

EU proposal

Without prejudice

This document contains an EU proposal for a Public Procurement Chapter in the Trade Part of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.

EU-Chile Free Trade Agreement

EU TEXTUAL PROPOSAL

PUBLIC PROCUREMENT CHAPTER

Article 1

Relation to the WTO Government Procurement Agreement and scope of application

The Parties shall apply, on a bilateral basis, the rules of the WTO Government Procurement Agreement that are specified in Section A of Annex [X] to this Chapter to the procurements covered in Section B of Annex [X] to this Chapter.

Article 2

Additional Disciplines

In addition to the provisions referred to under Article 1, the Parties shall apply the following provisions:

Anti-corruption measures

1. Each Party shall ensure that it has appropriate measures in place to address corruption in their government procurement. These measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the judicial authorities of the Party have determined by final decision to have engaged in fraudulent or other illegal actions in relation to government procurement in the territory of that Party. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over procurement.

National Treatment of locally established suppliers

2. Each Party shall ensure that the suppliers of the other Party that have established a commercial presence in its territory through the constitution, acquisition or maintenance of a juridical person are accorded national treatment with regard to any government procurement of the Party in its territory.

The general exceptions set forth in article 3 of the GPA shall apply.

Use of electronic means in procurement

3. When conducting covered procurement by electronic means, a procuring entity shall use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and shall use electronic means for the submission of tenders to the widest extent practicable.

Electronic publication of procurement notices

4. All procurement notices (notice of intended procurement, summary notice and notice of planned procurement) shall be directly accessible by electronic means, free of charge, through a single point of access on the internet. In addition, the notices may

also be published in an appropriate paper medium, which shall be widely disseminated and shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

Registration Systems and Qualification Procedures

5. Where a Party or one of its procuring entities maintains a supplier registration system, it shall ensure that interested suppliers have access to information on the registration system through electronic means and that they may request registration at any time. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision must be duly motivated.

Selective tendering

6. Where the procuring entity uses a selective tendering procedure, it shall address an invitation to submit a tender to a number of suppliers that is necessary to ensure effective competition.

Environmental, social and labour considerations

7. A Party may:
 - (a) allow procuring entities to take into account environmental and social considerations throughout the procurement procedure, provided they are non-discriminatory and they are linked to the subject-matter of the contract; and
 - (b) take appropriate measures to ensure compliance with its obligations in the fields of environmental, social and labour law, including the obligations under Chapter X (Trade and Sustainable Development).

Standstill period

8. Each Party shall provide, as a general rule, for a standstill period between the award and the conclusion of a contract in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

Article 3

Exchange of statistics

Each Party shall make available to the other Party statistics on public procurement conducted under this Chapter on an annual basis.

Article 4

Modifications and Rectifications to Coverage

1. A Party may modify or rectify its market access commitments under Section B of its Annex [X] to this Chapter pursuant to paragraphs 2 to 8 of this Article.

Modifications

2. When a Party intends to modify an Annex under Section B of Annex [X], the Party shall:
 - (a) notify the other Party in writing; and
 - (b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.
4. Notwithstanding subparagraph 2(b), a Party does not need to provide compensatory adjustments if the modification covers an entity over which the Party has effectively eliminated its control or influence.

Government control or influence over the entities listed in Section B of Annex [X] to this Chapter is presumed to be effectively eliminated if the entity is exposed to competition on markets to which access is not restricted.

5. The other Party may object the modification if:
 - (a) an adjustment proposed under sub-paragraph 2 (b) is not adequate to maintain a comparable level of mutually agreed coverage; or
 - (b) the modification covers an entity over which the Party has not effectively eliminated its control or influence as provided for in sub-paragraph 3.

The other Party shall submit the objection in writing within 45 days of receipt of the notification referred to in sub-paragraph 2 (a). After the expiry of that deadline the other Party is deemed to have accepted the adjustment or modification, including for the purposes of Chapter [XYZ] (Dispute Settlement).

Rectifications

6. The following changes to a Party's Annexes under Section B of Annex [X] shall be considered a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in the Chapter:
 - (a) a change in the name of an entity;
 - (b) a merger of two or more entities listed within an Annex; and
 - (c) the separation of an entity listed in an Annex into two or more entities that are added to the entities listed in the same Annex.
7. In the case of proposed rectifications to a Party's Annexes under Section B of Annex [X], the Party shall notify the other Party every two years, in line with the cycle of

notifications provided for under the GPA, following the entry into force of this Chapter.

8. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. Where a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5 of this Article, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in the Agreement. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

Consultations and Dispute resolution

9. If the other Party objects to the proposed modification or rectification, the Parties will seek to resolve the issue through consultations. If no agreement is found within [x] days of receipt of the objection, the Party seeking to modify or rectify its Annex may refer the matter to dispute settlement. The intended modification or rectification of the Annex will take effect only when both Parties have agreed or on the basis of a final decision of the [Dispute Settlement body].

Article 5
Committee on Government Procurement

The Parties hereby establish a Committee on Government Procurement comprising representatives of each Party. On a request by a Party, the Committee on Government shall meet to address matters related to the implementation and operation of this Chapter, such as:

- (a) the modification of Annex X
- (b) issues regarding government procurement that are referred to it by a Party.
- (c) any other matter related to the operation of this Chapter.

ANNEX [X]

Section A – relevant provisions of the WTO Government Procurement Agreement

Articles I – IV, VI – XV, XVI.1 – XVI.3, XVII and XVIII including their subsequent binding amendments

Section B –Market access commitments