



Department for Business & Trade

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12 December 2023

Dear Andrew,

Thank you for raising wider points of interest on the Government Procurement changes within the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill at Committee Stage on 7 December. I promised to respond to your points.

The exemption for contracts funded by international organisations under the WTO agreement on Government Procurement (GPA)

During the debate, you raised some points regarding the GPA's exemption for contracts funded by international organisations and how this differs to the CPTPP exemption.

As you raised in the debate, the GPA contains a similar exemption, but there are some subtle differences. The CPTPP exception can only apply to contracts if the contract is both funded and governed by the procedures of an international organisation. On the other hand, the GPA exception applies if either the contract is internationally funded or the contract is procured under procedures of an international organisation that is inconsistent with GPA procedures.

Under the GPA, the government's position is that "funded" means at least 50% funded. This position is reflected in the existing domestic regulations concerning this exemption. Those regulations refer to contracts that are "fully financed" or "co-financed for the most part" (or "main part")¹ by international organisations.

The exemption for contracts funded by international organisations under CPTPP

You also raised questions regarding the difference in language between the Government Procurement Chapter in CPTPP and the changes we are making in the bill.

You have rightly raised that the language of the exemption in the Government Procurement Chapter refers to a contract funded by an international organisation. However, our view is that the wording in CPTPP "funded by an international organisation" does not mean any level of funding. That interpretation could mean that even where an international organisation provided only minimal funding, the procurement of the contract would be exempt from our domestic rules. However, it also does not mean the contract has to be 100% funded by the international organisation.

¹ The relevant and equivalent provision concerning this exemption in the Scottish regulations refers to co-financed for the "main part" instead of "most part".

As with our position on “funded” in the GPA, the government's position is that “funded by an international organisation” under CPTPP means at least 50% funded. To ensure there is no ambiguity in respect of the level of funding required for the exemption to be applied, the amendments have been drafted to provide the necessary specificity.

In respect of the Procurement Act, this is expressed as “wholly or mainly funded” and in respect of the current regulations as “fully financed, or financed for the most part”. The effect of the amendments is the same, with different wording used only to ensure internal consistency with the Act and regulations respectively.

Case study

We previously shared an example with you on a project between the World Bank and the Department for Education (DfE). The illustrative example was a joint project to improve educational outcomes based on socio-economic factors. The project requires that the selection of any private third-party partners is subject to World Bank procurement procedures (which are materially inconsistent with the provisions of the Act).

Under the current exemption, contracts with those third-party partners would be exempt from the requirements of the Act, irrespective of the funding arrangements between DfE and the World Bank. The amendments to the Procurement Act made by this Bill will mean that the third-party partner contracts in this example would only be exempt if they are also wholly or mainly funded by the World Bank.

I hope this letter reassures you on the importance that this Government places on the matters that you raised during Committee Stage of the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill.

I am placing a copy of this letter in the Library of the House.

With very best wishes,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a horizontal line underneath.

Lord Johnson of Lainston CBE
Minister for Investment
Department for Business and Trade