

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

EU-Mexico Free Trade Agreement

EU TEXTUAL PROPOSAL

Chapter on Public Procurement

CHAPTER [XY]

PUBLIC PROCUREMENT

Article 1

Application of rules set out in the WTO Government Procurement Agreement and Scope of Application

The Parties shall apply, on a bilateral basis, the Articles I – IV, VI – XV, XVI.1 – XVI.3, XVII and XVIII of the WTO Government Procurement Agreement to the procurements covered by Appendix [X] of this Chapter.

Article 2

Additional Disciplines

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

Local establishment

1. 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 legal person are accorded national treatment with regard to any government procurement of the Party in its territory. This obligation applies irrespectively of whether or not the procurement is covered by Appendix [X] of this Chapter. However, the general exceptions set forth in Article III of the WTO Government Procurement Agreement shall be applied.

Use of electronic means in procurement

2. 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.

Single electronic access point

3. All the notices of intended 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. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

Registration Systems and Qualification Procedures

4. Where a Party or one of its procuring entities, pursuant to Article IX.1 of the WTO Government Procurement Agreement, maintains a supplier registration system, it shall ensure that interested suppliers have access to information on the registration system [by 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

5. Where, pursuant to Article IX.4 of the WTO Government Procurement Agreement, a selective tendering procedure is used, an invitation to submit a tender shall be addressed to a number of suppliers that is sufficient to ensure effective competition.

Environmental and labour considerations

6. A Party may:
 - (a) allow contracting authorities to take into account environmental and labour 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 their obligations in the fields of environmental and labour law, including the obligations under Chapter [...] (Trade and Sustainable Development Chapter).

Statistics

7. The Parties shall make available statistics on procurement conducted under this Chapter on an annual basis.

Domestic review procedures

8. The Parties shall, as a general rule, provide 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.
9. Where a review body has determined that there has been a breach or a failure as referred to in Article XVIII.1 of the WTO Government Procurement Agreement, each Party shall adopt or maintain procedures that provide for
 - (a) corrective action consisting in setting aside or ensuring the setting aside of decisions taken unlawfully by a procuring entity and declaring ineffective contracts concluded by a procuring entity in violation of this Chapter;
 - (b) compensation for the loss or damages suffered.

Article 3

Modifications and Rectifications to Coverage

1. A Party may modify or rectify its Annexes of Appendix [X].

Modifications

2. When a Party modifies an Annex of Appendix [X], the Party shall:
 - (a) notify the other Party in writing; and
 - (b) include in the notification a proposal of appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.
3. Notwithstanding subparagraph 2(b), a Party need not 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 covered procurement of entities listed in Appendix [X] of this Chapter is deemed to be effectively eliminated if the procuring entity performs a competitive activity.
4. If the other Party disputes that:
 - (a) an adjustment proposed under subparagraph 2(b) is adequate to maintain a comparable level of mutually agreed coverage; or
 - (b) the modification covers an entity over which the Party has effectively eliminated its control or influence under subparagraph 3,

it must object in writing within 45 days of receipt of the notification referred to in subparagraph 2(a) or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter [...] (Dispute Settlement).

Rectifications

5. The following changes to a Party's Annexes shall be considered a rectification, provided that they do not affect the mutually agreed coverage provided for in this 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 all added to the entities listed in the same Annex.
6. In the case of proposed rectifications to a Party's Annexes, the Party shall notify the other Party every two years, where appropriate in line with the cycle of notifications provided for under the WTO Government Procurement Agreement, following the entry into force of this Chapter.
7. 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 this Chapter. 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.

Article 4

Committee on Government Procurement

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

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

APPENDIX [X]

Coverage

[...]