

ARTICLE 54

Sub-Committee on competition

The Joint Committee may, if the need arises, establish a Sub-Committee on competition.

ARTICLE 55

Consultations

A Party may request consultations regarding any matter related to this Chapter. The request for consultations shall indicate the reasons for the request and whether any procedural time limit or other constraints require that consultations be expedited. Upon request of a Party, consultations shall promptly be held with a view to reaching a conclusion consistent with the objectives set forth in this Chapter. Any Party may request that consultations continue within the Joint Committee in order to obtain its recommendations in relation thereto.

V GOVERNMENT PROCUREMENT

ARTICLE 56

Coverage

1. This Chapter applies to any law, regulation, procedure or practice regarding any procurement:
 - (a) by entities set out in Annex XII;
 - (b) of goods in accordance with Annex XIII, services in accordance with Annex XIV, or construction services in accordance with Annex XV; and
 - (c) where the value of the contract to be awarded is estimated to be equal to or greater than a threshold as set out in Annex XVI.
2. Paragraph 1 is subject to the provisions set out in Annex XVII.
3. Subject to paragraph 4, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.
4. No Party may prepare, design or otherwise structure any procurement contract in order to avoid the obligations of this Chapter.

5. Procurement includes procurement by such methods as purchase, lease or rental, with or without an option to buy ¹⁰.

ARTICLE 57

National treatment and non-discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the products, services and suppliers of the other Party treatment no less favourable than that accorded to domestic products, services and suppliers.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall ensure:

- (a) that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of the other Party; and
- (b) that its entities do not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is the other Party.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

ARTICLE 58

Rules of origin

No Party may apply rules of origin to goods imported from the other Party for purposes of government procurement covered by this Chapter that are different from, or inconsistent with, the rules of origin which that Party applies in the normal course of trade.

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Procurement does not include:

- (a) non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services to persons or states and municipal governments; and
- (b) the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions and sale and distribution services for government debt.

ARTICLE 59

Denial of benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party, where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of either Party.

ARTICLE 60

Prohibition of offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, or in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to, or in the course of, its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

ARTICLE 61

Procurement procedures and other provisions

1. Mexico shall apply the rules and procedures specified in Part A of Annex XVIII and the EFTA States shall apply the rules and procedures specified in Part B of Annex XVIII. Both sets of rules and procedures are considered to provide equivalent treatment.
2. The rules and procedures specified in Annex XVIII may only be modified by the Party concerned in order to reflect amendments to the corresponding provisions of the North American Free Trade Agreement (hereinafter NAFTA) and the WTO Agreement on Government Procurement (hereinafter GPA), respectively, provided that the rules and procedures applied by that Party, as modified, continue to afford equivalent treatment.
3. The Party concerned shall notify the other Party of any modification to the rules and procedures specified in Annex XVIII no later than 30 days prior to their date of entry into force, and shall bear the burden of proving that the rules and procedures, as modified, continue to afford equivalent treatment.
4. Where a Party considers that such a modification affects access to the other Party's procurement market considerably, it can request consultations. If no satisfactory solution can be found the Party may have recourse to dispute settlement procedures under Chapter VIII, with a view to maintaining an equivalent level of access to the other Party's procurement market.

5. No entity of a Party may make it a condition for the qualification of suppliers and for 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 62

Bid challenge

1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Chapter shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days from that time.

6. A Party may require under its legislation that a challenge procedure be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-day period described in paragraph 5 shall begin no earlier than the date that the notice is published or the tender documentation is made available. Nothing in this provision precludes the right of interested suppliers to judicial review.

7. Challenges shall be heard by an impartial and independent reviewing authority with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;

- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- (f) witnesses can be presented; and
- (g) documents are disclosed to the reviewing authority.

8. Challenge procedures shall provide for:

- (a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
- (b) where appropriate, correction of the breach of this Chapter or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

9. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

ARTICLE 63

Provision of information

1. Each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex XIX.

2. Each Party shall designate upon entry into force of this Agreement one or more contact points to:

- (a) facilitate communication between the Parties;
- (b) answer all reasonable inquiries from the other Party to provide relevant information on matters covered by this Chapter; and

- (c) on request of a supplier of a Party, provide in writing within a reasonable time period a reasoned answer to the supplier and the other Party as to whether a specific entity is covered by this Chapter.

3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. 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. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party, except after consultation with, and agreement of, the Party that provided the information.

4. Upon request, each Party shall provide to the other Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorisation of the person that provided the information to that Party.

6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. Each Party shall collect and exchange on an annual basis statistics on its procurements covered by this Chapter¹¹. Such reports shall comply with the requirements of Annex XX.

ARTICLE 64

Technical co-operation

1. The Parties shall co-operate to increase the understanding of their respective government procurement systems, with a view to maximising the access to government procurement opportunities for the suppliers of both Parties.

2. Each Party shall take reasonable measures to provide to the other Party and to the suppliers of the other Party, on a cost recovery basis, information concerning training and orientation programs regarding its government procurement system.

¹¹ The first exchange of information under paragraph 7 of Article 63 (Provision of Information) will take place two years after the entry into force of this Agreement. In the meantime, the Parties will communicate to each other all available and comparable relevant data on a reciprocal basis.

ARTICLE 65

Exceptions

1. Nothing in this Chapter shall be construed to prevent any 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.
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.

ARTICLE 66

Privatisation of entities

1. Where a Party wishes to withdraw an entity from Section 2 of Annex XII.A or XII.B, as appropriate, on the grounds that government control over it has been effectively eliminated, that Party shall notify the other Party.¹²
2. Where a Party objects to the withdrawal on the grounds that the entity remains subject to government control, the Parties will enter into consultations to restore the balance of their offers. If no satisfactory solution can be reached, the claiming Party may have recourse to dispute settlement procedures under Chapter VIII.

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Where both Parties have adopted rules that allow a covered entity to derogate from procurement procedures if such entity intends to purchase exclusively to enable it to provide goods or services where other market participants are free to offer the same goods or services in the same geographical area and under substantially the same conditions, the Parties shall review the wording of this provision accordingly.

In case Article XXIV:6(b) of the GPA or Article 1023 of NAFTA is amended, the Parties shall review the wording of this provision accordingly. The amended provision of the GPA or NAFTA shall not apply between the Parties until it has been incorporated in accordance with this paragraph.

ARTICLE 67

Further negotiations

In the case that the EFTA States or Mexico offer, after the entry into force of this Agreement, a GPA or NAFTA Party, respectively, additional advantages with regard to the access to their respective procurement markets beyond what has been agreed under this Chapter, they shall agree to enter into negotiations with the other Party with a view to extending these advantages to the other Party on a reciprocal basis.

ARTICLE 68

Other provisions

1. The Joint Committee may adopt appropriate measures to enhance the conditions for effective access to a Party's covered procurement or, as the case may be, adjust a Party's coverage so that such conditions for effective access are maintained on an equitable basis.
2. The EFTA States shall provide to Mexico, at the entry into force of this Agreement, an indicative list of 40 public authorities or public undertakings covered by Annex XII.B.2. The entities contained in this list shall be representative of the coverage offered under that Section in terms of geographical location and sectorial distribution.

VI INTELLECTUAL PROPERTY

ARTICLE 69

Protection of intellectual property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Article and Annex XXI.
2. The Parties shall accord to each others' nationals treatment not less favourable than that they accord to their own nationals. Exemptions from this obligation shall be in accordance with the substantive provisions of Article 3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS Agreement).