

Gaining access to third countries' public procurement markets

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ALSTOM

Alstom : Three main activities in 4 sectors

Equipment & services for power generation

Alstom Thermal Power



Alstom Renewable Power



Equipment & services for power transmission

Alstom Grid



Equipment & services for rail transport

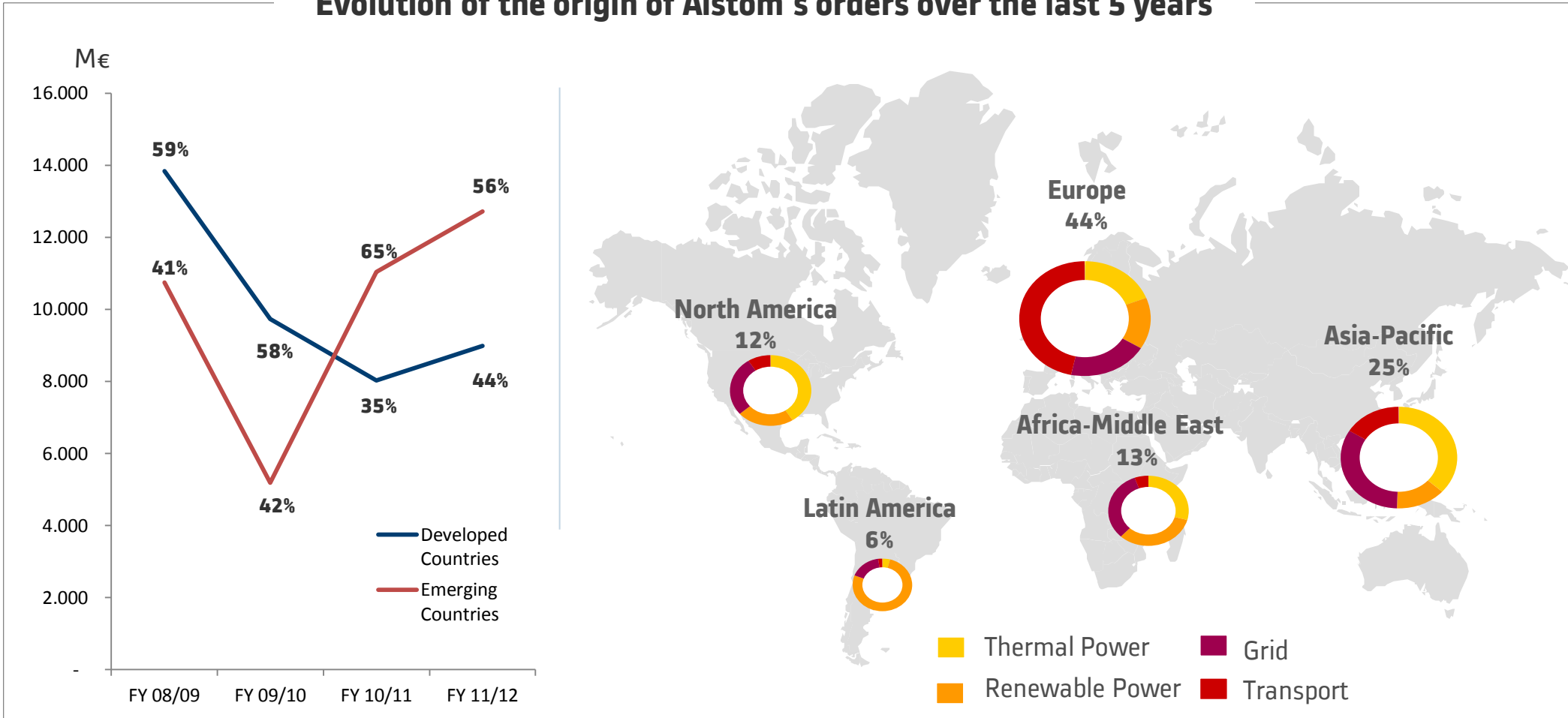
Alstom Transport



Alstom's activities are directly linked to public procurement.

Alstom, a worldwide Company...

Evolution of the origin of Alstom's orders over the last 5 years

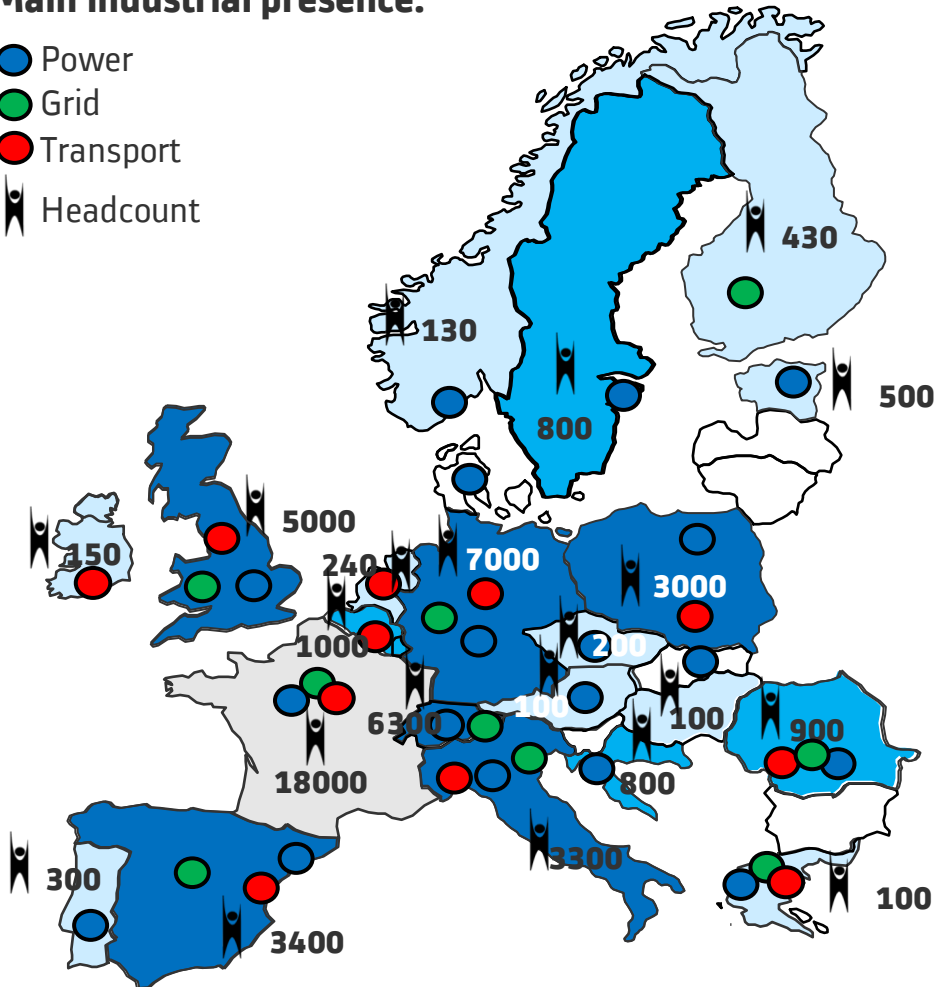


- **Close to 60 %** of Alstom's orders are **coming from emerging economies**.
- **Free trade and Non Tariff Barriers removal** are key for Alstom's global supply chain.

...with a strong and diversified European industrial basis

Main industrial presence:

- Power
- Grid
- Transport
- 👤 Headcount



52 000
EU employees

56%
Total

- Alstom's main industrial basis in Europe relies on exports :

 Poland: more than **40%** of the sales are dedicated to **exports**

 Germany : **50 %**

 France : **50%**

 Spain : **60 %**

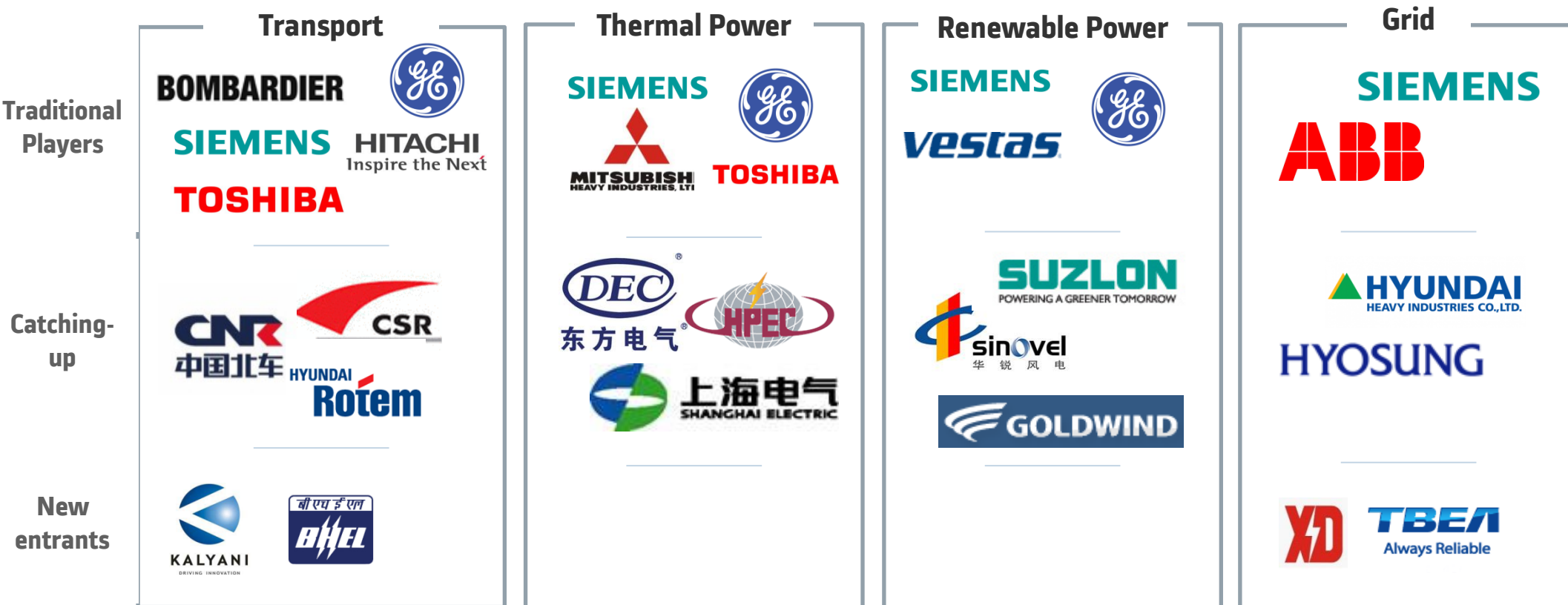
 Switzerland : **90 %**

- In 2012 more than **1/3** of Alstom's European orders were dedicated to exports outside the EU.

▶ **Unlocking public procurement in third countries secures jobs in Europe**






Alstom's challenging competitive landscape is more challenging than ever...

- Beyond the traditional players, Alstom is facing a challenging competition from newcomers in emerging economies







- China is already #1 in wind
- CSR and CNR are already ranked # 4 and # 5 in transport worldwide

...and needs a level playing field. When it comes to public procurement, some situations are unfair (1/2)

COUNTRY	CONTRACTS AWARDED IN THE EU (DATE, AUTHORITY, FOREIGN SUPPLIER, AMOUNT)	ACCESS TO THE PUBLIC PROCUREMENT MARKET IN THE COUNTRY OF ORIGINE – MAIN BARRIERS
JAPAN	 <ul style="list-style-type: none"> • 2011 (Department of Transport / Hitachi): supply of 500 new electric and bi-mode carriages (Intercity Express Programme – IEP) – EUR 5.3 billion;  <ul style="list-style-type: none"> • 2012 (DB / Hitachi): pre-qualification for the supply of 60 sub-urban cars - Hamburg area. 	<p>Derogations included in the GPA:</p> <ul style="list-style-type: none"> • Railway transportation not covered (Operational Safety Clause waiver) <p>Coverage of procuring entities in the GPA:</p> <ul style="list-style-type: none"> • Most of the relevant procuring entities in the field of Transportation and Power are not covered
KOREA	 <ul style="list-style-type: none"> • 2000-2005 (Irish Rail/Hyundai-Rotem): 5 contracts –MEUR 350, including the supply of 120 diesel locomotives for MEUR 190.  <ul style="list-style-type: none"> • 2002 (Attiko Metro A.E./ Hyundai-Rotem): supply of 126 cars for the metro of Athens – MEUR 130; • 2009 (Attiko Metro A.E./ Hyundai-Rotem): 102 cars for the metro of Athens – MEUR 160.  <ul style="list-style-type: none"> • 2012 (STIB/ Hyundai-Rotem): pre-qualification supply of 43 metros of 6 cars +signalisation system for the Brussels metro. 	<p>Derogations included in the GPA:</p> <ul style="list-style-type: none"> • Railway transportation not covered (presidential decree still enforced) <p>National preference:</p> <ul style="list-style-type: none"> • Quasi-monopolistic situation of Hyundai-Rotem; • Calls for tenders tailored for the national champions.

...and needs a level playing field. When it comes to public procurement, some situations are unfair (2/2)

COUNTRY	CONTRACTS AWARDED IN THE EU (DATE, AUTHORITY, FOREIGN SUPPLIER, AMOUNT)	ACCESS TO THE PUBLIC PROCUREMENT MARKET IN THE COUNTRY OF ORIGINE – MAIN BARRIERS
CHINA	 <ul style="list-style-type: none"> • 2011: (PPC / Sinovel) strategic cooperation to develop wind parks and a wind turbine.  <ul style="list-style-type: none"> • 2012: (Electrica / Sinovel) 1.2 GW wind farm, equipment and service (on-going negotiations).  <ul style="list-style-type: none"> • 2011: (Estonian Railways) / CNR : 16 single-cab shunting locomotives - MEUR 30.2. 	<p>National preference:</p> <ul style="list-style-type: none"> • “Buy China” for public procurement • 2007 decrees limiting the use of foreign suppliers • 12th Five Year Plan (need for 100 % Endogenous innovation) • New laws restricting foreign firms’ ability to acquire local companies. • Etc. <p>Technology transfers</p>
CANADA	 <ul style="list-style-type: none"> • 2006: (SNCF / Bombardier) Transilien commuter trains - MEUR 1.3. 	<p>Derogations included in the GPA: The urban rail transport sector is not covered by the GPA</p> <p>Local content requirements: from 25% up to 60% requested for a project, depending on the state and of the federal funding.</p> <p>Feed In Tariff for Renewable in Ontario: price bonus when Ontario-sourced equipment and services in wind and solar projects are included.</p>

▶ **European suppliers are “punished” twice**

Examples of Public Procurement NTBs Worldwide

United States	China	Japan	Korea
<p>Coverage of procuring entities in the GPA:</p> <ul style="list-style-type: none"> - 37 out of 50 states are covered but other sub-central levels such as the city level, or the county level are maintained outside of the scope of the GPA - The USA did not include Amtrack in the list of other entities procuring in the field of railway. - Many entities are not covered in the field of energy. <p>Local content requirements:</p> <ul style="list-style-type: none"> - In the revision of the GPA, the USA removed its general exclusion of contracts benefiting from government assistance (grants, loans, guarantees, fiscal incentives etc.). Nevertheless, Local content requirements (Buy America and Buy American) still apply in the field of “mass transit”. - The American Recovery and Reinvestment Act of 2009 imposes 100% local content requirement for steel and iron used in projects that benefit from federal funds <p>Norms / standards:</p> <p>EU companies cannot have access to the Light Rail Train market for standard reasons, European standards being different from American standards</p>	<p>Technology transfer:</p> <ul style="list-style-type: none"> - Chinese demands in terms of technology transfer are a real obstacle to those seeking to gain a foothold in the country. - Endogenous Innovation: local innovation policy aiming at helping Chinese companies move up the value chain. The principle is aiming at promoting the 100% Chinese innovation goods even towards goods 100% produced in China based on a foreign R&D. <p>National preference:</p> <ul style="list-style-type: none"> - Support of the Chinese industry at the expense of foreign competitors. - Manufacturing permits granted by the Chinese authorities are also a stumbling block given the amount of red tape involved and the weighted manner in which permits are handed out. - China also recently adopted new laws liable to severely restrict foreign firms’ ability to acquire local companies. 	<p>Coverage of procuring entities in the GPA:</p> <ul style="list-style-type: none"> - Japan’s offer only covers 21 cities. Many procuring entities are therefore not covered in the field of urban transport. - Japan intends to de-list the 3 JRs East, West and Central (rail market share of 60% in Japan and worth 95% of the market share of the 8 JRs offered in the GPA by Japanese authorities) from the scope of the GPA <p>Derogations included in the GPA: Operational safety close: in 1994, Japan obtained dispensation to circumvent application of the GPA in key sectors such as rail transport and telecommunications for reasons of “operational safety”. The OSC still applies.</p> <p>National preference:</p> <p>To win contracts in Japan in the field of railway, it is often necessary to have a local reference and established relationships with other Japanese partner manufacturers</p> <p>Norms/Standards:</p> <p>Technical specifications are usually jointly elaborated by the Japanese operators and national manufacturers before the procurement goes public. Because they are most often based on the characteristics of rolling stock already in operation in Japan, the specifications favour Japanese manufacturers over foreign companies.</p>	<p>Derogations included in the GPA:</p> <ul style="list-style-type: none"> - High-speed railway is excluded from the scope of the GPA - Presidential Decree: adopted in 2003, it clearly states the exclusion of European suppliers from the Korean railway market. Even after the revision of the GPA, this decree has not been removed and still applies <p>Technology transfer:</p> <p>When contracts are published they often include local production requirements and technology transfers.</p> <p>Norms/standards:</p> <p>The State utility KEPCO uses a strictly national standard -ESB-which is a mix of Japanese, American -ANSI- and international -IEC- standards</p> <p>National preference:</p> <ul style="list-style-type: none"> - Quasi-monopolistic situation of Hyundai-Rotem - Calls for tenders are tailored for Hyundai-Rotem’s products - National preference in the award of exploitation licences (Korail has the monopoly of mainline railway lines).

...and the situation is not progressing, with new barriers affecting Public Procurement access

- **American Recovery and Reinvestment Act (ARRA)** : use of 100% domestic manufactured goods, iron or steel in the procurement of construction projects using ARRA funds such as High Speed Rail
- **Buy American Act** : 60 to 100 % local content requirement (in California, price bonus evaluation of 0.25% per 1% of local content increased above 60%)
- **Plano Brasil Maior** : “Buy Brazil” decree for public procurement (25% price preference for goods and services produced in Brazil)
- **Indian National Manufacturing policy** : local content requirements in the National Solar Mission. Preferential Market Access (PMA) policy in the Telco etc.
- **Chinese XIIIth 5 years plan** : Endogenous innovation promoting goods with 100 % Chinese R&D etc.

Plurilateral (GPA) and bilateral negotiations (FTAs) were so far unable to remove those barriers.

Alstom supports the EU proposal for a regulation on Public Procurement

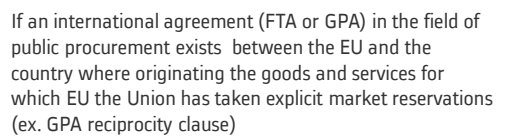
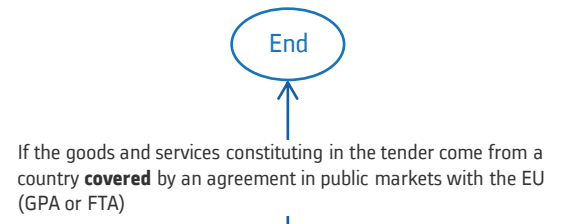
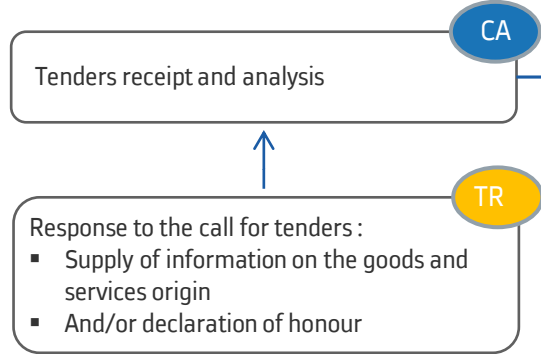
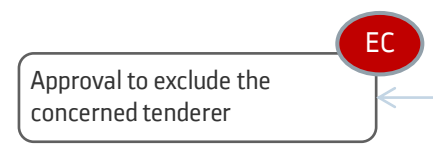
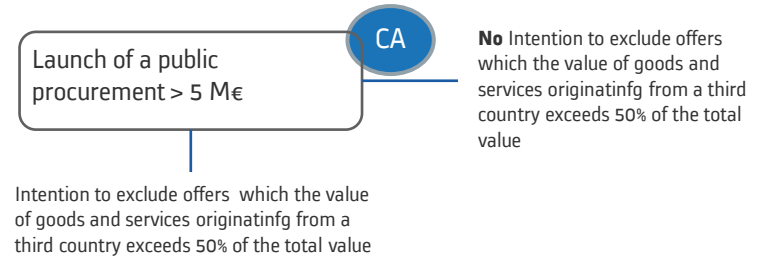
As **65 %** of the respondents to the EC July 2011 consultation on public procurement, Alstom advocates for a **legislative** and **business-friendly instrument** able to :

- **Strengthen the position of the EU** when negotiating access for EU companies to the public procurement markets of third countries;
- **Clarify the rules governing access of third country companies**, goods and services to the EU public procurement market.

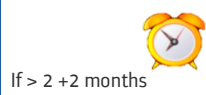
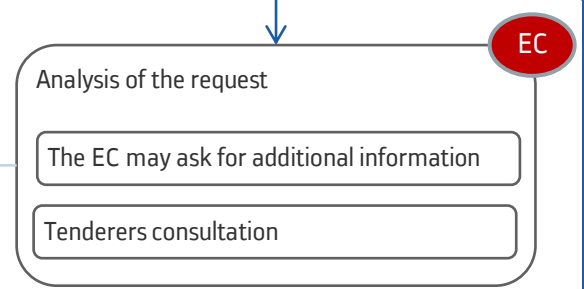
The proposed instrument has a **balanced approach** that **tackles long and short term issues** :

- As many bilateral and multilateral negotiations are currently under discussion (China's offer to join the GPA, EU-India FTA, UE-Japan FTA, EU-US FTA...), the instrument will **stimulate third countries** to come up with **better offers in terms of access to public procurement markets**.
- It will provide procuring entities with a **single legal and common framework to apply reciprocity measures in a transparent way**.

ARTICLE 6 OF THE PROPOSAL: LOCAL LEVEL

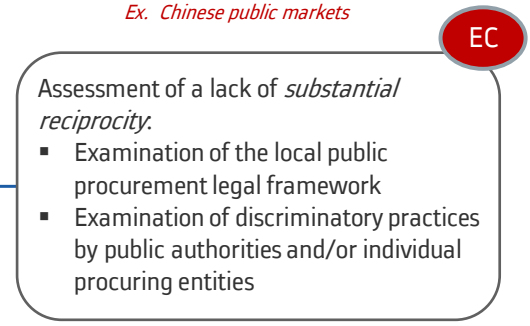
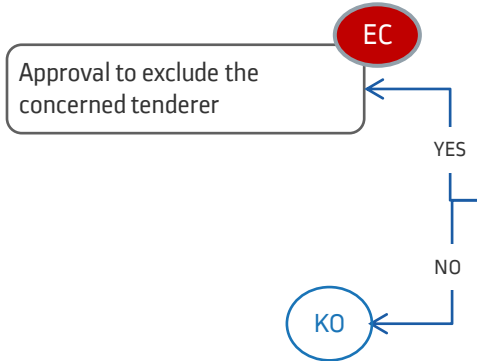


Ex: Japanese rail market



If no agreement in the field of public procurement

Ex. Chinese public markets

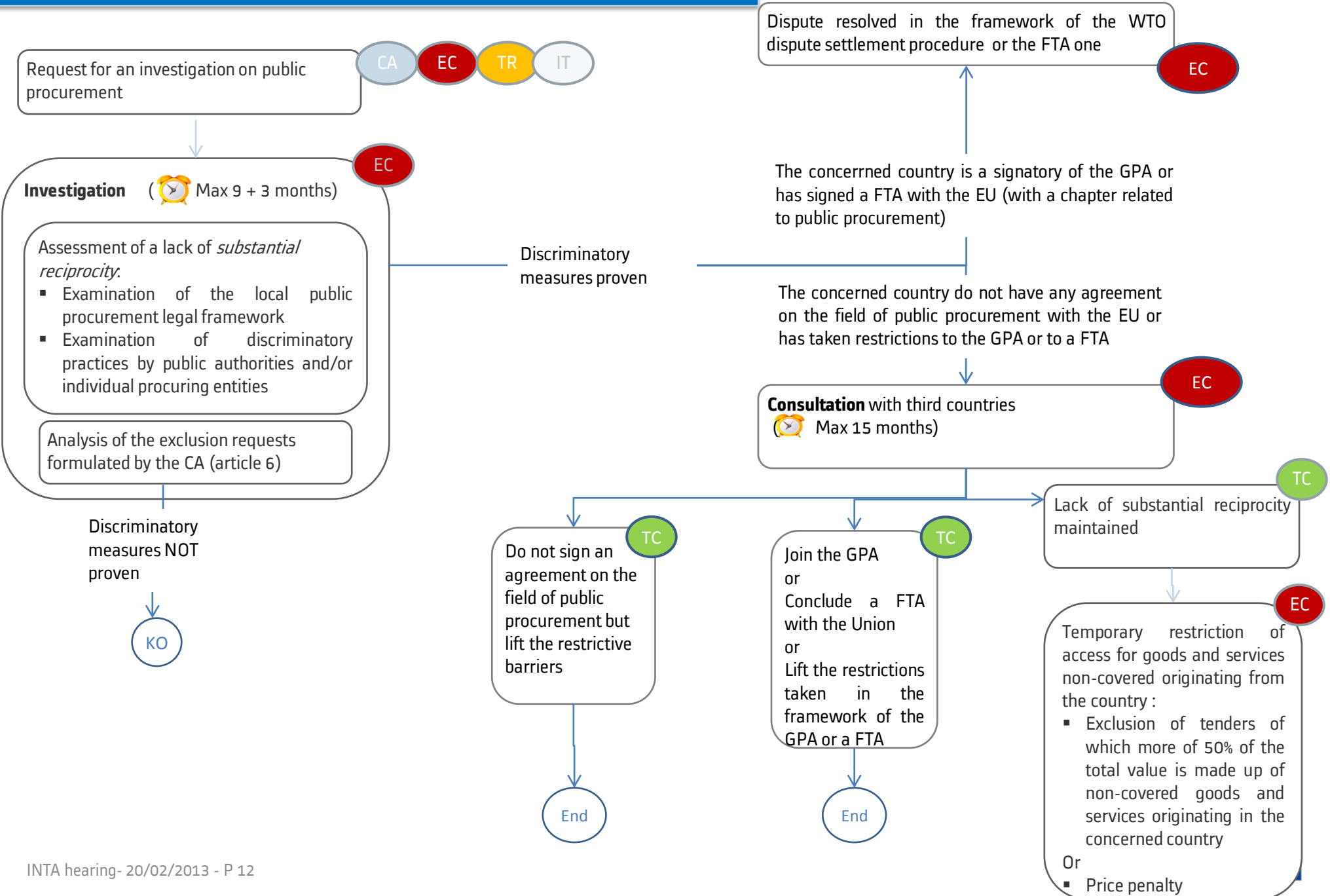


Reading key

- CA** Contracting Authorities
- EC** European Commission
- TR** Tenderer
- TC** Third Countries
- IP** Interested Parties



ARTICLE 8, 9, 10 OF THE PROPOSAL: EUROPEAN LEVEL



Why does Europe need to take urgent action to remedy the lack of reciprocity and dismantle trade barriers?

1. Unlocking public procurement in third countries secures jobs in the UE.
2. Through its normative power and thanks to the leverage that comes from the size of the world's biggest public procurement market, Europe has the potential to induce a positive change in third countries' legislation regarding public procurement.
3. This instrument will create a leverage for negotiating with its trading partners further market access, more symmetry and fair treatment for European companies.
4. Without guaranteeing a *de facto* openness of these markets, Europe can contribute to create the legal conditions for a *de jure* access for EU companies, enabling them, at least, to get familiar with these market environments, which currently lack transparency.
5. The European regulation on public procurement may open the door to additional reciprocity in other fields such as environmental, labour or IPR standards.

Main proposals for improvements (1/2)

1. Clarification of definitions and scope:

- Make sure that the proposal explicitly explains what is **covered and not covered** as regards EU's commitments, notably GPA derogations and exceptions (non-covered). This is not clear enough in the current proposal.
- Define precisely what is reciprocity and how a lack reciprocity can be established: action of the EU and contracting entities will depend on this definition. A market where a comprehensive legal analysis does not reveal any apparent discrimination should not automatically be considered as reciprocally open. **The Commission should assess the effective and comparable market access**

2. Ensure the proposal increase the EU's leverage for its trade negotiations (ongoing and to come)

- Decouple the existence of EU trade negotiations with the possible rejection of goods and services from countries engaged in these negotiations. Delete exemption of rejection of goods and services from third countries, when they are engaged with the EU in trade negotiations.

3. Precise the decentralized procedure : article 6

- Shorten delays given to the Commission to give permission to exclude a tenderer: delays have to be realistic for public entities.
- Change the procedure: if there is no reply of the Commission to the notification of the contracting entity, the rejection is accepted. This will be less burdensome.
- The EC shall give its decision to exclude a tender before the tender opening procedure.

Main proposals for improvements (2/2)

4. Simplification and clarification of the EU trade defense instrument on public procurement is needed: articles 8, 9 and 10

- **Delays are far too long**, and should be shortened to allow a reaction of the Commission in due time, while having the necessary time for investigation and consultation with the concerned third country.
- In particular, when third countries have introduced specific exclusions in the framework of the GPA, consultation should be reduced to a minimum and when it does not succeed, the reciprocity clause should apply automatically
- Make sure that the Commission is entitled to take measures **vis-à-vis all trade partners as soon as a “lack of substantial reciprocity” is observed**. The mechanism described in the regulation and the procedures of the dispute settlement body work in parallel should work in parallel.

5. When used, ensure a proper and harmonized implementation of the proposed instruments: articles 11, 13 and 16

- Alstom will propose amendments as regards the supervision of exceptions, the respect and application of the Commission’s decisions by the contracting entities and infringement procedures if not implemented.

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