

Working Party on GATS Rules

GOVERNMENT PROCUREMENT RELATED PROVISIONS IN ECONOMIC INTEGRATION AGREEMENTS

Note by the Secretariat¹

Addendum

I. INTRODUCTION

1. At its meeting on 2 December 2008, the Secretariat was requested to provide an update of its note S/WPGR/W/49 (Government Procurement-Related Provisions in Economic Integration Agreements).

2. In keeping with the methodology used in S/WPGR/W/49, this Note focuses on the main government procurement-related provisions found in economic integration agreements (EIAs) but does not assess their scope and coverage, i.e., how government procurement is defined, what are the exceptions or exclusions, or what sectors, thresholds, levels of government or entities are covered. It should be noted that this Note does not seek to capture all differences and similarities between the WTO Government Procurement Agreement (GPA) and government procurement provisions in EIAs. Rather it is aimed at capturing the main approaches, with a view to facilitating further analysis and discussion. Further, this Note only looks at procurement-related provisions and does not cover provisions of a horizontal nature that may be found in other sections, but that can nonetheless be of relevance for government procurement (e.g., horizontal transparency disciplines including those governing the publication of laws and regulations).

3. To avoid duplication, this present Note does not include descriptions of provisions in agreements previously reviewed in S/WPGR/W/44 and S/WPGR/W/49. Only agreements that have been notified after 31 August 2004 up to 31 July 2009 have been included in this update. The list of agreements notified within this period is contained in Annex 1. For the reasons explained in Part II of this Note, the observations on procurement-related provisions are based on a subset of ten agreements as listed in Table 1.

4. The text of all relevant provisions have not been reproduced, since this would have led to an unwieldy document. Moreover, the full text of these agreements can already be found in official WTO documents (see listing in Annex 1 and Table 1) and also on the Regional Trade Agreements Database on the WTO website.² Rather, for each of the topics reviewed, the Note reproduces the relevant provisions so as to illustrate similarities and differences by way of example.

5. This Note does not, of course, preclude discussion of any other issue which Members may regard as important. Nor does it in any way prejudice the position of any delegation in respect of the GATS Article XIII negotiations on government procurement.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² The database can be found at <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

II. MAIN OBSERVATIONS

6. In the period between 31 August 2004 and 31 July 2009, 33 EIAs were notified to the WTO. Of these agreements, 11 did not contain any provisions on government procurement (see Annex 1). While in another five agreements, the government procurement-related provisions essentially consisted of calls for future negotiations, cooperation in the exchange of information and technical capacity building or consultations (i.e., Japan-Thailand, EFTA-Korea, Thailand-New Zealand, Thailand-Australia, EFTA-Chile).

7. Of the 17 agreements containing substantive provisions on government procurement, four included chapters that were either identical or generally similar to the non-discrimination obligation and procedural rules of the GPA (i.e., Chile-Japan, Trans-Pacific Strategic Economic Partnership, Korea-Singapore and Japan-Mexico). The agreement between Panama and Costa Rica, replicates the non-discrimination provision of the GPA but contains no other procedural rules apart from less detailed obligations on technical specifications and challenge procedures. The agreement between Iceland and Faroe Islands is unique in that it prohibits all discrimination on government procurement but this is most likely due to the single market established between the Parties.

8. Therefore, to avoid repeating the type of information provided in S/WPGR/W/49, only provisions that were found to be either more detailed or significantly different from those contained in the GPA have been reviewed in Part III of this Note. These include the 10 agreements as listed in Table 1 below. It should be noted that background descriptions of the provisions contained in the GPA and the various approaches used in EIAs are already contained in Secretariat Notes S/WPGR/W/44 and S/WPG/W/49 and have therefore not been repeated. These documents should be consulted for any additional background information. Members may also wish to consult S/WPGR/W/51 for a description of the main approaches used in EIAs to undertake commitments.

Table 1: Agreements and provisions reviewed in Part III

RTA	Date of entry into force	Date of notification	Document reference
Peru-Singapore	01-Aug-09	03-Aug-09	S/C/N/502
Canada-Peru	01-Aug-09	4-Aug-09	S/C/N/508
Australia-Chile	06-Mar-09	5-Mar-09	S/C/N/484
US-Peru	01-Feb-09	4-Feb-09	S/C/N/473
US-Oman	01-Jan-09	2-Feb-09	S/C/N/472
EC - CARIFORUM States EPA	01-Nov-08	24-Oct-08	S/C/N/469/Rev.1
US-Bahrain	01-Aug-06	15-Sept-06	S/C/N/375
Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR)	01-Mar-06	6-Mar-07	S/C/N/391
US-Morocco	01-Jan-06	16-Jan-06	S/C/N/362
US-Australia	01-Jan-05	23-Dec-04	S/C/N/310

9. As was noted in S/WPGR/W/49, most agreements contain obligations on non-discriminatory treatment, as well as accompanying provisions on valuation of contracts (e.g., key principles to be followed for determining the value of contracts), technical specifications (e.g., to avoid unnecessary obstacles to trade), procurement methods (e.g., to specify permissible methods and, more specifically, the conditions under which procedures other than open tendering can be used), qualification of suppliers (e.g., focus on criteria essential to ensure fulfilment of the contract), invitations to participate (e.g., requirements relating to the publication of a tender notice), time limits (e.g., minimum periods of time for allowing suppliers to prepare and submit tenders), tender documentation (e.g., requirements relating to the type of information contained in tender documentation provided to suppliers), award of contracts (e.g., rules regarding award criteria and information of results), provision of information (e.g., requirement to publish laws, regulations, decisions, rulings and other procedures relating to government procurement), and challenge procedures (e.g., requirement to allow suppliers recourse to an impartial body to review complaints).

10. While there are many similarities across agreements, differences exist in terms of the types of provisions included, as well as their level of detail and comprehensiveness. In general, as was observed in S/WPGR/W/49, the reviewed EIAs have tended to model their provisions on either the GPA or on provisions that are typically found in agreements involving the US, which are in turn based on NAFTA.³ In some cases, elements from both approaches appear to have been combined. Overall, whichever approach is taken, the tendency has been to simplify provisions in terms of their specific requirements.

11. The agreements involving the United States (US), which are the majority of the EIAs reviewed in this Note, tend to have detailed and comprehensive rules that are equivalent to – and in some cases – go beyond those contained in the GPA. There are, however, differences between the various US agreements, with US-Australia often providing the most extensive and detailed set of rules overall. Other agreements like, Australia-Chile, Canada-Peru and Peru-Singapore also have comprehensive rules, though with some degree of variation across the three agreements. Again, the agreement involving Australia was the most comprehensive.⁴ The EC-CARIFORUM States Economic Partnership Agreement (EPA) is modelled closer to the GPA, though in general the provisions provide for less extensive and detailed obligations.

12. Having said the above, it needs to be emphasized that no direct link necessarily exists between the degree of comprehensiveness of the provisions reviewed and the level of liberalization achieved or of the scope of entities and service sectors covered, as these are typically contained in country-specific Annexes of the various agreements.

13. It should be noted that GPA Members have been engaged in a process of review of the existing provisions of the Agreement.⁵ All references/comparisons in the text to the WTO Agreement on Government Procurement (GPA) are based on the existing (1994) Agreement. It should, nonetheless, be noted that, in December 2006, a "provisionally-agreed revised text of the Agreement" was agreed to by the Parties (see document GPA/W/297 of 11 December 2006). This revised text has not yet come into force and, according to the understanding reached at the time, is subject to a mutually satisfactory outcome in related coverage negotiations that are ongoing. It is, nonetheless, of

³ In S/WPGR/W/49, NAFTA and NAFTA-type provisions on government procurement are described. In subsequent agreements involving the US, such provisions have often been further simplified whilst retaining the comprehensive nature of the substantive rules.

⁴ Many provisions are similar to those contained in US-Australia.

⁵ At time of writing, the review process of the GPA has been completed but the results have not entered into force.

interest to note that, in some instances, the provisions of some of the regional trade agreements described herein appear to correspond to those of the revised GPA text.⁶

III. REVIEW OF THE RELEVANT PROVISIONS

A. NON-DISCRIMINATION

14. Specific provisions relating to non-discrimination are contained in all 10 agreements listed in Table 1 and tend to be equivalent to the GPA obligation on non-discriminatory treatment as reproduced below.

GPA	
<u>Article III : National Treatment and Non-Discrimination</u>	
1.	With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than: <ul style="list-style-type: none">(a) that accorded to domestic products, services and suppliers; and(b) that accorded to products, services and suppliers of any other Party.
2.	With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure: <ul style="list-style-type: none">(a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and(b) that its entities shall 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 a Party to the Agreement in accordance with the provisions of Article IV.
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 Agreement.

15. Significant variations from Article III of the GPA are found in only a few agreements. The agreement between **Australia and Chile** (Article 15.4) incorporates the main elements of Article III of the GPA with an additional element which specifies that the scope of non-discriminatory treatment covers "all orders under contracts awarded for contract procurement, such as framework agreements or panel arrangements".⁷

16. In **EC – CARIFORUM** (Article 167, A.2) the obligation on non-discriminatory treatment that are couched in "best endeavour" terms (see paragraph A.2(a) and A. 2(ii)). Further, any national treatment granted is subject to a decision of the Joint CARIFORUM-EC Council which may specify

⁶ See, for instance, US-Bahrain agreement (Article 9.7) regarding multi-use lists (p.26 below), US-Peru agreement (Article 9.5) regarding commercial goods and services and reduced time-periods under certain circumstances when using electronic means (para 43 below).

⁷ In paragraph 3 of Article 15.4 of the Australia-Chile agreement it is provided that, "3. For greater clarity, all orders under contracts awarded for covered procurement, such as framework agreements or panel arrangements shall be subject to paragraphs 1 and 2".

the procurements to which non-discriminatory treatment would apply, as well as the relevant conditions.

EC- CARIFORUM
Article 167

A. Supporting the creation of regional procurement markets

[...]

- 2.(a) With respect to any measure regarding covered procurement, each Signatory CARIFORUM State, including its procuring entities, shall endeavour not to treat a supplier established in any CARIFORUM State less favourably than another locally established supplier.
- (b) With respect to any measure regarding covered procurement, the EC Party and the Signatory CARIFORUM States, including their procuring entities:
 - (i) shall endeavour not to discriminate against a supplier established in either Party on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of either Party;
 - (ii) shall not treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation to or ownership by operators or nationals of any Signatory
3. Subject to paragraph A.4, each Party, including its procuring entities, shall with respect to any measure regarding covered procurement, accord to the goods and services of the other Party and to suppliers of the other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services and suppliers.
4. The Parties shall not be required to provide the treatment envisaged in paragraph A.3 unless a decision by the Joint CARIFORUM-EC Council to this effect is taken. That decision may specify to which procurements by each Party the treatment envisaged in paragraph A.3 would apply, and under which conditions.

17. In all other agreements reviewed, Parties are required to give services and suppliers of the other Parties treatment no less favourable than that given to their domestic services and suppliers, or the services and suppliers of any other Party. Further, each Party is required to ensure 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 or ownership, and do not discriminate against a locally-established supplier on the basis of the country of production of the service being supplied. It should be noted that the obligation on non-discriminatory treatment for procurement relates only to the sectors, entities and thresholds that are typically committed in annexes. Thus, similar or even identical provisions may nevertheless have different implications depending on the extensiveness of the commitments taken.

18. As observed in S/WPGR/W/49, in a number of agreements, the treatment of **offsets** is found under the provision on non-discriminatory treatment. These include **all the agreements concluded by the US**, as well as that between **Canada and Peru** (Article 1403:6). In the agreements between **Australia and Chile** (Article 15.6), and **Peru and Singapore** (Article 9.7) provisions on offsets are found in a separate section. Overall, these provisions do not tend to vary very significantly and are similar to Article XVI of the GPA.

GPA

Article XVI: Offsets

1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.¹ [...]

¹ Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

US-Australia⁸

Article 15.2: General Principles

Offsets

5. A procuring entity may not seek, take account of, impose or enforce offsets in the qualification and selection of suppliers, goods, or services, in the evaluation of tenders or in the award of contracts, before or in the course of a covered procurement.

Canada-Peru

Article 1403: General Principles

Offsets

6. A Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a procurement covered by this Chapter.

B. VALUATION OF CONTRACTS

19. Most agreements contain provisions relating to the valuation of contracts which set out the key principles to be followed in determining the value of contracts. These principles are similar to those contained in Article II of the GPA and include: an obligation to take all forms of remuneration into consideration in the valuation; an anti-avoidance clause, providing that the valuation method shall not be used, nor procurement requirement be divided into separate contracts, with the intention of avoiding the application of the agreement; criteria for valuation when contracts are awarded in separate parts; criteria for valuation in the case of contracts that do not specify a total price or in the case of contracts for the lease, rental or hire purchase of services; and special valuation provisions in cases where an intended procurement specifies the need for option clauses.

⁸ The article on offsets is similar in all the agreements involving the US that were reviewed.

GPA

Article II: Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts ² for purposes of implementing this Agreement.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.
4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
 - (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
 - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.
5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:
 - (a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;
 - (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.
6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

² This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.

20. In the agreement between **Australia and Chile** (Article 15.5), the valuation principles are generally equivalent to those of the GPA with the additional requirement in Article 15.5: 3 that, "Where the total estimated value of a procurement over its entire duration is not known the procurement shall be a covered procurement, unless otherwise excluded under this Agreement".

21. **Agreements involving the US, apart from CAFTA-DR and US-Morocco⁹**, contain requirements that are similar to the GPA on the valuation of contracts with some differences relating to the treatment of contracts in separate parts and/or to multiple suppliers. Unlike the GPA no differentiation is made between the actual or estimated value of recurring contracts, with the valuation to be based on the "total maximum value of the procurement over its entire duration" (Article 15.1:7(c)). A similar provision, which simplifies the valuation of procurement in multiple parts or from one or more suppliers, is found in **Canada-Peru** (Article 1401).

⁹ In US-Morocco, the provision on valuation of contracts only replicates Article II:4 and 5 of the GPA.

US-Australia¹⁰
Article 15.1: Scope and Coverage

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:
 - (a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of the procurement for the purpose of avoiding the application of this Chapter;
 - (b) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for under the contract and, where the procurement provides for the possibility of option clauses, the total maximum value of the procurement, inclusive of optional purchases; and
 - (c) without prejudice to paragraph 7, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration.
 7. In the case of procurement by lease or rental or procurement that does not specify a total price, the basis for estimating the value of the procurement shall be, with respect to:
 - (a) a fixed-term contract,
 - (i) where the term is 12 months or less, the total estimated contract value for the contract's duration, or
 - (ii) where the term exceeds 12 months, the total estimated contract value, including the estimated residual value, or
 - (b) a contract for an indefinite period, the estimated monthly instalment multiplied by 48. Where there is doubt as to whether the contract is to be a fixed-term contract, a procuring entity shall use the basis for estimating the value of the procurement described in this subparagraph.
 8. Where the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be a covered procurement, unless otherwise excluded under this Agreement
 9. All orders under contracts awarded for covered procurements shall be subject to Articles 15.2.1 and 15.2.2.
- [...]

¹⁰ A similar provision is found in all the agreements involving the US, apart from CAFTA.

Canada-Peru
Article 1401: Scope and Coverage

Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by this Chapter, a procuring entity shall:
- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;
 - (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
 - (i) premiums, fees, commissions, and interest, and
 - (ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and
 - (c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation of the total maximum value of the procurement over its entire duration.

22. Provisions in other agreements tend to be less detailed with regard to valuation principles. **EC-CARIFORUM** replicates Article II.2 and 3 of the GPA, while the agreement between **Peru and Singapore** does not specify criteria for the valuation of contracts in separate parts, or the treatment of contracts for the lease, rental or hire purchase of products or services as in Article II:4 and 5 of the GPA.

EC-CARIFORUM States
Article 167

B. Valuation rules

Procuring entities shall not choose a valuation method, or divide a procurement, with the aim of avoiding the application of this Chapter. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions, and interest.

Peru-Singapore
Article 9.5 : Valuation of Procurements

The following provisions shall apply in determining the value of a procurement for purposes of implementing this Chapter:

- (a) valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable;
- (b) the selection of a valuation method by a government body shall not be made, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Chapter; and
- (c) in cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

C. TECHNICAL SPECIFICATIONS

23. As with the agreements reviewed in S/WPGR/W/49, provisions on the technical specifications of goods and services to be procured tend to be similar or equivalent to Article VI of the GPA. These provisions typically provide that technical specifications shall not constitute unnecessary obstacles to international trade. While these elements tend to be standard, in certain agreements, additional detail and/or obligations are provided on such characteristics as quality, performance, processes or methods of production.

GPA	
<u>Article VI: Technical Specifications</u>	
1.	Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
2.	Technical specifications prescribed by procuring entities shall, where appropriate: <ol style="list-style-type: none"> be in terms of performance rather than design or descriptive characteristics; and be based on international standards, where such exist; otherwise, on national technical regulations, recognized national standards², or building codes.
3.	There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.
4.	Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement
<p>¹ For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.</p> <p>² For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.</p>	

24. The **agreements concluded by the US**, as well as that between **Canada and Peru**, generally replicate Article VI of the GPA with some changes such as the addition of a specific clause allowing procuring entities to prepare, adopt or apply technical specifications to promote the conservation of natural resources and the protection of the environment. In the **US-Peru** agreement, a further clause is included requiring that suppliers comply with labour standards. While in **Peru-Singapore** (Article 9.11:7) there is an additional obligation requiring procuring entities to notify suppliers of any modification of technical specifications during the course of a procurement.

Peru-Singapore

Article 9.11: Tender Documentation and Technical Specifications

Technical Specifications

[....]

7. Where, during the course of a procurement, a procuring entity modifies any part of the tender documentation referred to in paragraph 1, including the criteria or technical requirements thereof, it shall transmit all such modifications in writing:
 - (a) to all suppliers that are participating in the procurement at the time the criteria was modified, if the identities of such suppliers are known, and in all other cases, in the same manner the original information was transmitted; and
 - (b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

US-Morocco¹¹

Article 9.7: Technical Specifications

1. A procuring entity may not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.
2. In prescribing any technical specification for the good or service being procured, a procuring entity shall:
 - (a) specify the technical specification, wherever appropriate, in terms of performance or functional requirements, rather than design or descriptive characteristics; and
 - (b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the procuring entity's program requirements or would impose more burdens than the use of a government-unique standard.
3. A procuring entity may not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in preparing or adopting any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.
4. A procuring entity may not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.
5. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or to protect the environment.

¹¹ The same provision is found in all the agreements concluded by the US with the exception of US-Peru which adds further elements on compliance with labour standards.

US-Peru

Article 9.6: Information on Intended Procurements

Technical Specifications

[...]

7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:
- (a) to promote the conservation of natural resources or to protect the environment.
 - (b) to require a supplier to comply with generally applicable laws regarding
 - (i) fundamental principles and rights at work; and
 - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed.

Canada-Peru

Article 1407: Technical Specifications and Tender Documentation

Technical Specifications

[...]

5. For greater certainty, a Party, including its procuring entities, may in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

25. Furthermore, whilst all agreements stipulate that technical specifications should be based on performance and international standards, where such exist, in some cases there are additional provisions relating to the use of national standards. In the **agreements involving the US**, it is specified that technical specification need not be based on the international standard should such standards fail to meet the procuring entity's program requirements or would impose more burdens than the use of a government-unique or a recognized national standard.¹² In **Australia-Chile**, there is an additional provision in Article 15.12:5 permitting a procuring entity to "conduct market research in developing specifications for a particular procurement" as well as the possibility for a "supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers". The same provision also appears in the agreement between the **US and Australia**.

Australia-Chile

Article 15.12: Technical Specifications

[...]

5. Notwithstanding paragraph 4, a procuring entity may:
- (a) conduct market research in developing specifications for a particular procurement; or
 - (b) allow a supplier that has been engaged to provide design or consulting to participate in procurements related to such services;

[...]

¹² Agreements between the US and Australia; Oman; and Peru, refer to the use of a "recognized national standard". While those concluded with Morocco and Bahrain refer to a "government-unique standard".

D. PROCUREMENT METHODS

26. All the agreements reviewed typically contain provisions specifying the types of procurement methods that can be used. A significant number of agreements either follow the approach taken in Articles VII, X and XV of the GPA or a simplified version of those provisions.

GPA

Article VII: Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.
2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.
3. For the purposes of this Agreement:
 - (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.
 - (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.
 - (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.

Article X: Selection Procedures

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.
2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.
4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

Article XV: Limited Tendering

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:
 - (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
 - (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services¹;

(e) when an entity procures prototypes or a first product or service which are developed 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, subsequent procurements of products or services shall be subject to Articles VII through XIV²;

(f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;

(g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;

(h) for products purchased on a commodity market;

(i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;

(j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

¹ It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

² Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

27. In all the **agreements concluded by the US**, the use of open tendering procedures are generally foreseen, although there are some differences in the exact content and drafting of the relevant provisions. Limited tendering procedures may however be used in certain circumstances and provided that particular procedures are followed.¹³ The general conditions permitting the use of limited tenders are similar to those listed under Article XV:1 of the GPA with some differences. For instance, in **US-Oman** (Article 9.8:2 and 3) **and US-Morocco** (Article 9.9:2 and 3), construction services are not listed as a specific case permitting the use of limited tendering procedures. In **US-Australia** (Article 15.8), such procedures might be used for the award of contracts of construction services but only if they are new. While in **CAFTA-DR** (Article 9.9) **and US-Peru** (Article 9.8) reference is made only to additional construction services.

US-Oman
Article 9.8: Tendering Procedures

1. A procuring entity shall conduct procurement covered by this Agreement in a manner that is consistent with this Chapter, and, except where specifically provided otherwise in this Chapter, in a transparent and impartial manner and shall permit any interested supplier to submit a tender.
2. Provided that the tendering procedure is not used to avoid competition, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party, a procuring entity may contact a supplier or suppliers of its choice and may choose not to apply Articles 9.4 through 9.7, paragraph 1 and paragraphs 3 through 7 of Article 9.9 in the following circumstances:
 - (a) where, in response to a prior notice of intended procurement or invitation to tender,
 - (i) no tenders were submitted;
 - (ii) no tenders were submitted that conform to the essential requirements in the tender documentation; or
 - (iii) no suppliers satisfied the conditions for participation; and the entity does not substantially modify the essential requirements of the procurement or the conditions for participation;
 - (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist because:
 - (i) the requirement is for a work of art;
 - (ii) the procuring entity is obligated to protect patents, copyrights, or other exclusive rights, or proprietary information; or
 - (iii) there is an absence of competition for technical reasons;
 - (c) for additional deliveries of goods or services 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 procuring entity to procure goods or services that do not meet requirements of interchangeability with existing equipment, software, services, or installations;
 - (d) for goods purchased on a commodity market;
 - (e) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such a contract has been fulfilled, subsequent procurements of goods or services shall be subject to this Chapter; or
 - (f) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time under procedures consistent with Articles 9.4 through 9.7, paragraph 1 and paragraphs 3 through 7 of Article 9.9, and the use of such procedures would result in serious injury to the procuring entity or the relevant Party.

¹³ "Limited tendering" refers to a situation where the procuring entity contacts the potential suppliers individually.

3. For each contract awarded under paragraph 2, a procuring entity shall prepare a written report that includes the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 2 that justify the use of a limited tendering procedure.

CAFTA

Article 9.9: Tendering Procedures

1. Subject to paragraph 2, a procuring entity shall award contracts by means of open tendering procedures.
2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, a procuring entity may award contracts by means other than an open tendering procedure in the following circumstances:
 - (a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior notice of intended procurement or invitation to participate, including any conditions for participation, provided that the requirements of the initial notice or invitation are not substantially modified;
 - (b) where, for works of art, or for reasons connected with the protection of exclusive intellectual property rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) 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 goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
 - (d) for goods purchased on a commodity market;
 - (e) where a procuring entity procures a prototype or a first good or service that is developed 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, subsequent procurements of goods or services shall be subject to this Chapter;
 - (f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract; or
 - (g) in so far as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open tendering procedure and the use of an open tendering procedure would result in serious injury to the procuring entity, the entity's program responsibilities, or the Party.
3. A procuring entity shall maintain records or prepare written reports providing specific justification for any contract awarded under paragraph 2, in a manner consistent with Article 9:11.3

28. Additionally, in **US-Australia** (Article 15.7:6-8) and **US-Peru** (Article 9.8), selective tendering procedures may be used provided that certain requirements are met. These relate *inter alia* to the requirement that: a notice of procurement must be published sufficiently in advance; all suppliers that meet conditions of participation must be allowed to tender unless a limit on the number of suppliers has been set; and information must be provided on the entity's decision with respect to applications received.

US-Australia¹⁴
Article 15.7: Tendering Procedures

Selective Tendering

6. To ensure optimum effective competition under selective tendering procedures, procuring entities shall, for each intended covered procurement, invite tenders from the largest number of domestic suppliers and suppliers of the other Party that is consistent with the efficient operation of the procurement system.
7. A procuring entity applying selective tendering procedures shall use, in accordance with paragraph 6:
- (a) a multi-use list, provided such a list is compiled in accordance with the provisions of this Chapter and is appropriate to the type of procurement being undertaken;
 - (b) a list of suppliers that have responded to a notice inviting suppliers to submit applications for participation in a procurement;
 - (c) a list of suppliers that have responded to a notice requesting all interested suppliers to express their interest in the procurement, provided that the procuring entity:
 - (i) publishes a notice requesting any interested supplier to submit an expression of its interest in the procurement and any information requested in the notice; the notice may be the notice of planned procurement under Article 15.4.3 where that notice invited suppliers to express their interest in the procurement; and
 - (ii) sends an invitation to submit tenders to all the suppliers that expressed an interest in the procurement, unless it has stated in the notice that it may limit the suppliers that it will invite, in accordance with paragraph 8; or
 - (d) a list of all the suppliers that have been granted a license or that have been determined by the appropriate agency, authority, or organization to comply with specific legal requirements that exist independent of the procurement process, provided that:
 - (i) the requirement for a license or compliance with specific legal requirements is essential to the conduct of the procurement;
 - (ii) the complete list of such suppliers is maintained by the appropriate agency, authority, or organization and is available to the procuring entity; and
 - (iii) the entity invites all the suppliers on the list to submit tenders in the procurement.
8. Provided that relevant requirements and criteria have been specified in advance in a notice or in tender documentation, a procuring entity, in determining the suppliers that will be invited to tender, under paragraphs 7(b) and (c) may:
- (a) in assessing technical ability, assess the extent to which the suppliers' proposals or responses meet the technical and performance specifications of the procurement; and
 - (b) limit the number of suppliers that it invites to tender based on the rating of the supplier proposals or responses.
9. A procuring entity shall apply the time limits set out in Article 15.5 for responses to the notices referred to in paragraphs 7(b) and (c).

Information on Procuring Entity Decisions

10. Where a supplier applies for participation in a covered procurement, including through a procedure described in paragraphs 7(b) or (c), or for inclusion on a list referred to in paragraph 4, a procuring entity shall promptly advise such supplier of its decision with respect to its application.
11. Where a procuring entity:
- (a) rejects an application for participation in a covered procurement, including an application through a procedure described in paragraph 7(b) or (c),
 - (b) rejects a request for inclusion on a list, referred to in paragraph 4, or
 - (c) ceases to recognize a supplier as having satisfied the conditions for participation, the procuring entity shall promptly inform the supplier and, on request of such supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

¹⁴ US-Australia as the most detailed provisions on tendering procedures as compared to other agreements involving the US.

29. In **Australia-Chile** (Article 15.14), a procuring entity may use open, selective or limited tendering procedures. The provisions on limited tendering are similar to Article XV of the GPA. Procedures for selective tendering are less detailed than those found in the GPA but procuring entities must, nevertheless, ensure effective competition by inviting tenders from the maximum number of domestic and foreign suppliers and undertake selection in a fair and non-discriminatory manner. There is, however, no provision, as in Article X:3 of the GPA which requires procuring entities to consider requests from suppliers seeking to participate in a particular procurement.

Australia-Chile

Article 15.14: Tendering Procedures

1. A procuring entity shall only use open or selective tendering procedures consistent with the provisions of this Chapter, except as provided for in Article 15.15.
2. A procuring entity may use selective tendering procedures in accordance with Article 15.4 and the procurement laws, regulations, procedures and policies of its Party.
3. To ensure effective competition under selective tendering procedures, a procuring entity shall invite tenders from the largest number of domestic suppliers and suppliers of the other Party that is consistent with the efficient operation of the procurement system. It shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

Article 15.15: Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition, to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering procedures.
2. When a procuring entity applies limited tendering it may choose, according to the nature of the procurement, not to apply Articles 15.8, 15.10, 15.11, 15.12, 15.13, 15.14, 15.16.1 and 15.16.3 to 15.16.6. A procuring entity may use limited tendering only under the following circumstances:
 - (a) where, in response to a prior notice, invitation to participate, or invitation to tender:
 - (i) no tenders were submitted or no suppliers requested participation;
 - (ii) no tenders were submitted that conform to the essential requirements in the tender documentation; or
 - (iii) no suppliers satisfied the conditions for participation; and the procuring entity does not substantially modify the essential requirements of the procurement;
 - (b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) for additional deliveries by the original supplier or its authorised agent 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 procuring entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
 - (d) for goods purchased on a commodity market;
 - (e) where a procuring entity procures a prototype or a first good or service that is intended for limited trial or developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development;

- (f) where additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseen circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 per cent of the amount of the initial contract;
 - (g) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following use of open tendering or selective tendering in accordance with this Chapter, and for which the procuring entity has indicated in the notice of intended procurement concerning the initial construction service that limited tendering procedures might be used in awarding contracts for such new construction services;
 - (h) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers;
 - (i) where a contract is awarded to the winner of a design contest provided that:
 - (i) the contest has been organised in a manner that is consistent with this Chapter, and
 - (ii) the contest is judged by an independent jury with a view to a design contract being awarded to the winner; or
 - (j) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the goods or services could not be obtained in time by means of an open or selective tendering procedure.
3. A procuring entity shall maintain a record or prepare a written report providing specific justification for any contract awarded by means other than open or selective tendering procedures, as provided for in this Article.

30. The **EC-CARIFORUM Agreement** (Article 169) does not restrict the method of procurement provided that it is not for the purpose of restricting participation in the procurement process. The provision on selective tendering (Article 170) sets out general principles on: the publication of the notice of intended procurement and its content; the selection of suppliers to participate in a fair manner; and time limits for submitting requirements for participation. While the circumstances permitting the use of limited tendering procedures (Article 171) are generally similar to Article XV the GPA, no provision is made for situations where "the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation". In addition to conditions on selective and limited tendering, certain procedures are also established for procurement conducted through electronic means.

EC-CARIFORUM
Article 170

Selective tendering

1. Whenever selective tendering procedures are employed, procuring entities shall:

- (a) Publish a notice of intended procurement;
- (b) In the notice of intended procurement invite eligible suppliers to submit a request for participation;
- (c) Select the suppliers to participate in the selective tendering procedure in a fair manner; and
- (d) Indicate the time limit for submitting requests for participation.

2. Procuring Entities shall recognise as qualified suppliers all suppliers which meet the conditions for participation in a particular procurement, unless the procuring entity states in the notice or, where publicly available, in the tender documentation, any limitation on the number of suppliers that will be permitted to tender and the objective criteria for such limitation.
3. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 1, procuring entities shall ensure that those documents are made available at the same time to all the qualified suppliers selected.

Article 171

Limited tendering

1. When using the limited tendering procedure, a procuring entity may choose not to apply Articles 168, 169(1) and (3), 170, 173 (1), 174, 175, 176 and 178.
2. Procuring entities may award their public contracts by limited tendering procedure, in the following cases:
 - (a) when no suitable tenders have been submitted in response to an open or selective tendering procedure, on condition that the requirements of the initial tender are not substantially modified;
 - (b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
 - (d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the procuring entity;
 - (e) when a procuring entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
 - (f) when additional services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseen circumstances, become necessary to complete the services described therein. However, the total value of contracts awarded for the additional services shall not exceed 50 % of the amount of the original contract;
 - (g) for new services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open or selective procurement method, and for which the procuring entity has indicated in the notice of intended procurement that a limited procurement method might be used in awarding contracts for such new services;
 - (h) for products purchased on a commodity market;
 - (i) in the case of contracts awarded to the winner of a design contest; in the case of several successful candidates, successful candidates shall be invited to participate in the negotiations as specified in the notice of the intended procurement or the tender documents; and
 - (j) for purchases made under exceptionally advantageous conditions which only arise in the very short term in case of unusual disposals such as arising from liquidation, receivership or bankruptcy and not for routine purchases from regular suppliers.

31. Under Article 1406 on "Conditions for Participation", the agreement between **Canada and Peru** requires a procuring entity using selective tendering procedures to publish a notice inviting suppliers to apply for participation. All suppliers satisfying the conditions for participation may submit a tender subject to any limitations on the number of suppliers permitted to tender, as specified in the notice of procurement. Limited tendering is permitted in a number of cases, similar to those contained in Article XV of the GPA.

Canada-Peru	
<u>Article 1406: Conditions for Participation</u>	
<u>Selective Tendering</u>	
9.	Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement covered by this Chapter:
(a)	publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers time to prepare and submit applications and for the entity to evaluate, and make its determination based on, such applications; and
(b)	allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participations to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, in the tender documentation, a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

32. In the agreement between **Peru and Singapore** (Article 9.13), while open tendering procedures are foreseen, as in the GPA under certain circumstances limited tendering may be used.

E. QUALIFICATIONS OF SUPPLIERS

33. Provisions relating to the qualifications of suppliers are found in all the reviewed agreements and tend to be equivalent to Article VIII of the GPA, with some variations. The relevant provisions generally include principles preventing discrimination between domestic and foreign suppliers by ensuring that all suppliers are able to participate in the tender, and are informed of the decision made by procuring entities. Certain additional conditions also apply when the procuring entity maintains a permanent, multi-use or publicly available list of qualified suppliers.¹⁵ In such situations, the procuring entity is typically required, among other things, to allow suppliers to apply for inclusion on the list and to promptly process requests.

¹⁵ The GPA refers to "permanent list" while the agreements involving the US, Canada-Peru and EC-CARIFORUM use the concept of "multi-list". No such lists are referred to in Peru-Singapore and CAFTA-DR uses the concept of "available list".

GPA**Article VIII: Qualification of Suppliers**

In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (g) each Party shall ensure that:
 - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
 - (ii) efforts be made to minimize differences in qualification procedures between entities.
- (h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

34. **Agreements involving the US**, which tend to be very similar to each other¹⁶, contain some additional conditions on the qualification of suppliers and the publication of notices. It is stipulated that procuring entities should publish a notice sufficiently in advance to provide interested suppliers time to submit and prepare applications. Furthermore, when a procuring entity establishes or maintains a "multi-use" list of suppliers¹⁷, certain requirements on the contents of the notice inviting interested suppliers to apply for inclusion are specified. Suppliers must be allowed to apply at any time and shall be included if they satisfy the conditions for participation within a reasonably short time. Information must also be provided on the procuring entity's decision. These agreements also contain provisions preventing the procuring entity from conditioning qualification upon "prior experiences" or "previous awards" obtained in its territory. These conditions do not have a corollary in the GPA.

35. In the agreements between **Canada-Peru, Australia-Chile and EC-CARIFORUM**, there are also conditions concerning "multi-use" lists and the treatment of prior experience and previous awards which are couched in similar terms as the US agreements.¹⁸ Such provisions do not, however, appear in the agreement between **Peru and Singapore**.

EC- CARIFORUM

Article 174

[...]

2. The Signatory CARIFORUM States and the EC Party shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or State or that the supplier has prior work experience in the relevant territory. This paragraph does not apply for procurements in respect of social impact surveys and studies.

[...]

5. Procuring entities may maintain a multi-use list provided that a notice inviting interested suppliers to apply for inclusion on the list is:
- (a) published annually; and
 - (b) where published by electronic means, made available continuously in one of the appropriate media listed in Annex VII.
6. Procuring entities shall ensure that suppliers may apply for qualification at any time through the publication of a notice inviting suppliers to apply for inclusion on the list containing the following information:
- (a) a description of the goods and services, or categories thereof, for which the list may be used;
 - (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
 - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

¹⁶ Identical provisions are found in US-Peru, US-Oman and US-Bahrain.

¹⁷ Both paragraphs fall under the general heading of article 9.7 "Conditions for Participations". It should be noted that Article VIII of the GPA only refers to "permanent lists" of suppliers and does stipulate any conditions on the manner in which suppliers should be invited on these lists.

¹⁸ It should be noted that in Article 15.13: 2(d) of Australia-Chile, a Party "may require prior experience where relevant to meet the requirements of the procurement".

- (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list. Procuring entities shall include in the list all qualified suppliers within a reasonably short time.
- 7. Where a non-qualified supplier submits a request for participation, and all required documents relating thereto, within the time-limit, a procuring entity, whether or not it uses a multiuse list, shall examine and accept the supplier's request for participation, unless, due to the complexity of the procurement the entity is not able to complete the examination of the request. Procuring entities shall also ensure that a supplier having requested to be included in the list shall be informed of the decision in this regard in a timely fashion.
- 8. Procuring entities operating in the utilities may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement and may exclude requests for participation from suppliers not yet qualified in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the application.

Australia-Chile

Article 15.13: Conditions for Participation

- 1. A Party shall limit any conditions for participation in a covered procurement to those that ensure the supplier's capability to fulfil the requirements of the procurement.
- 2. In assessing whether a supplier satisfies the conditions for participation, a Party:
 - (a) shall evaluate the capabilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;
 - (b) shall base its determination solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;
 - (c) may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and
 - (d) may require prior experience where relevant to meet the requirements of the procurement.
- 3. Nothing in this Article shall preclude a Party from excluding a supplier from a procurement on grounds such as:
 - (a) bankruptcy;
 - (b) false declarations; or
 - (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract.
- 4. Where a Party requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement that Party shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published sufficiently in advance of the procurement to allow for interested suppliers, including suppliers of the other Party, to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration or qualification procedures.
- 5. The process of, and the time required for, registering or qualifying suppliers shall not be used in order to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent such suppliers from being considered for a particular procurement.

6. A Party may establish a multi-use list provided that it publishes, annually or continuously, a notice inviting interested suppliers to apply for inclusion on the list.

The notice shall include:
 - (a) a description of the goods and services, or categories thereof, for which the list may be used;
 - (b) the requirements to be satisfied by suppliers;
 - (c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and obtain all relevant documents relating to the list; and
 - (d) deadlines for submission of applications for inclusion on that list, where applicable.
7. A Party that maintains a multi-use list shall include on the list all suppliers that satisfy the requirements set out in the notice referred to in paragraph 6 within a reasonably short time.

US- Bahrain ¹⁹

Article 9.7: Conditions for Participation

General Requirements

1. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall, subject to the other provisions of this Chapter:
 - (a) limit any conditions for participation to those that are essential to ensure that the supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement;
 - (b) evaluate the financial, commercial, and technical abilities of a supplier on the basis of its global business activities, including both its activities in the territory of the Party of the supplier, as well as its activities, if any, in the territory of the Party of the procuring entity, and may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party;
 - (c) base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation; and
 - (d) allow all suppliers that satisfy the conditions for participation to participate in the procurement.
2. Nothing in this Article shall preclude a procuring entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.
3. Where a procuring entity requires suppliers to satisfy conditions for participation, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers adequate time to prepare and submit responsive applications and for the entity to evaluate and make its determination based on such applications.

¹⁹ The provisions contained in US-Bahrain is reproduced as an example of the model used in the agreements involving the US.

Multi-Use Lists

4. A procuring entity may establish a multi-use list provided that the entity annually publishes in a paper or electronic medium, or otherwise makes available continuously in electronic form, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:
 - (a) a description of the goods or services that may be procured using the list;
 - (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
 - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
 - (d) the date on which use of the list will terminate, or where a date is not provided, an indication of the method by which advance notice will be given of the termination of use of the list;
 - (e) any deadlines for submission of applications for inclusion on the list; and
 - (f) an indication that the list may be used for procurement covered by this Chapter.
5. A procuring entity that maintains a multi-use list shall allow suppliers to apply at any time for inclusion on the list and shall include on the list all suppliers that apply and satisfy the conditions for participation within a reasonably short time after a supplier applies.

Information on Procuring Entity Decisions

6. Where a supplier applies for participation in a covered procurement, or for inclusion on a multi-use list, a procuring entity shall promptly advise such supplier of its decision with respect to its application.
7. Where a procuring entity rejects an application for participation in a covered procurement or for inclusion on a multi-use list, or ceases to recognize a supplier as having satisfied the conditions for participation, the entity shall promptly inform the supplier and, on request of such supplier, promptly provide the supplier a written explanation of the reasons for its decision.

CAFTA –DRArticle 9.8: Requirements and Conditions for Participating in Procurement

[...]

2. Each procuring entity shall:
 - (a) limit any conditions for participation in a procurement to those that are essential to ensure that the supplier has the legal, technical, and financial abilities to fulfil the requirements and technical specifications of the procurement;
 - (b) recognize as qualified all suppliers of another Party that have met the requisite 9-6 conditions for participation; and
 - (c) base qualification determinations solely on the conditions for participation that have been specified in advance in notices or tender documentation.

[...]

4. No procuring entity may make it a condition for participation in a procurement that a supplier has previously been awarded one or more contracts by a procuring entity or that the supplier has prior work experience in the territory of a Party. A procuring entity shall evaluate the financial and technical abilities of a supplier on the basis of that supplier's business activity outside the territory of the Party of the procuring entity, as well as activity, if any, in the territory of the Party of the procuring entity.
5. A procuring entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where a procuring entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide a written explanation of the reasons for its action.

[...]

F. PROCEDURAL RULES REGARDING INVITATION TO PARTICIPATE

36. Article IX of the GPA contains detailed procedural rules regarding invitations to participate in an intended procurement. The agreements reviewed also include specific provisions on procedures to be followed prior to the actual tendering process, such as the publication of a notice, as well as its form and content. Overall, these provisions tend to be less detailed than those found in the GPA.

GPA

Article IX: Invitation to Participate Regarding Intended Procurement

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.
6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:
 - (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;
 - (b) whether the procedure is open or selective or will involve negotiation;
 - (c) any date for starting delivery or completion of delivery of goods or services;
 - (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
 - (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
 - (f) any economic and technical requirements, financial guarantees and information required from suppliers;
 - (g) the amount and terms of payment of any sum payable for the tender documentation; and
 - (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.
When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:
- (d) the nature of the products or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

37. In the **agreements concluded by the US**, the procedural rules focus on the requirement to publish a notice inviting tenders or applications to submit tenders, and the types of information that need to be contained (i.e., name and address of the procuring entity; description of procurement and conditions for participation; and address and time limits for the submission of tenders, applications and goods and services). In addition, it is usually specified that the notice is to be published in widely disseminated electronic or paper media, and procuring entities are encouraged to publish their procurement plans as early as possible in each fiscal year.

38. It should be noted that there are, however, some differences between the US agreements. For instance, in **CAFTA-DR** (Article 9.4), there is no requirement specifying publication through widely disseminated electronic or paper media. Whilst in **US-Peru** (Article 9.4), it is specified that procuring

entities are encouraged to publish electronically through a single point of entry. In the agreements between **US-Bahrain** (Article 9.4); **US-Peru** (Article 9.4); and **US-Oman** (Article 9.4) the procurement method used is to be specified in the notice but this requirement does not appear in the other agreements. An example from US-Bahrain is provided below.

US-Bahrain

Article 9.4: Publication of Notice of Intended Procurement and Notice of Planned Procurement

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") or, where appropriate, applications for participation in the procurement. The notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering.
2. A procuring entity shall include the following information in each notice of intended procurement:
 - (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement;
 - (b) a description of the procurement and any conditions for participation;
 - (c) the time frame for the delivery of goods or services;
 - (d) the procurement method that will be used; and
 - (e) the address and the time limit for the submission of tenders, and, where appropriate, any time limit for the submission of an application for participation in a procurement.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish as early as possible in each fiscal year a notice regarding the procuring entity's procurement plans. The notice should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Where the notice is published in accordance with Article 9.5.2(a), a procuring entity may apply Article 9.5.2 for the purpose of establishing shorter time limits for tendering for covered procurements.

39. The relevant provisions in **Peru-Singapore** (Article 9.9) and **Canada-Peru** (Article 1405) contain provisions on intended procurement that are similar to the US agreements. While the requirement to publish notices of intended procurement is also contained in **Australia-Chile** (Article 15.8), there is less detail on their form and content. A distinction is however made between notices for open and selective tendering procedures. In the case of open tendering procedures, the notices must be accessible for the entire period established for tendering.

Peru-Singapore

Article 9.9 : Publication of Notice of Intended Procurement

1. For each procurement covered by this Chapter, a procuring entity shall publish in advance a notice inviting all interested suppliers to submit tenders for that procurement ("notice of intended procurement"), except as otherwise provided in Article 9.13. This notice shall be published in an officially designated electronic medium listed in Annex 9B (Officially Designated Electronic Media for the Publication of Information on Government Procurement). Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.
2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the procuring entity issuing the notice, the address and contact where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders and the dates for delivery of the goods or services to be procured.

3. Each Party shall encourage its procuring entities to publish, as early as possible in the fiscal year, information regarding the procuring entity's indicative procurement plans published in an officially designated electronic medium listed in Annex 9B (Officially Designated Electronic Media for the Publication of Information on Government Procurement). Where such information is published, a procuring entity may apply Article 9.10 (Time Limits for the Tendering Process) for the purpose of establishing shorter time limits for tendering.

Australia-Chile

Article 15.8: Publication of Notice of Intended Procurement

1. In an open tendering procedure, a procuring entity shall publish a notice inviting interested suppliers to submit tenders ("notice of intended procurement") in such a way as to be readily accessible to any interested supplier of the other Party for the entire period established for tendering.
2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the procuring entity, the address where suppliers may obtain all documents relating to the procurement and the time limits for submission of tenders.
3. Where, in a selective tendering procedure, a procuring entity publishes a notice inviting applications for participation in a procurement, that notice shall be published in such a way as to be readily accessible to any interested supplier of the other Party.

40. In **EC-CARIFORUM** invitations to participate are contained in Article 168 on "Transparency of Government Procurement" which combines elements from Articles IX and XVII of the GPA. Detailed provisions are set out on the publication of laws, regulations, and judicial decisions and administrative rulings regarding procurement covered by the agreement, as well as on the publication and dissemination of tendering opportunities. The requirements on the form and content of notices are generally similar to Article IX of the GPA and the agreements concluded by the US with provisions on the on-line dissemination of tendering opportunities, specification of procurement method, and the publication of future procurement plans.

G. TIME LIMITS FOR TENDERING AND DELIVERY

41. As was observed in S/WPGR/W/49, the reviewed agreements mostly contain specific prescriptions concerning time limits for the preparation, submission and receipt of tenders before the closure of tendering procedures. With some differences in detail, these provisions tend to replicate the requirements specified in Article XI of the GPA.

GPA

Article XI: Time-limits for Tendering and Delivery

General

1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.
- (b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.

Deadlines

2. Except in so far as provided in paragraph 3,
 - (a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;
 - (b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;
 - (c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.
3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:
 - (a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:
 - (i) as much of the information referred to in paragraph 6 of Article IX as is available;
 - (ii) the information referred to in paragraph 8 of Article IX;
 - (iii) a statement that interested suppliers should express their interest in the procurement to the entity; and
 - (iv) a contact point with the entity from which further information may be obtained, the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;
 - (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;
 - (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or
 - (d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.
4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

42. While the actual time limits may differ, all reviewed agreements contain a general provision specifying that suppliers of another party should have adequate time to submit applications or tenders before procedures are closed. In the **agreements concluded by the US**, the provisions on time limits are generally similar to the GPA, with some differences in terms of the level of detail and the number

of days. In **US-Australia** (Article 15.5), the GPA Article XI time limit of no less than 40 days for the receipt of tenders is reduced to 30 days. It is further specified that should selective procedures be used, time limits should be included in the notice except where a notice of multi-use lists has been readily accessible in electronic form for a reasonable period.

43. In **US-Peru** (Article 9.5), the time limit for tendering may be reduced to 30 days if the notice of procurement was published electronically and the tender documentation concurrently available in electronic medium. In all the agreements, certain circumstances are specified that may allow the time for the receipt of tenders to be less than 40 days²⁰ but in no case less than 10 days. These include the procurement of commercial goods and services, and the use of electronic media. Also with the exception of **US-Morocco** (Article 9.5) and **CAFTA-DR** (Article 9.5), a procuring entity shall require all participating suppliers to submit tenders by a common deadline.

US-Australia²¹
Article 15.5 : Time limits

1. A procuring entity shall prescribe time limits for tendering that allow suppliers adequate time to submit applications or requests to participate in a covered procurement, including pursuant to Article 15.7.7(b) and (c), and to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.
2. Except as provided for in paragraphs 3 and 4, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 30 days:
 - (a) from the date on which the notice of intended procurement is published; or
 - (b) where the entity has used selective tendering, from the date on which the entity invites suppliers to submit tenders.
3. Under the following circumstances, a procuring entity may establish a time limit for tendering that is less than 30 days, provided that such time limit is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than ten days:
 - (a) where the procuring entity published a separate notice, including a notice of planned procurement under Article 15.4.3 at least 30 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement, and the address from which documents relating to the procurement may be obtained;
 - (b) where the procuring entity procures commercial goods or services;
 - (c) in the case of second or subsequent publication of notices for procurement of a recurring nature; or
 - (d) where a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 1.
4. When a procuring entity publishes a notice of intended procurement in accordance with Article 15.4 in an electronic medium, or, in the case of selective tendering, issues an invitation to tender via an electronic medium and provides, to the extent practicable, the tender documentation via an electronic medium, the procuring entity may reduce the time limit for submission of a tender by up to five days. In no case shall the procuring entity reduce either time limit to less than ten days from the date on which the notice of intended procurement is published.

²⁰ Or 30 days in the case of US-Australia.

²¹ ...

5. Where a procuring entity intends to limit the submission of tenders to all suppliers that the entity has determined have satisfied the conditions for participation, except where a notice of a multi-use list has been readily accessible in electronic form for a reasonable period, the entity shall include in an invitation to tender the time limit for submitting applications. Any conditions for participation in a tendering procedure shall be published sufficiently in advance to enable interested suppliers of the other Party to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration and qualification procedures within the time allowed for tendering.
6. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. For greater certainty, this requirement also applies where:
 - (a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limit for qualification or tendering procedures; or
 - (b) negotiations are terminated and suppliers are permitted to submit new tenders.

44. Time limits in **EC-CARIFORUM** are less detailed than those contained in Article XI of the the GPA and only provide for general principles such as common deadlines and time limits that are consistent with a procuring entities reasonable needs. The agreement between **Peru and Singapore** reduces the time limit for the submission of tenders from the GPA benchmark of 40 days to 21 days. Under certain circumstance and where there are no qualification requirements for suppliers, the time limit may be less than 21 days but in no case less than 10 days. The circumstances allowing such reductions are similar to those under Article XI:3. In the **Australia-Chile and Canada-Peru agreements**, the time limits and conditions are similar to the US-Australia agreement. However, in the event of the use of electronic media, the time limit may only be reduced by five days.

EC- CARIFORUM

Article 178

Time limits

1. In determining any time limits to be applied to procurement covered by the Chapter, procuring entities shall, consistent with their own reasonable needs take into account such factors as the complexity of the intended procurement and the normal time for transmitting tenders..
2. The Parties and the Signatory CARIFORUM States shall ensure that their procuring entities shall take due account of publication delays when setting the final date for receipt of tenders or of request for participation or for qualifying for the supplier's list. Such time limits, including any extension, shall be common for all interested or participating suppliers.
3. Procuring entities shall clearly set out the time limits applicable to any specific procurement in the notice of intended procurement and/or tender documents.

Peru-Singapore

Article 9.10 : Time limits for the tendering process

1. A procuring entity shall prescribe time limits for the tendering process that allows sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. A procuring entity shall provide no less than twentyone (21) days between the date on which it publishes the notice of intended procurement and the deadline for submitting tenders.

2. Notwithstanding paragraph 1, where there are no qualification requirements for suppliers, a procuring entity may establish a time limit of less than twentyone (21) days, but in no case less than ten (10) days, in the following circumstances:
 - (a) where the procuring entity has published a separate notice containing the information specified in paragraph 3 of Article 9.9 (Publication of Notice of Intended Procurement) in an officially designated electronic medium listed in Annex 9B (Officially Designated Electronic Media for the Publication of Information on Government Procurement) at least twentyone (21) days and not more than twelve (12) months in advance;
 - (b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;
 - (c) where a state of urgency duly substantiated by the procuring entity renders the time limit specified in paragraph 1 impracticable; or
 - (d) where the procuring entity has published a notice of intended procurement by electronic means in an officially designated electronic medium listed in Annex 9B (Officially Designated Media for the Publication of Information on Government Procurement).

Australia-Chile
Article 15.10: Time Limits

1. A procuring entity shall prescribe time limits for tendering that allow sufficient time for suppliers to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement and the efficient operation of the procurement process. The time allowed for the submission of tenders shall not be set with the intention of causing a competitive disadvantage for suppliers of the other Party, or suppliers offering goods or services of the other Party, in submitting tenders in accordance with the requirements set out in the tender documentation.
2. Except as provided for in paragraphs 3 and 4, a procuring entity shall provide that the final date for the submission of tenders shall not be less than 30 days:
 - (a) from the date on which the notice of intended procurement is published; or
 - (b) where the procuring entity has used selective tendering, from the date on which the entity invites suppliers to submit tenders.
3. Under the following circumstances, a procuring entity may establish a time limit for tendering that is less than 30 days, provided that such time limit is sufficiently long to enable suppliers to prepare and submit responsive tenders and is in no case less than 10 days:
 - (a) where the procuring entity published a separate notice, including a notice of planned procurement under Article 15.9 at least 30 days and not more than 12 months in advance, and such separate notice contains:
 - (i) a description of the procurement;
 - (ii) the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement; and
 - (iii) the address from which documents relating to the procurement may be obtained;
 - (b) where the procuring entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes, including goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace;
 - (c) in the case of second or subsequent publication of notices for procurement of a recurring nature;
 - (d) where a state of urgency duly substantiated by the procuring entity renders impracticable the time limits specified in paragraph 2; or
 - (e) when the intended procurement is for goods or services which can be easily and objectively specified and which reasonably imply less effort in the preparation and submission of responsive tenders.

4. A procuring entity may reduce the time limit for submission of a tender by up to five days when it:
 - (a) publishes a notice of intended procurement in an electronic medium; or
 - (b) in the context of a selective tendering procedure, issues an invitation to tender via an electronic medium; and provides, to the extent practicable, the tender documentation via an electronic medium.
5. The application of paragraph 4 shall in no case result in the time limit for submissions being reduced to less than 10 days.
6. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline.

H. TENDER DOCUMENTATION

45. Provisions on tender documentation in the reviewed agreements are modelled on the GPA Article XII but are generally less detailed. In the GPA, the procuring entity has a general obligation to provide suppliers with all information necessary to submit responsive tenders. Types of information to be provided include the address of the entity where tenders should be sent, the criteria for awarding the contract, or the terms of payment. Entities also need to forward tender documentation to any supplier participating in open tendering procedures or requesting to participate in selective tendering procedures. Any reasonable request for explanation shall be provided promptly, provided it does not provide a supplier with an advantage over its competitors in the process.

GPA **Article XII**

Tender Documentation

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.
2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:
 - (a) the address of the entity to which tenders should be sent;
 - (b) the address where requests for supplementary information should be sent;
 - (c) the language or languages in which tenders and tendering documents must be submitted;
 - (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
 - (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
 - (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
 - (g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
 - (h) the criteria for awarding 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;
 - (i) the terms of payment;
 - (j) any other terms or conditions;
 - (k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.

Forwarding of Tender Documentation by the Entities

3. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.
- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

46. All the **agreements involving the US** as a party generally follow the same model on tender documentation with some slight variations. The types of information to be provided to the supplier are similar to the GPA but are less detailed. For instance, there are no conditions on the languages used in the submission of tenders nor on the forwarding of tender documentation by the entities. However, the conditions include certain requirements that are not found in the GPA such as the specification of the relative importance of the criteria used in the award of contracts (except in the case where price is the determinative factor).²² Also included are provisions in the event that a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation.

US-Bahrain²³

Article 9.6: Information on Intended Procurements

Tender Documentation

1. A procuring entity shall provide to any interested supplier tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:
 - (a) the procurement, including the nature, scope, and, where quantifiable, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certifications, plans, drawings, or instructional materials;
 - (b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;
 - (c) all criteria, including all cost factors, to be considered in awarding the contract, and the relative importance of such criteria;
 - (d) the date, time, and place for the opening of tenders; and
 - (e) any other terms or conditions, including terms of payment, relating to the procurement.
 2. A procuring entity shall promptly:
 - (a) provide, on request, the tender documentation to any supplier participating in the procurement; and
 - (b) reply to any reasonable request for relevant information by a supplier participating in the procurement, provided that such information does not give that supplier an advantage over its competitors in the procurement.
- (...)

²² The requirement on the "relative importance" of criteria is not specified in US-Australia.

²³ An example of the model used in the agreements involving the US. As explained above, it should be noted that there are some variations across agreements.

Modifications

8. If, during the course of a procurement, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit all such modifications or amended or re-issued notice or tender documentation:
- (a) to all the suppliers that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and
 - (b) in adequate time to allow such suppliers to modify and re-submit their tenders, as appropriate.

47. In **CAFTA-DR**, the provisions on tender documentation (Article 9.6) do not list the types of information to be provided but includes the condition on the relative importance of criteria used in the award of contracts and the modification of criteria, with an additional flexibility allowing each Central American Party and the Dominican Republic to make such modifications before tenders are opened. The United States may make such modifications before awarding the contract.

CAFTA-DR

Article 9.6: Tender Documentation

1. A procuring entity shall provide to interested suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the procuring entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.
2. A procuring entity may satisfy paragraph 1 by publishing the documentation by electronic means accessible to all interested suppliers. Where a procuring entity does not publish tender documentation by electronic means accessible to all interested suppliers, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.
3. Where a procuring entity, in the course of a procurement, modifies the criteria referred to in paragraph 1,¹ it shall transmit all such modifications in writing:
 - (a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in cases where the identities of suppliers participating are not known, in the same manner as the original information was transmitted; and
 - (b) in adequate time to allow the suppliers to modify and re-submit their tenders, as appropriate.

¹ Each Central American Party and the Dominican Republic may make such modifications before tenders are opened. The United States may make such modifications before awarding the contract.

48. The agreement between **Canada and Peru** (Article 1407) contain provisions on tender documentation that are similar to those found in the agreements involving the US. Similar provisions in other agreements are couched in more general terms. In **Australia-Chile** (Article 15.11), there is a general obligation to include all the information necessary to prepare and submit responsive tenders, and all criteria used in awarding contracts but the types of information to be provided are not listed. There is a similar obligation in **Peru-Singapore** (Article 9.11) with the additional requirement that tender documentation should be made available on the internet or a comparable publicly available computer-based telecommunications network.

Canada-Peru

Article 1407: Technical Specifications and Tender Documentation

Tender Documentation

6. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:
 - (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;
 - (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
 - (c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
 - (d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and
 - (e) any other terms or conditions relevant to the evaluation of tenders.
7. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in a procurement covered by this Chapter, except that the entity shall not make available information with regard to a specific procurement in a manner that would give the requesting supplier an advantage over its competitors in the procurement.

Modifications

8. Where a procuring entity, prior to the award of a contract, modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications, amended or re-issued notice or tender documentation:
 - (a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, where such suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and
 - (b) in adequate time to allow such suppliers to modify and submit amended tenders, as appropriate.

Australia-Chile

Article 15.11: Tender Documentation

1. A procuring entity shall provide on request to any supplier participating in a covered procurement or promptly publish, tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the procuring entity will consider in awarding the contract.
2. Where a procuring entity, during the course of a covered procurement, modifies a notice or tender documentation provided to participating suppliers, it shall publish or transmit all such modifications in writing:
 - (a) to all suppliers that are participating in the procurement at the time the notice or tender documentation is modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and
 - (b) in adequate time to allow such suppliers to modify and re-submit their tenders, as appropriate.

3. A procuring entity shall promptly reply to any reasonable request for relevant information by a supplier participating in the procurement. A procuring entity may establish a reasonable time limit to request the relevant information.
4. Procuring entities shall not provide information with regard to a specific procurement in a manner which would have the effect of giving a potential supplier an unfair advantage over competitors.

Peru-Singapore

Article 9.11 : Tender Documentation and Technical Specifications

Tender Documentation

1. A procuring entity shall provide interested suppliers with tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all the criteria that the procuring entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values that the procuring entity will assign to these criteria in evaluating tenders.
2. To the extent possible, a procuring entity should make available relevant tender documentation on the internet or a comparable publicly available computer based telecommunications network openly accessible to all suppliers. Where a procuring entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.

49. In **EC-CARIFORUM**, there is a section on transparency of government procurement (Article 168) which contains a general obligation to provide eligible suppliers with all the information required to take part in a procurement and submit responsive tenders. It is further specified that where entities do not offer free direct access to tender documentation by electronic means, the information shall be made available on request. A list of the minimum information to be provided in an intended procurement is included under this section and covers elements similar to those found in Article XII of the GPA.

EC-CARIFORUM

Article 168

Transparency of government procurement

[...]

2. The Parties and the Signatory CARIFORUM States shall ensure that their procuring entities provide for effective dissemination of the tendering opportunities generated by the relevant government processes, providing eligible suppliers with all the information required to take part in such procurement. Each Party shall set up and maintain an appropriate on-line facility to further the effective dissemination of tendering opportunities.
 - (a) Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders.
 - (b) Where entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any eligible supplier of the Parties.

I. AWARD OF CONTRACTS

50. In all of the reviewed agreements there are obligations on the submission, receipt, opening of tenders and awarding of contracts, which correspond to Article XIII and XVIII GPA. In these agreements, while the provisions may be organised under different sections (i.e., such as "information to suppliers", "publication of award information", "provision of information to the other Party", and "maintenance of records"), as compared to the GPA, the substantive obligations often remain similar. For instance, in the **agreements involving the US, Canada-Peru (Article 1410) and Australia-Chile (Article 15.16)**, under the section on the award of contract, the procuring entity is required to maintain records for a period of three years after the award, while in the GPA this obligation is found under Article XX:4 on challenge procedures.

GPA
Article XIII

Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:
 - (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and
 - (b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

Receipt of Tenders

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

Opening of Tenders

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

Award of Contracts

4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
- (b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.
- (c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

Option Clauses

5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

US-Peru
Article 9.9

Treatment of Tenders and Awarding of Contracts

Receipt and Opening of Tenders

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. A procuring entity shall treat tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.
3. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. A procuring entity shall require that, in order to be considered for an award, a tender must be submitted: (a) in writing and, at the time of opening, must conform to the essential requirements and evaluation criteria specified in the notices and tender documentation; and (b) by a supplier that satisfies any conditions for participation. 5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined satisfies the conditions for participation and is fully capable of undertaking the contract and whose tender is determined to be the lowest price or the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices and tender documentation.
6. A procuring entity may not cancel a procurement or terminate or modify awarded contracts in a manner that circumvents this Chapter.

Information Provided to Suppliers

7. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decision. Subject to Article 9.13, a procuring entity shall, on request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

8. Not later than 60 days after an award, a procuring entity shall publish in an officially designated publication, which may be in either an electronic or paper medium, a notice that includes at least the following information about the contract:
- (a) the name and address of the procuring entity;
 - (b) a description of the goods or services procured;
 - (c) the date of award;
 - (d) the name and address of the successful supplier;
 - (e) the contract value; and
 - (f) the procurement method used and, in cases where a procedure has been used pursuant to Article 9.8.1, a description of the circumstances justifying the use of such procedure.

Maintenance of Records

9. A procuring entity shall maintain reports and records of tendering procedures relating to covered procurements, including the reports provided for in Article 9.8.2, and shall retain such reports and records for a period of at least three years after the award of a contract.

GPA**Article XVIII***Information and Review as Regards Obligations of Entities*

1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain:
 - (a) the nature and quantity of products or services in the contract award;
 - (b) the name and address of the entity awarding the contract;
 - (c) the date of award;
 - (d) the name and address of winning tenderer;
 - (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
 - (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and
 - (g) the type of procedure used.
2. Each entity shall, on request from a supplier of a Party, promptly provide:
 - (a) an explanation of its procurement practices and procedures;
 - (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and
 - (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.
3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

CAFTA-Dominican Republic

Article 9.10: Awarding of Contracts

1. A procuring entity shall require that, in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted, conform to the essential requirements of the tender documentation that the procuring entity provided in advance to all participating suppliers, and be from a supplier that has complied with any conditions for participation that the procuring entity has communicated in advance to all participating suppliers.
2. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to a supplier that the procuring entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.
3. No procuring entity may cancel a procurement, or terminate or modify a contract it has awarded, in order to avoid the obligations of this Chapter.

Article 9.11: Information on Contract Awards

1. A procuring entity shall promptly inform participating suppliers of decisions on contract awards. A procuring entity shall, on request, provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender selected.
2. Promptly after awarding a contract in a covered procurement, a procuring entity shall publish a notice that includes at least the following information about the contract award:
 - (a) the name of the entity;
 - (b) a description of the goods or services included in the contract;
 - (c) the name of the supplier awarded the contract;
 - (d) the value of the contract award; and
 - (e) where the entity did not use an open tendering procedure, an indication of the circumstances justifying the procedure used.
3. A procuring entity shall maintain records and reports relating to tendering procedures and contract awards in procurements covered by this Chapter, including the records and reports provided for in Article 9.9.3, for at least three years after the date a contract is awarded.

51. Other agreements such as the **Peru-Singapore** (Article 9.14 and 9.15), **CAFTA-DR** (Article 9.10 and 9.11) and the **EC-CARIFORUM** (Article 177) have less detailed provisions regarding the award of contracts. Both the **CAFTA** and **EC-CARIFORUM** agreement contain general provisions on the necessity to have a fair and transparent process during the opening and awarding of contracts under open and selective procedures. In **CAFTA-DR**, for reasons of public interest, the procuring entity may select the tender which is the most advantageous in terms of the requirements and evaluation criteria. While this provision is similar to Article XIII:4(b) of the GPA, it does not specify that the procuring entity could alternatively select the lowest tender submitted. In terms of information provided to suppliers on the contract decision, the provisions in the reviewed agreements are similar to the GPA with the requirement that tenderers be informed of the reasons for the decision upon request. In **Peru-Singapore** (Article 9.14) there is only a general obligation that

the tender evaluation process shall be fair and non discriminatory with no further conditions prescribed on the award process such as performance and price. Nevertheless, the agreement does have provisions on the information to be provided on awards that are equivalent to, but less detailed than Article XVIII of the GPA.

EC-CARIFORUM

Article 176

Opening of tenders and awarding of contracts

1. All tenders solicited under open or selective procedures by procuring entities shall be received and opened under procedures and conditions guaranteeing the fairness and transparency of the process.
2. Unless a procuring entity decides that it is not in the public interest to award the contract, it shall award the contract to the supplier who has been determined, on the basis of the information presented, to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notice or tender documentation is determined to be the most advantageous. Awards shall be made in accordance with the criteria and essential requirements specified in the notice of intended procurement or in the tender documentation.

Article 177

Information on contract award

1. The Parties and the CARIFORUM Signatory States shall ensure that their procuring entities provide for effective dissemination of the results of government procurement processes.
2. Procuring entities shall promptly inform suppliers of decisions regarding the award of the contract and, on request, in writing. Upon request, procuring entities shall inform any eliminated supplier of the reasons for the rejection of its tender and of the relative advantages of the successful supplier's tender.
3. Procuring entities may decide to withhold certain information on the contract award where release of such information would interfere with law enforcement or be otherwise contrary to the public interest, would prejudice the legitimate commercial interests of suppliers, or might prejudice fair competition between them.
4. Subject to Article 180(4), no later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic media listed in Annex VII. Where only an electronic medium is used, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:
 - (a) a description of the goods or services procured;
 - (b) the name and address of the procuring entity;
 - (c) the name and address of the successful supplier;
 - (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
 - (e) the date of the award; and
 - (f) the type of procurement method used, and in cases where a limited tendering procedure was used, a description of the circumstances justifying the use of such procedure.

Peru-Singapore
Article 9.14 : Evaluation of tenders

The tender evaluation process shall be fair and nondiscriminatory, and shall have a mechanism to eliminate any potential conflict of interest between persons administering the process and suppliers participating in the process.

J. NEGOTIATIONS

52. The previous note S/WPGR/W/49 found that some agreements specify that entities may hold negotiations with tenderers, provided this is indicated in the initial tender notice or it appears from the evaluation that there is no single most advantageous bid. Of the agreements currently reviewed, only **EC-CARIFORUM** (Article 175) appeared to contain provisions on negotiations with tenderers. The provision is similar to Article XIV of the GPA but with fewer prescriptions on the course and conduct of negotiations. As a safeguard, the evaluation is to be undertaken on the basis of the criteria set out in the notice of intended procurement.

EC-CARIFORUM
Article 175

Negotiations

1. The Signatory CARIFORUM States and the EC Party may provide for their procuring entities to conduct negotiations:
 - (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or
 - (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
 - (a) ensure that any elimination of suppliers in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
 - (b) when negotiations are concluded, provide a common deadline for the remaining suppliers to submit any new or revised tenders.

K. PROVISION OF INFORMATION

53. As in the GPA, most agreement contain a general requirement to publish laws, regulations and judicial decisions, administrative rulings of general application and any procedures regarding covered procurement. In the **agreements involving the US, Peru-Singapore** (Article 9.8) and **Canada-Peru** (Article 1404) such transparency rules are found in sections relating to the publication of procurement information. Similar obligations are found in **EC-CARIFORUM** (Article 168) together with other rules on transparency of government procurement.

GPA**Article XIX: Information and Review as Regards Obligations of Parties**

1. Each Party 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 Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.
2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.
3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.
4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.
5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:
 - (a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;
 - (b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;
 - (c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and
 - (d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.

To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.

Peru-Singapore

Article 9.8: Publication of information on procurement measures

Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, procedure (including standard contract clauses), and any modifications or additions to this information regarding government procurement covered by this Chapter, in an officially designated electronic medium listed in Annex 9B (Officially Designated Electronic Media for the Publication of Information on Government Procurement), and in such a manner as to enable the other Party and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain such information to the other Party.

CAFTA-DR²⁴

Article 9.3: Publication of Procurement Measures

Each Party shall promptly:

- (a) publish any law or regulation, and any modification thereof, relating to procurement;
- (b) make publicly available any procedure, judicial decision, or administrative ruling of general application, relating to procurement; and
- (c) on request of a Party, provide to that Party a copy of a procedure, judicial decision, or administrative ruling of general application, relating to procurement.

Canada-Peru

Article 1404: Publication of Procurement Information

Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, and procedure regarding procurement covered by this Chapter, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party, on request.

²⁴ A similar provision is found in all the other agreements involving the US, usually under the section on the publication of procurement information.

EC-CARIFORUM
Article 168

Transparency of government procurement

1. Subject to Article 180(4), each Party or Signatory CARIFORUM State shall promptly publish any law, regulation, judicial decision and administrative ruling of general application, and procedures, regarding procurement covered by this Chapter, as well as individual procurement opportunities, in the appropriate publications referred to in Annex VII including officially designated electronic media. Each Party or Signatory CARIFORUM State shall promptly publish in the same manner all modifications to such measures, and shall within a reasonable time inform the others of any such modifications.

54. In all the reviewed agreements, clauses that are similar to Article XIX:2 and 3 of the GPA (i.e., information to be provided by procuring entities to unsuccessful tenderers), are found in the provisions dealing with the "award of contract" or "information on awards"

55. As in Article XIX:4 of the GPA, most reviewed agreements also have conditions on the non-disclosure of confidential information. Parties are also usually not required to disclose information which would impede law enforcement; prejudice fair competition between suppliers; prejudice the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property; or otherwise be contrary to the public interest. In addition, **US-Peru** (Article 9.13) and **Canada-Peru** (Article 1411) have requirements to disclose information on the tender and evaluation procedures used in the conduct of a procurement to a requesting Party sufficient to determine whether a procurement was conducted fairly, impartially and in accordance with relevant disciplines. While no provisions on the disclosure/non-disclosure of information appears in **Australia-Chile**, it is stipulated in Article 15.20 that should any confidential information be conveyed it should not be used for other purposes than those for which it was made available.

US-Peru
Article 9.13: Disclosure of Information

Provision of Information to a Party

1. On request, a Party shall provide to the requesting Party information on the tender and evaluation procedures used in the conduct of a procurement sufficient to determine whether a particular procurement was conducted fairly, impartially, and in accordance with this Chapter. The information shall include information on the characteristics and relative advantages of the successful tender and on the contract price.

Non-Disclosure of Information

2. No Party, procuring entity or review authority, referred to in Article 9.11, may disclose information that the person providing it has designated as confidential, in accordance with domestic law, except with the authorization of such person.
3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, to provide information disclosure of which would:
 - (a) impede law enforcement;
 - (b) prejudice fair competition between suppliers;
 - (c) prejudice the legitimate commercial interests of particular suppliers or procuring entities, including the protection of intellectual property; or
 - (d) otherwise be contrary to the public interest.

Canada-Peru
Article 1411: Disclosure of Information

Provision of Information to a Party

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and consent of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.
3. A Party, including its procuring entities, authorities and review bodies, are not required under this Chapter to release confidential information where release:
 - (a) would impede law enforcement;
 - (b) might prejudice fair competition between suppliers;
 - (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
 - (d) would otherwise be contrary to the public interest.

Australia-Chile
Article 15.20: Confidential Information

When a person of a Party makes available confidential information to the other Party or its procuring entities, the latter Party shall ensure that such information is kept confidential and is not used for a purpose other than that for which it was made available. However, disclosure of confidential information may occur where a Party or its procuring entities are required to make disclosure under its domestic law or where disclosure is authorised by the person that furnished the information.

56. Requirements of Article XIX:5 of the GPA on the collection and provision of statistics on government procurement were not found in any of the reviewed agreements.

L. CHALLENGE PROCEDURES

57. Challenge procedures, which allow for recourse to an independent domestic tribunal or review body are found in all the reviewed agreements. Generally modelled on Article XX of the GPA, these procedures usually require the establishment or designation of an impartial judicial authority, and call for review procedures that are timely, transparent and effective.

58. In particular, the **agreements involving the US and EC-CARIFORUM** (Article 179) contain detailed provisions including paragraphs on: the necessity for each supplier to be allowed sufficient time to submit a challenge (and reply to the procuring entity); reasonable record keeping; and rapid interim measures for the correction of breaches. As in the GPA, the rights of suppliers in the course of challenges proceedings are also specified.

EC-CARIFORUM
Article 179

Bid challenges

1. The Parties and the Signatory CARIFORUM States shall provide transparent, timely, impartial and effective procedures enabling suppliers to challenge domestic measures implementing this Chapter in the context of procurements in which they have, or have had, a legitimate commercial interest. To this effect, each Party or Signatory CARIFORUM State shall establish, identify or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of covered procurement.
2. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge as from the time when the basis of the challenge become known or reasonably should have become known to the supplier. This paragraph does not preclude Parties or Signatory CARIFORUM States from requiring complainants to lodge their complaints within a reasonable period of time provided that duration of that period is made known in advance.
3. Procuring entities shall ensure their ability to respond to requests for a review by maintaining a reasonable record of each procurement covered under this Chapter.
4. Challenge procedures shall provide for effective rapid interim measures to correct breaches of the domestic measures implementing this Chapter.

US agreements²⁵
Domestic Review Of Supplier Challenges

1. Each Party shall permit a supplier to challenge a Party's compliance with its measures implementing this Chapter without prejudice to that supplier's participation in ongoing or future procurement activities. Each Party shall ensure that its review procedures are made publicly available in writing, and are timely, transparent, effective, and consistent with the principle of due process.
2. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge to receive and review challenges that suppliers submit in connection with any covered procurement. Where a body other than such an authority initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of the challenge.
3. Each Party shall authorize the authority that it establishes or designates under paragraph 2 to take prompt interim measures, pending the resolution of a challenge, to ensure that the Party complies with its measures implementing this Chapter and to preserve the supplier's opportunity to participate in the procurement, including by suspending the contract award or the performance of a contract that has already been awarded. However, in deciding whether to apply an interim measure, each Party may take into account any overriding adverse consequences to the public interest if an interim measure were taken. If a Party decides not to apply an interim measure, it shall provide a written explanation of the grounds for its decision.
4. Each Party shall ensure that the authority that it establishes or designates under paragraph 2 conducts its review in accordance with the following:
 - (a) a supplier shall be allowed sufficient time to prepare and submit a written challenge, which in no case shall be less than ten days from the time when the basis of the challenge became known or reasonably should have become known to the supplier;

²⁵ All the agreements involving the US contain a similar section on challenges procedures.

- (b) the procuring entity shall be required to respond in writing to the supplier's challenge and provide all relevant documents to the authority;
- (c) the supplier that initiates the challenge shall be provided an opportunity to reply to the procuring entity's response before the authority makes a decision on the challenge; and
- (d) the authority shall promptly provide decisions relating to a supplier's challenge in writing, with an explanation of the grounds for each decision.

59. Challenge procedures in **Canada-Peru** (Article 1412) are generally modelled on Article XX of the GPA with some differences in the drafting. The agreements concluded between **Australia-Chile** (Article 15.18) and **Peru-Singapore** (Article 9.14) contain general obligations which are less detailed than those found in Article XX of the GPA. However, unlike the GPA, none of the abovementioned agreements provides the challenge body with the authority to specifically order the payment of compensation.

Canada-Peru
Article 1412: Domestic Review Procedures

1. Each Party shall ensure that its entities accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of measures implementing this Chapter arising in the context of a procurement covered by this Chapter in which they have, or have had, an interest. Each Party shall encourage suppliers to seek clarification from its entities through consultations with a view to facilitating the resolution of any such complaints.
2. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by suppliers ("challenge") arising in the context of a procurement covered by this Chapter in which the supplier has, or has had, an interest.
3. Each Party shall ensure that any authority it establishes or designates under paragraph 2 has written procedures that are generally available. Such procedures shall be timely, effective, transparent, non-discriminatory and provide that:
 - (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
 - (b) the participants in the challenge shall:
 - (i) have the right to be heard prior to a decision of the review body being made on the challenge,
 - (ii) have the right to be represented and accompanied,
 - (iii) have access to all challenge proceedings, and
 - (iv) have the right to request that the proceedings take place in public and that witnesses may be presented; and
 - (c) decisions or recommendations relating to challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.
4. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known to the supplier or reasonably should have become known to the supplier.
5. Each Party shall provide that an authority it establishes or designates under paragraph 2 has authority to take interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures for taking interim measures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied.

6. Each Party shall ensure that a supplier's submission of a challenge will not prejudice the supplier's participation in ongoing or future procurements.
7. Where a body other than an authority referred to in paragraph 2 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

Australia-Chile

Article 15.18: Domestic Review of Supplier Challenges

1. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a nondiscriminatory, timely, transparent and effective manner, complaints that suppliers submit, in accordance with the Party's law, relating to a covered procurement. Where such an authority is not a court it shall either be subject to judicial review or shall have procedural guarantees similar to those of a court.
2. Each Party shall make information on complaint mechanisms generally available.

Peru-Singapore

Article 9.14 : Evaluation of tenders

The tender evaluation process shall be fair and nondiscriminatory, and shall have a mechanism to eliminate any potential conflict of interest between persons administering the process and suppliers participating in the process.

Annex 1
Economic Integration Agreements notified between 31 August 2004 to 31 July 2009

RTA	Date of entry into force	Date of Notification	Document of Reference
Canada – Peru	01-Aug-09	31-Jul-09	S/C/N/508
Peru - Singapore	01-Aug-09	30-Jul-09	S/C/N/502
China – New Zealand*	01-Oct-08	21-Apr-09	S/C/N/491
Panama – Costa Rica (Central America)	23-Nov-08	07-Apr-09	S/C/N/490
Australia – Chile	06-Mar-09	03-Mar-09	S/C/N/484
China – Singapore*	01-Jan-09	02-Mar-09	S/C/N/483
US – Peru	01-Feb-09	03-Feb-09	S/C/N/473
US – Oman	01-Jan-09	30-Jan-09	S/C/N/472
Japan – Philippines*	11-Dec-08	11-Dec-08	S/C/N/470
EC – CARIFORUM States EPA	01-Nov-08	16-Oct-08	S/C/N/469/Rev.1
Brunei Darussalam – Japan*	31-Jul-08	31-Jul-08	S/C/N/466
Iceland – Faroe Islands	01-Nov-06	10-Jul-08	S/C/N/465
Japan – Indonesia*	01-Jul-08	27-Jun-08	S/C/N/462
Panama – Chile*	07-Mar-08	17-Apr-08	S/C/N/443
Pakistan – Malaysia*	01-Jan-08	19-Feb-08	S/C/N/440
Japan – Thailand	01-Nov-07	25-Oct-07	S/C/N/419
Chile – Japan	03-Sept-07	24-Aug-07	S/C/N/398
Trans-Pacific Strategic Economic Partnership	28-May-06	18-May-07	S/C/N/394
India – Singapore*	01-Aug-05	03-May-07	S/C/N/393
Panama – Singapore*	24-Jul-06	04-Apr-07	S/C/N/392
US – Bahrain	01-Aug-06	08-Oct-06	S/C/N/375
EFTA – Korea, Republic of	01-Sept-06	23-Aug-06	S/C/N/373
Japan – Malaysia*	13-Jul-06	12-Jul-06	S/C/N/371
Jordan – Singapore*	22-Aug-05	07-Jul-06	S/C/N/370
Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR)	01-Mar-06	17-Mar-06	S/C/N/391
Korea, Republic of – Singapore	02-Mar-06	21-Feb-06	S/C/N/363
US – Morocco	01-Jan-06	30-Dec-05	S/C/N/362
Thailand – New Zealand	01-Jul-05	01-Dec-05	S/C/N/361
Japan – Mexico	01-Apr-05	31-Mar-05	S/C/N/328
Thailand – Australia	01-Jan-05	07-Dec-04	S/C/N/311
US – Australia	01-Jan-05	22-Dec-04	S/C/N/310
EFTA – Chile	01-Dec-04	03-Dec-04	S/C/N/309
Korea, Republic of - Chile	01-Apr-04	08-Apr-04	S/C/N/302

* These agreements did not contain any provisions on government procurement.