions of the GPA with regard to U.S. suppliers.

13. To clarify its existing offer of accession to the GPA, Chinese Taipei agrees to add the following language to Note 2 of Chinese Taipei's Notes to Annex 1 of its GPA accession offer: "and entities transferred to the central government pursuant to the October 28, 1998 'Provisional Statute on the Reorganization of the Taiwan Provincial Government,' in effect and as amended on December 6, 2000."

14. Recognizing that several subordinate entities of the principal entities listed in Annex 1 of Chinese Taipei's GPA accession offer may not be explicitly listed in the laws referred to in Note 2 of that Annex, Chinese Taipei confirms that, as of the date of signature, Note 2 applies to the attached list of subordinate entities. Chinese Taipei confirms that all the entities on this list shall procure in accordance with the provisions of the GPA. Chinese Taipei agrees to inform the United States of any changes that it may propose to make to this list either before or after Chinese Taipei's accession to the GPA.

15. Chinese Taipei agrees that the Central Police University will be included in Annex 3 of its final Appendix I offer for accession to the GPA.

Bilateral Consultations

16. On request of either side, Chinese Taipei and the United States agree to consult bilaterally and to work positively and constructively to resolve any concerns either side may have relating to the implementation of this Understanding. If Chinese Taipei's GPA accession process is not completed by June 30, 2003, both sides agree to consult to determine the extent to which issues need to be renegotiated.

For the Separate Customs Territory
of Taiwan, Penghu, Kinmen, and
Matsu

For the United States

Date: