

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter on Government Procurement

• **CHAPTER ON GOVERNMENT PROCUREMENT**

[Article I. Objective

1. The objective of this Chapter is to expand access to the government procurement markets of the FTAA countries.

[Article II. General Principles

1. In order to attain the goal in Article I, each Party shall [guarantee] [recognize]:

a) the principles of non-discrimination, transparency, [legality,] [impersonality,] [morality,] [objectivity] due process, publicity, [and] [a link to the individual instrument of a procurement requirement,] in government procurement, [pursuant to the provisions of this Chapter]; [and]

[b) the development of cooperation and technical assistance mechanisms.]

2. As regards national regulations, the each Party shall guarantee:

a) Laws, regulations, procedures and practices implemented by entities listed in ANNEX ___[are in agreement with] [give effect to] the provisions of this Chapter;

b) Its national legislation will be applied in [conjunction] [congruity] with this chapter.

Article III. [National Treatment And Most Favored Nation Treatment] [Non-Discrimination]

[1. With respect to measures covered by the provisions of this Chapter [and subject to the exception provided for in Article ___ (Exceptions)] [implemented by entities through competitive procedures], each Party shall [immediately and unconditionally] accord to the goods [and services] [and public works] of another Party, [and] to the suppliers [of such goods and to service suppliers] [and public works] of another Party [that offer such goods and services] [and public works] treatment no less favorable than [the most favorable treatment] the Party accords to:]

[[a)] its own goods, services [and public works] and suppliers [of said goods and services] and public works [, and] [.]

[b) goods, services [and public works] and [the] suppliers [of said goods and services of any other Party] [or third countries].]

[2. With respect to measures covered by this Chapter, a Party may not:]

[a) accord a locally established supplier treatment less favorable than that accorded to another locally established supplier on the basis of degree of foreign affiliation or ownership;]

[b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party [or of any non-Party].]

[3. This Article shall not apply to measures relating to customs duties or other charges of any kind imposed on or in connection with importation, to the method of levying such duties and charges, or to other import regulations, including restrictions and formalities [,and measures affecting trade in services] other than laws, regulations and requirements regarding government procurement covered by this Chapter.]

Article IV. [Prohibition of Offsets] [Offsets] [Performance Requirements] ¹

[1. Each Party shall ensure that its entities do not take into account, seek, or impose, [in the qualification and selection of suppliers, goods or services, in the evaluation of tenders or in the award of contracts] [in any stage of the procurement processes], [special compensatory conditions (offsets)] [performance requirements] [that diminish the competitiveness of the procurement process] impose, seek or consider offsets. [For the purposes of this Article, [special compensatory conditions (offsets)] [performance requirements] [offsets in government procurement] [are] [means] [measures] [requirements] [conditions] imposed or considered by an entity prior to, or in the course of the procurement process, [in order to foster] [that encourage] local development or improve its Party's balance of payments accounts by means of local domestic content requirements, licensing of technology, investment, counter-trade or similar requirements.]]

[2. Developing countries or smaller economies may apply compensatory conditions provided these are objective, clearly defined and non-discriminatory,] [and so long as they are only used for purposes of qualifying and not as criteria for the awarding of contracts.]]

[Article V. Rules of Origin]

[1. For purposes of government procurement covered by this Chapter, no Party may apply rules of origin to goods imported from another Party that are different from or inconsistent with the rules of origin the Party applies in the normal course of trade.]

[2. For purposes of the present Chapter, goods shall be considered originating goods of the Parties where they qualify as such in accordance with the pertinent provisions in the Chapter on market access for goods of the FTAA Agreement.]

Article VI. Denial of Benefits

1. [A Party may deny the benefits granted by this Chapter to a service supplier from another Party, following notification [and consultation,] [during the period included between the presentation of tenders and the awarding of the contract,] when it determines that the service is being provided by an enterprise:

[a) that has no substantial business activities in the territory of another Party]

[b) that is not established in a FTAA Party, with "substantial connections" to the Party, as defined by the national legislation of the respective state.]

[c) that is owned or controlled by persons of a non-Party] [according to the applicable laws of that Party,]

2. [Any Party may make consultations relative to this Article during the procurement processes conducted in any other Party State.]]

[3. A Party may also deny the benefits of this Chapter if it is determined that the denying Party:]

[a) does not maintain diplomatic relations with the non-Party, or]

[b) adopts or maintains measures with respect to the non-Party that prohibits transactions with the company or that would be violated or circumvented if the benefits of this Chapter were accorded to the company.]

¹ The NGGP agreed to discuss later where would be the best location of the following paragraph: [In those cases where the entities of a Party procures the development of a technology, or in those instances in which such development results from the execution of the contract, the procuring entity is entitled to technology transfer and to intellectual property rights.]

[4. The national treatment and market access standards and commitments in the Chapter on Services of the FTAA Agreement shall be applied in a complementary manner.]

[Article VII. Scope of Application]

[1. This Chapter applies to any measure [or modality] specifically governing an entity's procurement by any contractual means, including purchase; lease; rental or hire purchase, with or without an option to buy; and build, operate and transfer contracts and concessions for public works. [Public contracts in the framework of the regime of concessions are not covered by this Chapter.]

2. This Chapter applies to any procurement contract for which the value is estimated, at the time of publication of the notice of intended procurement, in accordance with Article ___ of this Chapter, to equal or exceed the relevant threshold specified in Annex [market access commitments]. The value of a contract shall be estimated in accordance with the provisions of paragraph ___ of this Chapter.]

[3. Notwithstanding the provisions in previous paragraphs this Chapter shall not apply to:

[a] subsidies or donations accorded by one Party or one state enterprise, including loans, guarantees and insurance supported by any Party;

b) government services or functions, such as implementation of laws, social readaptation, unemployment pension or insurance services, or services related to social security, social welfare, public education, public instruction, child care, health and protection; and

c) cross-border financial services.]

[d] any form of government assistance, cooperative agreements, subsidies, grants, loans, equity infusions, guarantees, fiscal incentive, and the provision of supplies and services by a governmental entity or its representatives to any other governmental or non-governmental persons or entities;]

[e] government services or functions, such as [law enforcement,] social readaptation services, [health,] pension or unemployment insurance, social security or welfare services, public education, public training, [public health,] child healthcare and protection, and children's services;]

[f] government procurement governed by a regime of concessions;]

[g] procurement financed with funds from international organizations, international development agencies, multilateral technical assistance organizations, and bilateral technical and financial assistance organizations, which shall be governed by the provisions established in the respective funding and technical assistance contracts;]

[h] in the case of the smaller and lesser developed Parties, government procurement which is intended to stimulate small and medium sized enterprises;]

[i] contracting of the services of fiscal agency or depository services, liquidation or management services for regulated financial institutions and sale and distribution services for government debt;]

[j] procurement made by embassies and consulates overseas;]

[k] purchases of works of art;]

[l] the hiring of public employees, government loans, legal relations derived from the provision of public services for which a fee is charged, and other activities subject to a special procurement regime;]

- [m] occasional minor procurements (made out of petty cash);]
- [n] procurements between government entities;]
- [o] procurements between the State and users of services for which a fee or general rate is charged;]
- [p] purchases of fresh produce;]
- [q] any measure adopted or maintained with respect to Aboriginal peoples.]]

[4. This Chapter shall comprise government procurements whose value is equal to or greater than the limits established in Annex ___ (Thresholds *–no text*).]

[5. Government procurement that is totally or partially funded by international organizations shall be governed by the procurement standards established by these organizations.]

[Article VIII. [Thresholds] [Valuation of contracts]]

[1. In determining whether a contract is covered under this Chapter, procuring entities shall apply the following provisions:

- (a) Procuring entities shall not divide an intended procurement into separate contracts, or otherwise use a particular method for estimating the value of a contract for the purpose of avoiding the application of this Chapter.
- (b) In calculating the value of a contract, an entity shall take into account all forms of remuneration, including premiums, fees, commissions, interest, other revenue streams provided for under the contract, and the value of the maximum permissible options provided for by the contract.
- (c) Except as provided for in sub-paragraph (d) of this Paragraph, a procurement that is conducted in multiple parts, that is for an indefinite quantity, that may result in the award of contracts to more than one supplier, or that may result in the awarding of recurring contracts, shall be valued at the total estimated value of the procurement over its entire duration.
- (d) [Contracts for which the duration is not known shall be valued at the actual value of similar previous contracts awarded over the most recent two-year period, adjusting for any anticipated changes in the quantity and prices of the goods or services to be supplied.] [In the case of contracts for an indefinite period, the calculation will be made on the basis of the criteria established in current legislation in each State Party for each contractual mode and, in absence thereof, the basis will be the monthly installment multiplied by 48 (forty-eight) .]]

[Article IX. Exceptions]²

[[1. This Chapter shall not apply to:]

- [a] agreements entered into in pursuit of economic integration at the sub-hemispheric level;][This Chapter does not bind Parties currently participating or that will be participating in deeper integration agreements to extend, to the Parties to this Agreement, rights and obligations stemming from the implementation of the Most Favored Nation and National Treatment clauses in said integration agreements;]

² The NGGP agreed to discuss the need for general exceptions to the Government Procurement Chapter at a later stage in the negotiations, in consultation with the FTAA TCI.

[b] acquisitions and procurement linked to situations of defense, national security, public order, natural disasters and other emergencies involving the protection of health and the environment;]

[c] measures necessary to protect public morals, order or safety, human, animal or plant life or health; intellectual property, or relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor;]]

[2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent any Party from adopting or maintaining measures:

[a] necessary to protect public morals, order or safety;]

[b] necessary to protect human, animal or plant life or health;]

[c] necessary to protect intellectual property; or]

[d] relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.]]

[3. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.] [Nothing in this Chapter shall be construed to prevent a Party State from adopting the measures it considers necessary for protecting its fundamental interests in regard to procurement related to national security and defense.]

Article X. Dissemination of Laws and Regulations

1. Each Party

[a] shall ensure that its entities provide effective dissemination of its laws, regulations and administrative measures of general application on government procurement, providing the suppliers of the other Party with all necessary information for participating in said procurement through the communications media called for in their respective national legislation;

b) shall endeavor to implement a unified electronic information system for the dissemination of all laws, decrees, regulations, administrative rulings and any procedure or legal rule relating to government procurement together with any modification to that legislation that may be effected in the future;

c) shall inform [the contact points,] [the FTAA Secretariat] after the entry into force of this Agreement of the laws regulating government procurement.]

[a] shall promptly publish any law, regulation, [judicial decision,] administrative ruling of general application [and any procedure [(including standard contract clauses)]] regarding government procurement covered by this [Chapter] [.] [,] [Laws and regulations] [these] shall be published no later than their date of entry into force;

b) shall publish its laws, regulations and any other legal provision in [officially designated] media [identified by the Parties in Annex --- (Publication of Laws and Regulations- *no text*)] which are readily accessible [to suppliers and other Parties] [to the public];

c) shall publish, in the same media and in a prompt manner, all additions and changes to such information, [as well as any changes in the names or different variants with regard to contracting procedures. [The

Parties may directly report amendments to their laws and regulations using electronic or other means of communication.]]]

[Article XI. Designation of Contact Points]³

[Article XII. [General Principles Governing] Procurement Procedures]

[1. The Parties shall ensure that [their procuring entities use the] [procurement] [tendering] [modalities and] procedures [[established in their national laws] [provided that these are] in accordance with [the provisions of] [the principles defined in] this Chapter] [used by their procuring entities are not applied in a discriminatory manner.]]

[2. In order to guarantee free competition and allow for the participation of tenderers from any of the Parties, the entities shall abstain from applying procedures in a discriminatory manner, such as setting time limits, requiring technical specifications, or any other requirement, the aim of which is to limit or exclude competition.] [Each Party shall ensure that its entities:

- a) do not provide any suppliers with information on a given procurement such that it can have the effect of preventing competition; and
- b) afford all suppliers equal access to information on a procurement.]

[Article XIII. Selective Tendering]

[1. [In order to ensure competition between the suppliers of the Parties,] the greatest possible number of suppliers shall be invited to participate, [both domestic and those] of the [other] Parties], [as is compatible with the efficient working of the procurement system.]

[2. Any supplier may present its proposal, regardless of whether or not it was invited to participate in the tendering.]

[3. [When a supplier is not invited or] [if the participation of a supplier in selective tendering is not permitted, the tendering entity shall formally justify the reasons for its decision and make available to the interested parties the relevant information.]]

[Article XIV. Limited Tendering]^{4/5}

[1. A Procuring entity may use limited tendering procedures in the following circumstances [and under the following conditions, as the case may be] [provided that it does not use such as procedures for the purpose of avoiding competition among suppliers or protection of domestic suppliers]:]

- [a) in the absence of tenders in response to a bidding process] [in the absence of tenders or when the tenders presented do not meet the requirements or conditions for participation, or are risky or run counter to

³ The NGGP agreed to defer the discussion on the designation of contact points.

⁴ The NGGP agreed that the subparagraphs initially incorporated in this Article, regarding national security, acquisitions for military purposes, procurement among public entities, Agreements concluded with other States or with subjects of international public law, the acquisition of goods and services and the execution of public works financed through loans from governments, international organizations, external cooperation agreements or which are based on international treaties, agreements or conventions, will be analyzed under the Article addressing Exceptions.

⁵ The NGGP agreed that the second paragraph initially incorporated in this Article, regarding the obligation of entities to prepare a written report on every contract awarded, will be analyzed in a general Article regarding provision of information.

public interest after two public sessions have been held and they have been declared void. In such cases, requirements identical to those of the original tender document shall be applied.]

[b) when the tenders presented:

- i) do not conform to the requirements established in the tender documentation;
- ii) have been formulated by suppliers that do not satisfy the legal, financial, or other additional eligibility criteria established in this Chapter];

[c) when absence of competition among suppliers to the same bidding process is demonstrated];

[d) when, for works of art, [or technical work, the acquisition or lease of movable goods, immovable goods or services], or for reasons connected with the protection of exclusive rights, such as patents, copyrights or [proprietary] [restricted] [undisclosed] information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a single supplier and no reasonable alternative or substitute exists;]

[e) in so far as is strictly necessary when, for reasons of extreme urgency [or disaster] brought about by events unforeseeable [or inevitable] by the entity, the goods or services could not be obtained in time by means of open or selective [procurement] [tendering] procedures [and the use of such procedures would result in serious injury to the entity, the entity's program responsibilities, or the responsible Party];]

[f) for additional deliveries by the original supplier that are intended either as replacement parts [, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure products or services not meeting requirements of interchangeability with existing equipment, software, services, or installations];]

[g) for the acquisition of components or parts of domestic or foreign origin needed for the maintenance of equipment during the technical guarantee period, when such exclusive status is indispensable for the guarantee to have effect;]

[h) when an entity procures a prototype or a first good or service developed [or provided] at its request in the course of, and for a particular contract for research, experiment, study, or original development. When such contracts have been fulfilled, [the purchase of goods or services made as a result thereof shall be adapted to open [or private] [selective or limited] [procurement] [tendering] procedures];]

[i) in anticipation that notice of the bidding process may perturb the price of good and services to be purchased ;]

[j) in contracts with a professional or entity considered, within the particular field, to have recognized expertise, demonstrated by prior performance, studies, experiences, publications, organization, equipment, technical staff, or other requirements related to their activities, it can be inferred that its work is essential [and] [indisputably] the most appropriate for fully meeting the objective of the contract;]

[k) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause serious economic disruption or similarly be contrary to the public interest;]

[l) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;]

[m) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is:

- i) organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest,
- ii) organized with a view to awarding the design contract to the winner, and
- iii) to be judged by an independent jury;]

[n) Where the amount of the procurement is negligible or below the minimum for limited tendering established by the Parties under their respective laws or regulations;]

[o) where the contracts in question are mere extensions of existing contracts, provided there is just cause and it is authorized by the competent entities;

p) where the price of the contracts in question is the same throughout an entire area of that industry, as a matter of custom, commercial practices or rates or prices set or approved by the competent entities; and

q) where the contracts in questions are barter contracts for the acquisition of movable or immovable goods, subject to relevant appraisal.]

[2. Entities shall not use limited tendering procedures for the purpose of avoiding the obligations of this Chapter. Notwithstanding any of the provisions of this Article, entities shall not use limited tendering because of a lack of advance planning or concerns relating to the amount of funds available to an entity within a particular period of time.]

[3. Where an entity uses a limited tendering procedure, it may choose not to publish or distribute a notice of intended procurement prior to the award of the procurement contract.]

[Article XV [Publication of invitation [to tender] [to participate]]]

[1. Each Party shall guarantee that their entities will use media which is widely disseminated and readily accessible to the general public.] [The Parties shall engage the publicity and invitation procedures for the participation of suppliers in public procurement in accordance with their respective domestic laws. To this end, the Parties shall notify, once the FTAA Agreement enters into force, the media and time periods established in their respective laws through which the publications in Annex ___ shall be made. (Publication of the invitation to tender – *no text available*).]

[2. Each entity shall publish at least one invitation to tender for all procurements covered by this Chapter.]

[3. The publication shall be made in a national daily newspaper with broad circulation, or any other media used for this purpose, including electronic means, such as those listed in Annex ___ (Publication of Invitation to tender- *no text*).]

[4. The Parties shall endeavor [, to the extent possible,] to implement an electronic information system in their respective entities that allows for [effective] [dissemination] [disseminating] the invitation and information regarding participation in a government procurement, especially that referring to business opportunities offered by the entities.]

[5. Once the [invitation to participate] [notice of tenders] has been published, any change in the tender document shall require the publication of a new call with the same publication requirements as before, and resetting the starting time for the regulatory terms, except when it absolutely clear that the change does not affect the formulation of proposals.] [before the date of receipt of the tenders, the procuring entity shall make public the modified information, including the new time periods set in the tender documentation that enable interested suppliers to modify and submit their tenders, as appropriate and pursuant to the provisions of this article.]

[Article XVI. [Content of Invitation [to tender] [to participate]]]

[1. [The invitation [to participate] shall contain the information necessary for suppliers to be able to evaluate their interest in participating in the procurement, including at least :]

[a) the name and address of the procuring entity [and [the procurement method] [the procurement modality] that will be used];]

[b) a description of the intended procurement, including the nature and quantity thereof;]

[c) place, date, [time period] [[estimated cost] [approximate value of the contract], currency, form of payment of the intended procurement]]

[d) means of obtaining the tender documentation as well as additional information on the process;]

[e) the language [or languages] in which the tender [documentation] [conditions] can be obtained and [in which] the suppliers shall present their proposals;] [and]

[f) the place and time-period for the submission and opening of tenders[;][.]]

[g) the tender validity period;]

[h) if selective procedures are used, the time limits for the submission of applications to qualify for participation in the intended procurement;]

[i) the deadline for fulfilling the contract;]

[j) date to begin and conclude the delivery of the goods object of the tendering procedure;]

[k) the origin of the funds that will finance the tender;]

[l) an indication that the procurement is covered by the Chapter ; and]

[m) a statement of any economic or technical condition, and any financial guarantee, information and documents required from suppliers.]

[Article XVII. Time Periods for responses [to inviting tenders] [to invitations to participate]]]

[1. [[Any] [The Parties shall guarantee in their respective legal frameworks that [any] [the] prescribed time periods for [the tendering process shall be adequate] [responding to the invitation to a procurement shall not be shorter than - ___ working days, nor longer than ___ calendar days, as of the last publication of the last invitation to participate and [to] allow] participating suppliers of all Parties to this Chapter to prepare and submit responsive tenders.] [Such time periods shall be established depending on the modality and nature of the procurement in question.]]

[2. Procuring entities shall apply the same time periods for all suppliers.]

[3. If, as a result of a need to amend information provided to suppliers during the procurement process, a procuring entity must extend the time period, such entity shall permit all participating suppliers to submit final tenders in accordance with a common deadline.]

[4. For submitting an invitation to tender the time periods are:

[a) a procuring entity using open tendering procedures shall provide no less than [40] [30] calendar days between the date on which a notice of invitation to tender is published and the date [on which the tendering procedures relating to that notice are closed.] [for delivery of proposals]. [In the case of electronic tendering when the object of the procurement so allows, a shorter time period, no less than [] may be stipulated;]

[b) procuring entities using selective tendering procedures shall provide no less than [40] [15] calendar days between the date on which a notice of invitation to tender is distributed to participating suppliers and the date [on which the tendering procedures relating to that notice is closed.] [for delivery of proposals].]]

[5. [[In order to ensure fair [and equitable] treatment for all tenderers [, in particular, suppliers from smaller economies,]] a minimum of [45 – 60] days [should] [shall] be allowed for the preparation and submission of bids [unless, such a time period would severely affect the objectives of the tender.] [Accordingly, a minimum period of ___ days shall be established between the notice to participate in the process and the deadline for the receipt of tenders.]]

[6. The time periods in this Chapter, when not stipulated in domestic legislation, shall be calculated as of the date of disclosure or as of the availability of the information to all interested parties. Time periods shall always be expressed in calendar days.]

Article XVIII Shorter Time Periods]

[1. A procuring entity may replace the time periods referred to in this Chapter with a period that is sufficiently long to enable suppliers to submit responsive tenders. In no case shall the time period be less than [10] calendar days from the date on which the notice of invitation to tender is published [or issued] except in the following circumstances:]

[a) if a separate notice has been published at least 40 calendar days and not more than 12 months in advance, [the period of 40 days may be reduced to not less than 24 calendar days]; [and the notice contains: a description of the subject matter of the procurement; the time limits for the submission of tenders or, when appropriate, applications for qualification; and the address from which documents relating to the procurement may be requested.] [the period of 40 days may be reduced to no less than 24 calendar days];]

[b) in the case of the second or subsequent publications dealing with contracts of a recurring nature [, the period of 40 days for reception of bids may be reduced to not less than 24 calendar days];]

[c) in the case of procurement of commercial goods and services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes, except that a procuring entity shall not reduce time periods for this reason if the entity requires that potential suppliers be qualified for participation in the procurement before submitting tenders, in accordance with Article ___; and]

[d) when, for duly substantiated reasons of extreme urgency brought about by events unforeseeable by the entity, the use of a 40-day time period would result in serious injury to the entity or the relevant Party; however, concerns relating to the amount of funds available to an entity within a particular period of time shall not be considered to be a reason of extreme urgency for these purposes.]

[2. When a procuring entity publishes an advance notice of intended procurement in accordance with Article ___ of this Chapter in an electronic media listed in Annex ___ to this Chapter, the entity may reduce the time periods provided for in this Chapter by up to five calendar days. The use of this provision, however, shall in no case result in the reduction of those time periods to less than 10 calendar days from the date on which the notice of intended procurement is published.]

[Article XIX [Tender Documentation] [Tender Conditions] [Content of the Tender Documentation]]

[1. [The Procuring entities shall provide to [interested] suppliers [with] tender documentation that includes all information necessary to permit [such] suppliers to prepare and submit responsive bids. Such documentation shall include in [precise terms] [, at least] the following information]:

[a) name and address of the procuring entity, including the date, time and place for the submission and opening of the tenders, as well as the requests for additional information;]

[b) the [tendering] [procurement] modality;]

[c) the language or languages in which tenders and tendering documents should be submitted;]

[d) the tender validity period, after which tenderers shall be freed from the commitments they assumed;]

[e) the intended procurement, including the nature and quantity of the goods or services to be procured and any requirements to be fulfilled;]

[f) the necessary conditions required of suppliers for participation in the procurement;]

[g) all criteria to be considered in the evaluation of tenders and the awarding of the contract, [including any factors, other than price, that are to be considered in the evaluation of tenders [and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes] and currency of payment;]]

[h) the terms of payment, and any other terms or conditions;]

[i) the persons authorized to attend the opening of the bids;]

[j) the model contract, the terms and conditions for performance of the contract;]

[k) the penalties for non-performance of the contract;]

[l) the origin of the funds that will finance the [procurement] [tender]; and]

[m) the laws governing the procurement and challenge procedures.]

[Article XX Registries, Qualifications, and other Conditions for Participation of Suppliers]

[1. The Parties may establish a Registry for all persons, companies or entities that wish to compete for contracts to procure goods, works and services. [This registry should be kept by the agencies and entities that carry out bidding processes, or a central agency, which regulates such activities.]]

[2. Parties whose entities use permanent lists or registers of qualified goods or service suppliers shall ensure that:

a) goods or service suppliers can apply for registration, qualification or entitlement at any time;

b) all goods or service suppliers that so request are put on the lists or registers as soon as possible and without undue delay;

c) interested parties submit the required documentation based on the relevant legislation of each Party;

d) all goods suppliers or service providers included in the lists or registers are notified if such lists or registers are temporarily suspended or cancelled, or if they have been removed from them;

e) the purpose thereof shall be none other than to verify their eligibility to conduct business with the State, without raising impediments to their inclusion in the list of any goods supplier or service provider of any other Party. [A Party shall not impose] requirements [for] [on] suppliers [that constitute] [shall not constitute] an unnecessary barrier [to access] [to participation in government procurement].]

[3. Where an entity requires suppliers to be included in a register or to satisfy other conditions for participation in a [tendering] [procurement] process, the entity shall publish a notice inviting interested suppliers to apply for inclusion on the registry or recognition of qualification and shall provide no less than [] calendar days prior to the final date for the submission of tenders for such suppliers to submit their applications. This notice may be the same as the notice of intended procurement or a separate notification relating to registration or qualification.]

[4. Where at any time within the []-day period referred to in paragraph ____, a supplier that has not registered or qualified submits an application, the entity shall promptly start the relevant procedures and shall allow such supplier to participate in the [tendering] [procurement] process, provided there is sufficient time to complete the procedures within the time period established for the [tendering] [procurement] process.]

[5. Each Party shall provide, in the selection process, equitable opportunities to the suppliers included in the lists or registries of the Parties. An entity shall not use the qualification process, including the time required for the process, to keep suppliers of another Party off a list of suppliers [, or to disregard them for a given procurement].]

[6. Each. Party shall ensure that:

[a) any conditions for participation in a [tendering] [procurement] process that are used by a procuring entity uses for are limited to those that are essential to ensure a potential supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the contract procurement in question;]

[b) entities [covered by this Chapter] recognize as qualified all suppliers that meet the requisite conditions of participation;]

[c) ensure that qualification decisions are based solely on the conditions for participation that have been specified in advance in notices or tender documentation;]

[d) entities [covered by this Chapter] do not impose the condition that, in order for a supplier to participate in a procurement process, the supplier has previously been awarded one or more contracts by [an entity of] that Party or that the supplier has prior work experience in the territory of that Party.]]

[7. Without prejudice to the right of suppliers to protect their intellectual property or trade secrets, the procuring entities may require those participating in the [tendering] [procurement] process to submit pertinent documentary proof showing that:

a) They possess the necessary technical competence [and sufficient] [,] financial resources [, equipment and other physical installations,] business acumen, [experience and reputation,] for fulfillment of the contract to be awarded; [and]

b) They have the necessary legal capacity to sign contracts;

[c) They have complied with their tax and social security obligations.]]

[8. Tendering entities may require from [goods or service] suppliers an insurance-backed guarantee of the bid, as well as an insurance-backed guarantee of performance.]

[9. [Entities shall promptly communicate to suppliers that have applied for qualification its decision on whether or not they qualify.] [Where an entity rejects an application for qualification, or ceases to recognize the qualification of a [goods or service] supplier that entity shall provide, without delay, upon the request of the supplier, a [written explanation of] [relevant information on] the reasons for its action.]]

[10. Nothing in the provisions set forth in the above paragraphs shall preclude an entity of a Party from excluding a [goods or service] supplier on grounds such as bankruptcy or false declarations, or that such supplier is prohibited from participating in procurements by [penalties which disqualify the supplier or provider from entering into contracts with] entities [of the Parties] [of that Party].]

[11. The financial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the procuring entity.]

Article XXI. Application of Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt, or apply any technical specification with the purpose or effect of creating unnecessary obstacles to trade [, eliminating or restricting competition [, or discriminating against the providers of other Parties]].

[2. Each Party shall ensure that, where appropriate, the technical specifications shall be [based [primarily]] [specified in terms of] [stated primarily in terms of] on the performance requirements of the product or service being procured, rather than on design and descriptive characteristics.]

[3. [Technical specifications shall be based on international standards, national norms or [technical standards, and must be compatible with the provisions on Technical Barriers to Trade] [technical regulations of the country in which the procurement is taking place].] [In establishing the technical specifications for each product or service being procured, each Party shall ensure that its entities specify, whenever available and applicable to that Party, an existing domestic or international consensus standard, except where the use of a consensus standard would fail to meet the entity's program requirements or would impose more burdens than the use of a government-unique standard. Each Party shall ensure that, whenever there is an existing consensus standard for a product or service being procured and an entity specifies a government-unique standard, such entity shall maintain an official record explaining why the existing consensus standard would fail to meet the entity's program requirements or would impose more burdens than the use of a government-unique standard.]]

[4. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or tradename, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.]

[5. The technical and professional capabilities shall be limited solely to the areas of greatest relevance and meaningful value to the purpose of the tender set out in the documentation. There shall be no requirements of minimum quantities of services provided, or time periods in which they were supplied. Nevertheless, for purposes of technical qualification and where the complexity of the service or the work so requires, the experience gained over the years prior to the call for tenders shall be taken into consideration.]

[6. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person or company that may have a commercial interest in that procurement.]

[Article XXII Submission, receipt and opening of tenders]

[1. [A procuring entity shall receive and open all tenders under procedures that guarantee the principles established in the Articles ___ of this Chapter.] [All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders.]] [The procuring entities shall receive and open all tenders pursuant to procedures consistent with the following:

a) Tenders shall be submitted in writing, in accordance with the provisions of the tender document, ensuring their confidentiality and integrity until the date, time, and place indicated therein, together with a declaration of acceptance of its clauses and conditions. Exceptionally, when the tender document expressly allows it, tenders may be submitted by electronic media. In this case, tenders shall be received by the procuring entity in the respective public session, a record of which shall be signed by the representatives of the entity and all the bidders present.

b) Once the time limit stipulated in the tender documentation for receipt of tenders has expired, no additional tenders will be accepted.

c) Tenders shall be opened in public session, in the presence of the tenderers or their representatives, on the date, time, and place established in the tender documentation.]

[2. [Provided they conform to the provisions of this Article], a procuring entity of a Party shall [use] [apply] [the procedures] for the submission, receipt and opening of tenders [established in their respective national legislation in force] [in accordance with the following:]]

[a) tenders shall be presented in writing [only], [in sealed envelopes] [in closed envelope], whether directly or by mail [or by electronic media when expressly indicated in the tender document and when doing so does not contravene the principles of this Chapter]; [exceptionally, when expressly provided in the tender document, tenders may be submitted in non-written form. In such cases, the tenders shall be received by the procuring entity in public session and entered in a record which shall be signed by the representatives of the entity and all the tenderers present;]]

[b) a tender made by means of electronic transmission must be confirmed within the time-frame set in the invitation or the tender document, by the dispatch of the original document of the tender or a signed copy of the electronic transmission;]

[c) the content of the electronic message shall prevail in the case there is a difference or conflict between it and any other documentation received after the time limit for the receipt of tenders has expired;]

[d) tenders presented by telephone shall not be permitted;]

[e) the awarding agency shall extend a certification indicating the date, place and time the tender was received;]

[f) tenders received by the entity after the deadline for presentation shall be returned unopened to the suppliers that presented them [or shall be destroyed]once the deadline for legal challenge has expired;]

[g) tenders will be opened in public session [in the presence of the tenderers and any other interested party, on a date,] at a place and time established in the tender documentation. [A record shall be made of the opening act, listing the tenders received and including the observations made by those present. The record shall be signed by the representatives of the entity and by the bidders [that so desire]];]

[h) a procuring entity shall not penalize any supplier for reasons attributable exclusively to that entity [, specially to] [In particular, entities shall not penalize] suppliers whose tender is received after the time specified for receiving tenders if the delay is caused solely by the entity; and]

[i) an entity may allow for the correcting of [non-substantial] errors of form provided such corrections do not alter the competitive conditions [or introduce discriminatory treatment between suppliers]. [Neither the tender of the winner, nor the terms and conditions stipulated in the [tender] [contract] documentation, may be altered.]]

[3. The tenders must, at the time of opening, conform to the essential requirements stipulated in the invitation and tender documentation and have been submitted by suppliers that comply with the conditions for participation [and are not legally prohibited from doing so].]

[Article XXIII. Negotiation Disciplines

[1.[Domestic law permitting, a procuring entity may conduct negotiations, providing that it has been expressly stipulated in the tender documentation.]

1. Domestic law permitting, [and if so provided in the tender documentation,] an entity may conduct negotiations only:

a) [in the event similar tenders are submitted, negotiations may be entered into with those tenderers that prequalify for the purpose, in order to secure better technical, quality or price terms and provided that the object of the tender document is not altered. The negotiation may be conducted through joint or individual sessions with each tenderer, but in either event, the conclusion of the negotiation and final submission of the improvements shall be done in a session to which all tenderers with similar tenders are convoked. A summary record shall be kept of the proceedings in each session;]

b) in the context of a procurement in which the entity has, in the tender notice published in accordance with Articles ___ and ___, indicated its intent to negotiate; or

c) when it appears to the entity from the evaluation of tenders that no one tender is clearly the most advantageous in terms of the specific evaluation criteria set out in the tender documentation.

2. An entity shall use negotiations primarily to identify the advantages and disadvantages of the tenders.

3. No entity may, in the course of negotiations, discriminate between the suppliers of goods or the providers of services. In particular, an entity shall:

a) carry out any elimination of suppliers of goods or providers of services in accordance with the criteria set out in the tender documentation;

b) provide in writing all modifications to the criteria or technical requirements to all suppliers or providers remaining in the negotiations;

c) permit all remaining suppliers of goods or providers of services to submit new or amended tenders on the basis of the modified criteria or requirements; and

d) when negotiations are concluded, permit all remaining suppliers of goods or providers of services to submit final tenders on a common deadline.]

[4. The negotiation disciplines shall be applied in those procedures in which price is the determining element in the award.]

[5.Tenders whose prices are not more than 5% higher than the lowest tender shall be considered similar tenders.]

[6. Negotiations may be required to improve tenders in cases of manifestly objectionable prices]

[7. The rules for improving tenders and for the negotiations stipulated above shall be used by the State entities when they deem it suitable to their interests]

[Article XXIV. Evaluation of tenders and Awarding of contracts]

[1. If the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation or is or will be capable of fulfilling the terms of the contract. [If not, that tender will be rejected.]] [The criteria for the evaluation of tenders shall be described explicitly in the tenders, which shall be transparent and objective, and neither limit nor exclude competition.]

[2. The tender submitted by the offerer shall include all the costs comprised in the final value of the procurement].

[3. Each Party shall ensure that awarded contracts are grounded on the criteria and the essential requirements established in advance by its entities [on the invitation and tender documentation [, respecting the principles established in the Articles ___ of this Chapter]].]

[4. In order for a tender to be evaluated and considered for award of the contract it must comply, at the time of the opening, with all the requirements and guarantees called for in the tender.]

[5. A Procuring entity shall award each contract to the tenderer [who has been determined to be fully capable of undertaking the [same] [contract] and] whose tender is [either the lowest tender [, within those offering the same quality and technical specifications,] or] the tender which is determined to be the most advantageous [for the contracting entity] in terms of the requirements and evaluation criteria set forth in the [notices or] tender documentation [, unless it decides for reasons of the public good not to award it]. Tenders of goods and services presented by suppliers of Parties shall not be increased by levying of taxes that introduce discrimination between domestic suppliers of the Party where the tender is made and those of other Parties.]

[6. The Parties shall not use the clauses relative to options to evade the provisions of this Chapter.]

[7. After the winning tenderer is notified, the contract will be signed. Prior to signing, the tenderer will [, when required,] present a performance bond, and upon its signing must present the payment bond.]

[8. If for any reason the tenderer selected does not sign the contract or does not present the bond, the contract may be awarded to the tenderer with the next highest rating without the need to go through a new bidding process, providing it offers the same conditions as the winning tender.]

[9. Subject to an extension of the tender validity period, if after [90] [60] [45] days following the date of the delivery of proposals no contract is awarded, the bidders shall be released from their commitments.]

[10. [The procuring entities may close a tendering procedure for duly justified reasons of interest to the Administration, or cancel it for reasons of irregularity or illegality.] [A Procuring entity shall not cancel a procurement process, or terminate or modify awarded contracts in a manner which circumvents the objectives and requirements of this Chapter.]]

[11. No entity of a Party may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party, or that the supplier has prior work experience in the territory of that Party.]

Article XXV. Dissemination and Publication of the Awarding of the Contract

[1. Parties shall ensure that their entities provide effective dissemination of the results of government procurement processes, in accordance with the provisions of their domestic legislation.]

[2. The awarding of the contract shall be communicated to all the participants at the domicile they have indicated, within [3] [5] [14] working days following the awarding.]

[3. A Procuring entity shall [promptly] [upon request] [inform suppliers that have submitted tenders of the procurement award decisions [within a [maximum] period of ___ calendar days], and] provide opportunities for losing bidders to obtain an explanation of the reasons for not being selected [and the relative characteristic and advantages of the tender selected, [the name of the winning supplier, the date of the award and the value of the contract awarded [, in accordance with the principle of transparency. If so requested] [Likewise] , the entity must inform them in writing by means of an explanatory resolution]].]

[4. A Party [shall provide] [may seek] additional information on the award of a contract as may be necessary to determine whether the procurement was made according to the provisions of this Chapter. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. [The Party making the request may not reveal the additional information referred to, except with the consent of the Party that has provided the information.]]

[5. Having awarded a contract, entities shall publish, [for a reasonable period of time] [one time only] [at least once] [information on contract awards] [a notice] [the award], including: the name of the winning supplier, the value and date of the contract; [a description of the nature and quantity of the goods or services included in the contract; the name and contact location of the procuring entity;] [the [name and] position of the official authorized to sign the contract;] [and the type of procurement procedure used, [and in cases where limited tendering procedures are used, a description of the circumstances justifying the use of such procedures [and whether the award was covered by this Chapter]]].]

[6. The entities shall publish [such information] [a notice] [the award] [, in conformity with their respective national legislations,] [in the officially designated media listed in Annex _____ (Information and Publication of the Awarding of the Contract – *no text*)] [or in other national media] [in at least two daily national newspapers] [in a newspaper of national or international circulation] [which is readily accessible to suppliers and other Parties] [within 72 days of][within the first [3] [5] working days following] [no later than [90] days after] [the award of the contract. [The Parties shall endeavor to make this information available to the public through electronic means, such as the Internet.] [Officially designated media may be electronic or paper.]]]

[7. The Parties shall ensure that their procuring entities maintain records of tendering procedures relating to contracts covered by this Chapter. Procuring entities shall maintain such records for a period of at least three years.]

Article XXVI. Confidential Information

[1.The Parties and their entities shall not disclose confidential or proprietary information in the course of a procurement.]

[2.Nothing in this Chapter shall [impose in] [prevent] the Parties or their entities [from withholding] [the obligation] of [retaining] [revealing] information under this Chapter where release might:

- a) impede law enforcement;
- b) prejudice the fair competition or the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property;
- c) otherwise be contrary to the public interest or

d) otherwise be contrary to vital security interests.]

Article XXVII . Review and Appeal Procedure

[1.[Each Party shall apply procedures for legal redress, claims or complaints that are available to any interested party and that ensure that their interests are defended.] [To this end, each Party shall maintain administrative or judicial bodies or procedures that can provide, at the request of an affected supplier, review of administrative decisions that affect government procurement covered in this Chapter].]

[2. For the purpose of promoting fair, open and impartial procurement procedures, each Party, consistently with its domestic legislation, shall adopt and maintain the procedures described in the previous paragraph, pursuant to the following:

a) allow goods suppliers and service providers to seek legal redress [and] or enter a challenge at any stage of the procurement process [which, for the purposes of this article, is initiated from the moment an entity defines the purpose of procurement and runs through to the award of the contract];]

b) ensure that its entities consider in a timely and impartial manner any challenge regarding procurements covered by this Chapter; and

c) if the claim is not settled in the administrative sphere, no goods or service supplier shall be prevented from appealing to other bodies which are independent from the procuring entity that is the subject of the challenge.]

[2. Each Party shall ensure that such challenge and review procedures are prompt, transparent and impartial and comply with due process, whereby suppliers are given the right to be heard, to be represented and assisted and to present any form of evidence recognized under the laws of the Party, access to proceedings, which must be public, unless for legal reasons, publicity is restricted, and the resolutions are made in writing, based on law and notified to the suppliers by the media established in the laws of the Party.]

[3. In the event of a complaint by a supplier that there has been a breach of this Chapter, each Party shall encourage its relevant procuring entity and such supplier to seek resolution of the complaint through consultations. Procuring entities shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to suppliers' participation in ongoing or future procurement activities or to suppliers' rights to seek corrective measures under the challenge system.]

[4. Each Party shall establish or designate at least one impartial authority, which is independent from its procuring entities, to receive and review supplier challenges relating to procurements covered by this Chapter and make appropriate findings and recommendations. Such authorities shall be authorized, pending the resolution of a challenge, to take prompt interim measures to preserve the opportunity to correct potential breaches of this Chapter, including the suspension of the award of a contract or the performance of a contract already awarded.]

[5. Each Party shall provide timely, effective, transparent, predictable and non-discriminatory means for suppliers to challenge alleged breaches of this Chapter, without prejudice to suppliers' participation in ongoing or future procurement activities. All challenge procedures shall be in writing and made generally available.]

[6. In the event that a challenge is initially reviewed by a body other than an authority established or designated under paragraph ___ of this Article, each Party shall ensure that suppliers may appeal the initial decision to an impartial administrative or judicial authority which is separate and independent from the procuring entity that is the subject of the challenge.]

[7. Each Party shall ensure that any confidential or proprietary information that is submitted in the course of a challenge proceeding is protected in accordance with Paragraph __ of Article ___ of this Chapter.]

[8. Each Party shall ensure that review procedures are conducted in accordance with the following:

- a) Suppliers shall be allowed a sufficient period of time to prepare and submit challenges, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
- b) The proceedings shall be conducted in a transparent manner, consistent with predictable, written procedures that are readily available to all participants in advance;
- c) Procuring entities shall respond in writing to the complaint and disclose all relevant documents to the review body;
- d) A supplier that initiates a complaint shall be provided an opportunity to respond to the procuring entities' report prior to a decision being taken on the complaint; and
- e) Decisions relating to supplier challenges shall be provided in a timely fashion, in writing, with an explanation of the basis for each decision.]

[Article XXVIII. Dispute Settlement]⁶

[[1.] [Differences arising with regard to the provisions stipulated in the Chapter on government procurement shall be resolved in accordance with the Chapter on Dispute Settlement of the FTAA. Agreement] [, which establishes the appropriate challenge and dispute settlement mechanisms for appeals].]

[2. The Chapter on Dispute Settlement of the FTAA. Agreement does not apply to the differences which arise between the entities and the suppliers of the Parties.]

[Article XXIX. Technical cooperation and assistance]

[1. The Parties shall provide each other with technical cooperation and assistance, taking into account the specific needs of countries, through the development of in the area of training programs human resources, [in order to achieve a better understanding of their respective] government procurement and statistical systems [as well as better access to their respective markets and business opportunities in the field of government procurement].]

[Developed economies shall endeavor to provide technical cooperation and assistance to smaller and developing economies upon request to facilitate their fulfillment of commitments and obligations agreed to in this Chapter, including successful transitions to full compliance with obligations at the end of agreed transitory periods. Mode, scope and extent of application shall be agreed bi-laterally among the relevant parties.]

[2. For that purpose, the Parties shall provide information concerning the training and orientation programs related to their government procurement systems and nondiscriminatory access to any program they conduct. The training and orientation programs include:]

- [a) training of public sector personnel who directly participate in government procurement procedures;]
- [b) training of suppliers interested in taking advantage of the business opportunities in the government procurements;]
- [c) explication and description of specific aspects of the Parties' government procurement systems, such as their appeals mechanisms;]

⁶ The NGGP agreed to defer the analysis of the article on dispute settlement to see the discussion on the issue in the NGDS.

[d] information on the market opportunities of Parties' government procurements; and]

[e] training in the different electronic programs used by the Parties to process the government procurement data and provide statistics on them.]

[3. The developed countries of the FTAA will cooperate with developing countries and countries with small and vulnerable economies, providing technical and financial support in this process. Also, they will provide technical assistance for solving problems related to government procurement, when requested by the developing countries. Specific obligations related to technical and financial assistance are laid out in Annex _____ (Technical Cooperation and Assistance – *no text*).]

[4. Developed Parties to this Agreement shall seek to facilitate the requests of the small economies for technical assistance in the development and maintenance of suitable infrastructure to ensure the easy accessibility and availability of information in these member states. Smaller economies will require technical assistance in ensuring that notifications issued regarding invitations to participate in a procurement process are easily accessible to other parties as well as among smaller economies, particularly in light of the hardware requirement associated with the use of electronic media.]

[Article XXX. Treatment of the Differences in the Level of Development and Size of Economies]⁷

[1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries and smaller economies, in their need to:

a) safeguard their balance of payments position and ensure a level of reserves adequate for the implementation of programmes for national economic development;

b) promote the establishment or development of domestic industries, through [the use of offsets,] exceptions to the national treatment obligations, such as buy national policies, including the development of small scale and cottage industries and economic development of other sector;

c) support industrial units [or service providers,] so long as they are wholly or substantially dependent on government procurement;

d) encourage economic development and expansion through sub-regional arrangements.]

[2. [Smaller economies] [countries, according to their level of development, especially the smaller economies,] [may] engage in joint regional bidding for the award of contracts given the limitations of small size and limited infrastructural capability. Recognizing that such regional bidding will require a longer period for the preparation and submission of bids by those countries, more developed members should facilitate, as far as possible, the full participation of those countries in the process.]

[3. [Smaller economies] [Countries, according to their level of development, especially the smaller economies] retain the right to utilize all procurement methods (i.e. open tendering, selective tendering and limited tendering), provided that such methods are utilized in a transparent manner.]

[3. Developed countries shall guarantee, for the benefit of countries with smaller economies, a procurement quota equal to _____ of the total value of the contracts to be awarded.]

⁷ The NGGP agreed that specific measures that take into account the differences in the level of development and size of economies and relate to market access negotiations should be included in the revised version of document w/114 on Methods and Modalities for Market Access Negotiations.

[4. At the end of each period of five (5) years, smaller and developing economies shall submit a report to the Committee on Government Procurement concerning progress toward full compliance with obligations of this Chapter. This report shall contain inter alia general and economic developments, technical assistance requested and received from the parties, trade balances, and actual performance within the framework of this Chapter. In accordance with their developmental needs, smaller and developing economies may petition the Committee on Government Procurement for continued application of these special measures. The Committee on Government Procurement and the petitioning party(ies) shall mutually agree on periods of extension in this regard.]

[5. Notwithstanding the provisions of paragraph 4, smaller and / or developing economies may at any time, consistent with demonstrated need, and as agreed with the Committee on Government Procurement institute emergency safeguards when compliance with commitments under this Chapter cause or threaten to cause damage to national suppliers and sensitive economic or socio-economic sectors. These measures shall be temporary in application subject to the duration of the period of emergency and limited to:

- a) the addressing of balance of payments concerns
- b) import quotas
- c) additional exclusions
- d) margins of preference
- e) higher thresholds
- f) higher percentage offsets.]

[Article XXXI . Administration of the Chapter]⁸

[1. The Parties shall establish a Government Procurement Committee, composed of representatives of each of them, to be appointed within ___ days following the entry into force of this Agreement.]

[2. The Government Procurement Committee shall have the following duties:]

- [a) oversee the implementation of the Chapter and compliance with its provisions;]
- [b) unless otherwise agreed to by the Parties, review the results of this Chapter's application every two (2) years;]
- [c) meet [at least] once a year [, or when necessary,] to [examine] [evaluate] the operation of the Chapter and progress in achieving its objectives;]
- [d) conduct consultations and studies intended to incorporate the entities listed in Annex ___ (Entities) into the scope of this Chapter;]
- [e) promote the development and implementation of the [electronic] information and intermediation system referred to in Article ___ ;]
- [f) coordinate the exchange of statistical information on government procurement;]
- [g) coordinate and promote the design of training programs for the Parties' competent authorities;]
- [h) enhance technical cooperation and assistance referred to in Article ___ ; and]

⁸ The NGGP agreed to defer the analysis of this article.

[i) promote opportunities for micro-enterprises and small- and medium-scale enterprises, among other activities [of Parties].]

[3. The regulation and specific functions of the Committee on Government Procurement is in Annex --- (Administration of the [Agreement] [Chapter.] – *no text*) to this Chapter.]

[4. The committee may set up working groups or other auxiliary bodies to help in carrying out its assigned tasks.]

[5. The Committee on Government Procurement shall [undertake] the necessary steps to create within the Hemisphere statistical systems and an information platform which would allow the systematization of the information on Government [acquisitions and] procurement, with sufficient transparency and without discrimination.]

[Article XXXII . [Amendments] [Modification to coverage]]

[1. A Party may seek make technical rectifications of a purely formal nature and minor amendments to its Schedules to Annexes to this Chapter, provided that it notifies such rectifications or amendments to the other Parties. Where no other Party objects to the proposed rectification or amendment within [] days of the notification, the rectification or amendment may enter into force immediately.]

[2. Where a Party objects to a proposed rectification or amendment, it may seek additional information and, if necessary, consultations in accordance with paragraphs ___ and ___]

[3. No Party may withdraw entities covered by this Chapter with the intention of avoiding compliance with the obligations herein].

[4. Where an entity covered by this Chapter is withdrawn, any Party may request the initiation of negotiations with a view to obtaining compensation for the purpose of restoring balance to the coverage.]

[5. The Parties shall approve these agreements, in accordance with the terms the Article ___ Commission ___].

[Article XXXIII . Privatization]

[1. No provision in this Chapter shall be interpreted as meaning that a Party is prohibited from [privatizing an entity covered in this Chapter] [or] withdrawing an entity covered by this Chapter if the State's loses its effective control over the entity or if such control is removed from the State]. [In these cases, [another] none Party may [not] demand compensation of any kind.]]

[2. Privatized entities shall not be subject to the application of this Chapter.]

[3. Where a Party considers that government control or influence over an entity listed in its Schedules to Annexes to this Chapter has been effectively eliminated, the Party may propose the removal of that entity from the relevant schedule by notifying the other Parties. Where no Party objects in writing to the removal of the entity within [] days of the notification, the entity shall be immediately removed from the coverage of this Chapter.]

[4. Where any Party objects to the removal on the grounds that government control or influence has not been effectively eliminated, the objecting Party may request further information. Such requests for information shall be made in writing within ___ days of the objection.]

[5. Where the information provided does not result in the resolution of the issue, the objecting Party may seek consultations for the purpose of maintaining the balance of negotiated market access opportunities under this

Chapter. Any such requests for consultations shall be made in writing within ____ days of the information being provided.

- a) Where, in the course of such consultations, compensation is requested, allowance shall be made for the market access opportunities resulting from the removal of government control or influence from the entity.
- b) Where a mutually acceptable solution is not reached during consultations, the Parties shall have recourse to the procedures under Chapter ____ (Dispute Settlement) of this Agreement.]

[6. No Party shall modify the structure of its entities to avoid the obligations of this Chapter.]