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Subject to Legal Review for Accuracy, Clarity, and Consistency
April 9, 2004

U.S. –DOMINICAN REPUBLIC FREE TRADE AGREEMENT

CHAPTER ON GOVERNMENT PROCUREMENT

ANNEXES TO DOMINICAN REPUBLIC’S REVISED OFFER OF COVERAGE

(March 29, 2004)

SECTION A CENTRAL LEVEL GOVERNMENT ENTITIES

This Chapter applies to procurement by the Federal or Central Level Government entities listed in this Annex where the value of the procurement is estimated, in accordance with Section H, to equal or exceed the following relevant threshold. Unless otherwise specified within this Section, all agencies subordinate to those listed are covered by this Chapter.

Thresholds

For procurement of goods and services (To be adjusted according to the formula in Section H, paragraph 2):
US\$58,550

For procurement of construction services (To be adjusted according to the formula in Section H, paragraph 3):
US\$6,725,000

For the three years following the entry into force of this Chapter, the threshold for procurement of goods and services applied by the procuring entities listed in Section A for the Dominican Republic shall be \$117,000. At the end of the three-year period, the threshold shall be the same threshold as applied by the United States for the procurement of goods and services by the procuring entities listed in Section A. For the three years following the entry into force of this Chapter, the threshold for procurement of construction services by the procuring entities listed in Section A for the Dominican Republic shall be \$8,000,000. At the end of the three-year period, the threshold shall be the same threshold applied by the United States for the procurement of construction services by the procuring entities listed in Section A.

1. Contraloría General de la República
2. Secretaría de Estado de Interior y Policía (Notes 1 and 2)
3. Secretaría de Estado de las Fuerzas Armadas (Notes 2 and 3)
4. Secretaría de Estado de Relaciones Exteriores (Note 4)
5. Secretaría de Estado de Agricultura (Note 5)
6. Secretaría de Estado de Finanzas (Note 6)
7. Secretaría de Estado de Educación (Note 7)
8. Secretaría de Estado de Salud Pública y Asistencia Social
9. Secretaría de Estado de Deportes, Educación Física y Recreación
10. Secretaría de Estado de Trabajo
11. Secretaría de Estado de Industria y Comercio
12. Secretaría de Estado de Turismo
13. Secretaría de Estado de la Mujer
14. Secretaría de Estado de la Juventud
15. Secretaría de Estado de Educación Superior, Ciencia y Tecnología
16. Secretaría de Estado de Obras Públicas y Comunicaciones
17. Secretaría de Estado de Medio Ambiente y Recursos Naturales

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18. Secretaría de Estado de Cultura
19. La Presidencia de la [República](#) Dominicana
20. Secretariado Técnico de la Presidencia (Note 8)
21. Secretaría de Estado de la Presidencia
22. Secretariado Administrativo de la Presidencia

Notes to Dominican Republic Schedule

1. Secretaría de Estado de Interior y Policía:
 - (a) Procurement made by the Dirección General de Migración is not covered by this Chapter.
 - (b) Procurement by the Policía Nacional of: i) Group 447 (weapons and ammunition and parts thereof); and, ii) combat, assault and tactical vehicles.
2. Policía Nacional in the Secretaría de Estado de Interior y Policía and Secretaría de Estado de las Fuerzas Armadas: The procurement of goods classified under Section 2 (Food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification 1.0 (CPC) is not covered by this Chapter.
3. Secretaría de Estado de las Fuerzas Armadas:
 - (a) Procurements by the Departamento Nacional de Investigación and the Instituto de Altos Estudios para la Defensa y Seguridad Nacional are not covered by this Chapter.
 - (b) Procurement of: i) Group 447 (weapons and ammunition and parts thereof); ii) aircrafts, airframe structural components, aircrafts components, parts and accessories; iii) landing and ground handling equipment; iv) docks; v) ships and ships components, parts and accessories; and, vi) marine equipment; vii) combat, assault and tactical vehicles.
4. Secretaría de Estado de Relaciones Exteriores: Procurement by the Dirección General de Pasaportes for the production of passports is not covered by this Chapter.
5. Secretaría de Estado de Agricultura: Procurements made in furtherance of agricultural support programs are not covered by this Chapter.
6. Secretaría de Estado de Finanzas: Procurements by the National Treasury with regard to the issuance of tax stamps and postage stamps, and the production of checks and treasury bonds are not covered by this Chapter.
7. Secretaría de Estado de Educación: Procurements made in furtherance of school feeding programs (Desayuno Escolar), programs to support the dissemination of education, the well-being of students or the accessibility of education, specially to rural or impoverished areas, including the border with Haiti (Zona Fronteriza), are not be covered by this Chapter.
8. Secretariado Técnico de la Presidencia: Procurement by the Comisión Nacional de Asuntos Nucleares is not covered by this Chapter.
9. The conditions specified in the General Notes apply to this Section.

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SECTION B SUBCENTRAL GOVERNMENT ENTITIES

This Chapter applies to procurement by the Sub-Federal or Sub-Central Level Government entities listed in this Annex where the value of the procurement is estimated, in accordance with Section H, to equal or exceed the following relevant threshold.

Thresholds

(To be adjusted according to the formula in Section H, paragraph 3)

For procurement of goods and services:	US\$477,000
For procurement of construction services:	US\$6,725,000

For the three years following the entry into force of this Chapter, the threshold for procurement of goods and services applied by the procuring entities listed in Section B for the Dominican Republic shall be \$650,000. At the end of the three-year period, the threshold shall be the same threshold as applied by the United States for the procurement of goods and services by the procuring entities listed in Section B. For the three years following the entry into force of this Chapter, the threshold for procurement of construction services by the procuring entities listed in Section B for the Dominican Republic shall be \$8,000,000. At the end of the three-year period, the threshold shall be the same threshold applied by the United States for the procurement of construction services by the procuring entities listed in Section B.

1. Gobernación de la Provincia de Azua
2. Gobernación de la Provincia de Bahoruco
3. Gobernación de la Provincia de Barahona
4. Gobernación de la Provincia de Dajabón
5. Gobernación de la Provincia de Duarte
6. Gobernación de la Provincia de Elías Piña
7. Gobernación de la Provincia de El Seybo
8. Gobernación de la Provincia de Espaillat
9. Gobernación de la Provincia de Hato Mayor
10. Gobernación de la Provincia de Independencia
11. Gobernación de la Provincia de La Altagracia
12. Gobernación de la Provincia de La Romana
13. Gobernación de la Provincia de La Vega
14. Gobernación de la Provincia de María Trinidad Sánchez
15. Gobernación de la Provincia de Monseñor Nouel
16. Gobernación de la Provincia de Montecristi
17. Gobernación de la Provincia de Monte Plata
18. Gobernación de la Provincia de Ocoa
19. Gobernación de la Provincia de Pedernales
20. Gobernación de la Provincia de Peravia
21. Gobernación de la Provincia de Puerto Plata
22. Gobernación de la Provincia de Salcedo
23. Gobernación de la Provincia de Samaná

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24. Gobernación de la Provincia de Sánchez Ramírez
25. Gobernación de la Provincia de San Cristobal
26. Gobernación de la Provincia de San Juan
27. Gobernación de la Provincia de San Pedro de Macorís
28. Gobernación de la Provincia de Santiago
29. Gobernación de la Provincia de Santiago [Rodríguez](#)
30. Gobernación de la Provincia de Santo Domingo
31. Gobernación de la Provincia de Valverde

Notes to Dominican Republic Schedule

1. The conditions specified in the General Notes apply to this Section.

SECTION C OTHER COVERED ENTITIES

This Chapter applies to procurement by the Other Covered Entities listed in this Annex where the value of the procurement is estimated, in accordance with Section H, to equal or exceed the following relevant threshold. Unless otherwise specified within this Section, all agencies subordinate to those listed are covered by this Chapter.

Thresholds

(To be adjusted according to the formula in Section H, paragraph 3)

For procurement of goods and services:	US\$250,000
For procurement of construction services:	US\$6,725,000

For the three years following the entry into force of this Chapter, the threshold for procurement of construction services applied by the procuring entities listed in Annex 1-3 for the Dominican Republic shall be \$8,000,000. At the end of the three-year period, the threshold shall be the same threshold as applied by the United States for the procurement of construction services by the procuring entities listed in Annex 1-3.

1. Instituto Nacional de Formación y Capacitación del Magisterial
2. Corporación de Fomento Industrial
3. Instituto Nacional de la Uva
4. Instituto Agrario Dominicano
5. Instituto Dominicano del [Azúcar](#) (INAZUCAR)
6. Centro de [Exportación e Inversión de la República](#) Dominicana
7. Instituto de Auxilios y Vivienda (INAVI)
8. [Corporación](#) Dominicana de Empresas [Eléctricas](#) Estatales (CDEEE)
9. Autoridad Portuaria Dominicana
10. Cámara de Cuentas de la República Dominicana
11. Consejo Nacional de Zonas Francas de Exportación
12. Instituto [Dominicano](#) de las [Telecomunicaciones](#) (INDOTEL) (Note 1)
13. Junta Central Electoral
14. Superintendencia de Bancos
15. Banco Central de la [República](#) Dominicana (Note 2)

Notes to Dominican Republic Schedule

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1. [Add name in Spanish] Dominican Institute of Telecommunications: This Chapter shall not apply to procurements of goods and services required for the implementation of special projects executed by the Telecommunications Development Fund to implement the Universal Services policy of the Dominican Republic pursuant to the General Telecommunications Law #153-98 and Regulation on the Telecommunications Development Fund.
2. [Add name in Spanish] Central Bank of the Dominican Republic: The issuance of currency and coins shall not be covered by this Chapter.
3. The conditions specified in the General Notes apply to this Section.

SECTION D GOODS

This Chapter applies to all goods procured by the entities listed in Sections A, B, and C subject to notes to the Sections A, B, C and the General Notes.

SECTION E SERVICES

This Chapter applies to all services by the entities listed in Sections A, B and C subject to notes to the Sections A, B, C and the General Notes, and except for the services in the following categories of the United Nations Central Product Classification 1.0 (CPC).

1. Business and Production Services
 - Division 81 Research and Development Services
 - Group: 836 Advertising services
2. Management of Government-Owned Facilities (Administrative Facilities and Service Buildings, Airfield, Communications, Missile Facilities, Educational Buildings, Hospital Buildings, Industrial Buildings, Presidential Buildings, Warehouse Buildings, Research and Development Facilities, Other Buildings, Conservation and Development Facilities, Highways, Roads, Streets, Bridges, Dams, Railways, Electric Power Generation (EPG) Facilities, Utilities, Other Non-Building Facilities).
3. Public Services
 - Division 69 Electricity distribution services; gas and water distribution services through mains
 - Division 913 Administrative services of compulsory social security schemes
 - Division 92 Education Services
4. Transport Services
 - Division 64 Land Transport Services
 - Division 65 Water Transport Services
 - Division 66 Air Transport Services
5. Printing Services

SECTION F CONSTRUCTION SERVICES

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Except as specified in Section J – Transitional Mechanism for Coverage of Construction Services, this Chapter applies to all construction services procured by the entities listed in Sections A, B and C subject to notes to the Sections A, B, C and the General Notes, and the notes to this Section.

Note to the Dominican Republic Schedule

1. A construction service is covered by the Dominican Republic except with respect to suppliers of Puerto Rico until such time as both the Dominican Republic and Puerto Rico provide access to the other Parties respective suppliers.

SECTION G GENERAL NOTES

1. This Chapter does not apply to government procurement programs on behalf of small, medium and micro enterprises, including any form of preference, such as the exclusive right to provide a good or a service.
2. This Chapter does not apply to construction-grade steel (including requirements on subcontracts).
3. This Chapter does not apply to government procurement programs to promote the alleviation of poverty and the protection of women, the disabled, children and adolescents, specially in depressed rural areas and at the border with Haiti (Zona Fronteriza).
4. This Chapter does not apply to procurement of goods and services related to the disposal of toxic, dangerous or radioactive garbage.
5. This Chapter does not apply to procurements made by one Dominican entity from another Dominican entity.
6. Procurements made in furtherance of public health protection programs, including treatment of HIV/AIDS, tuberculosis, paludism, malaria and other epidemics are not covered by this Chapter.
7. This Chapter does not apply to procurements made in support of human feeding programs.

SECTION H THRESHOLD ADJUSTMENT FORMULAS

1. In calculating the value of a contract for the purpose of ascertaining whether the procurement is covered by this Chapter, a procuring entity shall include the maximum total estimated value of the procurement over its entire duration, taking into account all options, premiums, fees, commissions, interest and other revenue streams or other forms of remuneration provided for in such contracts.
2. With regard to the goods and services thresholds referred to in Section A the United States shall calculate:
 - (a) the thresholds every two years, based on the U.S. inflation rate measured by the Producer Price Index for Finished Goods published by the U.S. Bureau of Labor Statistics, using a two-year time period from November 1, three years prior to the inflationary adjustment through October 31, a year prior to the adjustment, and using the following formula:

$$T_0 \times (1 + \Pi_i) = T_1$$

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T_0 = threshold value at base period

\prod_i = accumulated U.S. inflation rate for the "i"th two year-period

T_1 = new threshold value; and

- (b) make subsequent adjustments using two-year periods, with each period beginning November 1, and taking effect in January of the year immediately following the end of the two-year period.
3. The thresholds for construction services in Section A and all other thresholds in Sections B and C are conversions into U.S. dollars of the thresholds listed in the U.S. Appendix 1 to the World Trade Organization Agreement on Government Procurement, which are set out in Special Drawing Rights (SDRs) and listed below. The United States shall calculate adjustments of these thresholds based on the daily values of the U.S. dollar in terms of SDRs, using the two-year period preceding October 1 or November 1 of the year prior to the thresholds in national currency becoming effective, which will be in January, using the conversion rates published by the IMF in its monthly "International Financial Statistics":
- (a) 5 million SDRs for construction services; and,
 - (b) 355,000 SDRs for goods and services for Section B entities.
4. The United States shall notify the Dominican Republic of the adjusted threshold values in December of the year before the adjusted thresholds take effect in January.
5. The Dominican Republic shall:
- (a) convert the value of the adjusted thresholds values notified by the United States under paragraph 4 into its currency based on the official conversion rate of the Banco Central de la Republica Dominicana, using the average of the daily values of its currency in terms of the U.S. dollar over the two-year period ending September 30 of the year in which the United States notifies the adjusted thresholds; and
 - (b) promptly notify the United States of the value in its currency of the adjusted thresholds.
6. The first adjustments shall take effect on January 1, 2006.
7. The Parties shall consult bilaterally if a major change in a national currency vis-à-vis the other currency were to create a significant problem with regard to the application of the Chapter.

SECTION I TRANSITION MECHANISMS

1. During the two years following the entry into force of this Agreement, the Dominican Republic shall make its best efforts to comply with the following provisions of this Chapter:
- (a) Art. 9.3 (make publicly available judicial decisions and administrative rulings of general application governing procurement);
 - (b) Art. 9.4.2 (inclusion of an indication that the procurement is covered by this Chapter in the notice of intended procurement);

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- (c) Art. 9.5.1 (40 days time limit for the tendering process);
 - (d) Art. 13 (establishment and maintenance of systems that declare a supplier ineligible for participation);
 - (e) Art. 9.11.2 (publication of a notice regarding the contract award); and
 - (f) Art. 9.9.3 (only for preparation of written reports for the awarding of contracts using direct purchasing.
2. During the period between the entry into force of the Agreement and the end of the two-year transition period:
- (a) The Dominican Republic shall provide to the United States any judicial decision and administrative ruling of general application governing procurement; and
 - (b) a Dominican procuring entity shall provide no less than 30 days from the date on which the notice of intended procurement is published to the final date for submission of tenders

SECTION J TRANSITIONAL MECHANISM FOR COVERAGE OF CONSTRUCTION SERVICES

1. Notwithstanding Article 9.2(4) [Prohibition of Offsets], the Dominican Republic may, subject to paragraphs 2-5, maintain the following offsets, as provided for in Law No. 322 of 27 May 1981, with respect to procurement covered by Section F of this Chapter:
- (a) a requirement that a foreign supplier seeking to participate in a procurement covered by this Chapter form a joint venture with a company established in the Dominican Republic and that the share held by the foreign supplier in the joint venture be limited to no more than 50 percent , which may be increased to 70 percent depending on the availability of Dominican capital; and
 - (b) a requirement that 50 percent of the management of a procurement covered by this Chapter be comprised of Dominican nationals.
2. Where a procuring entity seeks, takes account of, or imposes an offset under paragraph 1, the entity:
- (a) shall clearly describe the offset in the notice of intended procurement or notice inviting suppliers to participate in the procurement and in relevant tender documentation;
 - (b) shall conduct the procurement in accordance with the procedures in the Chapter;
 - (c) shall apply the offset in a non-discriminatory manner that does not provide U.S. suppliers with treatment that is less favorable than the treatment given to suppliers of any other foreign country; and
 - (d) may not require suppliers to purchase goods or services on non-competitive terms or of substandard quality, or to take any action that is not justified from a commercial standpoint.
3. The limitations permitted under Paragraph 1 shall be reduced over a period of 15 years as follows:

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- (a) 40 percent for any procurement initiated after the beginning of the 6th year after entry into force of the Agreement and until the end of the 10th year after entry into force of the Agreement (years 6-10);
 - (b) 30 percent for any procurement initiated after the beginning of the 11th year after entry into force of the Agreement and until the end of 12th year after entry into force of the Agreement (years 11-12); and
 - (c) 20 percent for any procurement initiated after the beginning of 13th year after the entry into force of the Agreement.
4. During the 13th year after the entry into force of this Agreement, the Dominican Republic and the United States shall enter into consultations with regard to the treatment of offsets with a view to the elimination of the offsets described in paragraph 1 at the end of the 15th year after the entry into force of the Agreement. The consultations shall take into consideration, *inter alia*, the general and economic developments in the Dominican Republic, its implementation of this Chapter and the need for the offsets. If the Dominican Republic and the United States are unable to reach agreement on the treatment of the offsets by the end of the 15th year after the entry into force of the Agreement, the United States may reduce the access that it accords to the Dominican Republic, as set out in the U.S. Sections to Annex [] with respect to government procurement.
5. At the end of each period specified in paragraph 3, the Dominican Republic shall submit written reports to the United States on the implementation of the transitional mechanism provided for in this Section.