

ANNEX XVII

GOVERNMENT PROCUREMENT:

GENERAL NOTES

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Referred to in Article 56

PART A - General notes and derogations by Mexico to Annex XII through XVI

Section 1 - Transitional provisions

Notwithstanding any other provision of Chapter V, Annexes XII through XVI are subject to the following transitional provisions:

Pemex, CFE and Non-Energy Construction

1. Mexico may set aside from the obligations of Chapter V for each calendar year following the entry into force of this Agreement the respective percentage specified in paragraph 2 of:
 - (a) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by Pemex in the year that are above the thresholds set out in Annex XVI.A;
 - (b) the total value of procurement contracts for goods and services and any combination thereof and construction services procured by CFE in the year that are above the thresholds set out in Annex XVI.A; and
 - (c) the total value of procurement contracts for construction services procured in the year that are above the thresholds set out in Annex XVI.A, excluding procurement contracts for construction services procured by Pemex and CFE.

2. The percentages referred to in paragraph 1 are as follows:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
45%	40%	35%	35%	35%
<u>Year 6</u>	<u>Year 7</u>	<u>Year 8 and thereafter</u>		
30%	30%	0%		

3. The value of procurement contracts that are financed by loans from regional and multilateral financial institutions shall not be included in the calculation of the total value of procurement contracts under paragraphs 1 and 2. Procurement contracts that are financed by such loans shall also not be subject to any restrictions set out in Chapter V.

4. Mexico shall ensure that the total value of the procurement contracts under any single FSC class (or other classification system agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any calendar year does not exceed 15 per cent of the total value of the procurement contracts that may be set aside by Pemex or CFE for that year.
5. Mexico shall ensure that after 31 December of the fourth year following the entry into force of this Agreement, Pemex and CFE each shall make all reasonable efforts to assure that the total value of procurement contracts under any single FSC class (or other classification system as agreed by the Parties) that are set aside by Pemex or CFE under paragraphs 1 and 2 for any year does not exceed 50 per cent of the total value of all Pemex or CFE procurement contracts under that FSC class (or other classification system as agreed by the Parties) for that year.

Pharmaceuticals

6. Until 1 January of the eighth year following the entry into force of this Agreement, Chapter V shall not apply to procurement under this Agreement by the Secretaría de Salud, IMSS, ISSSTE, Secretaría de la Defensa Nacional and the Secretaría de Marina of drugs that are not currently patented in Mexico or whose Mexican patents have expired. Nothing in this paragraph shall prejudice protection of intellectual property rights.
7. The Parties agree to review, six years after the entry into force of this Agreement, the transitional period with a view of further extension for up to four years.

Section 2 - Permanent provisions

1. Chapter V does not apply to procurements made:
 - (a) with a view to commercial resale by government owned retail stores;
 - (b) pursuant to loans from regional or multilateral financial institutions to the extent that different procedures are imposed by such institutions (except for national content requirements);
 - (c) by one entity from another entity of Mexico; or
 - (d) for the purchase of water and for the supply of energy or of fuels for the production of energy.
2. Chapter V does not apply to public utility services (including telecommunication, transmission, water and energy services).
3. Chapter V does not apply to any transportation services including: land transportation (CPC 71); water transport (CPC 72); air transport (CPC 73); supporting and auxiliary transport (CPC 74); post and telecommunication (CPC 75); repair services of other transport equipment, on a fee or contractual basis (CPC 8868).

4. Chapter V does not apply to the procurement of transportation services that form a part of, or are incidental to, a procurement contract.
5. Chapter V does not apply to financial services; research and development services; and management and operation contracts awarded to federally funded research and development centres or related to carrying out government, sponsored research programs.
6. Notwithstanding any other provision in Chapter V, Mexico may set aside procurement contracts from the obligations of Chapter V, subject to the following:
 - (a) the total value of the contracts set aside may not exceed the Mexican peso equivalent of:
 - (i) 1.0 billion United States dollars, in each year until 31 December of the seventh year following the entry into force of Chapter V, which may be allocated by all entities except Pemex and CFE;
 - (ii) 1.8 billion United States dollars, in each year beginning 1 January of the eighth year following the entry into force of this Agreement, which may be allocated by all entities;
 - (b) no entity subject to sub-paragraph (a) may set aside contracts in any year of a value of more than 20 per cent of the total value of contracts that may be set aside for that year.
 - (c) the total value of the contracts set aside by Pemex or CFE may not exceed the Mexican peso equivalent of 720 million United States dollars in each calendar year, beginning 1 January of the eighth year following the entry into force of Chapter V.
7. Beginning one year after the date of entry into force of this Agreement, the dollar values referred to in paragraph 6 shall be adjusted annually for cumulative inflation from the date of entry into force of Chapter V, based on the implicit price deflator for the United States Gross Domestic Product (USGDP) or any successor index published by the Council of Economic Advisors in "Economic Indicators".

The dollar values adjusted for cumulative inflation up to January of each year following 2000 shall be equal to the original dollar values multiplied by the ratio of:

- (a) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in "Economic Indicators", current as of January of that year, to

- (b) the implicit USGDP price deflator or any successor index published by the Council of Economic Advisors in “Economic Indicators”, current as of the date of entry into force of this Agreement,

provided that the price deflators under subparagraph (a) and (b) have the same base year. The resulting adjusted dollar values shall be rounded to the nearest million dollars.

- 8. The national security exception provided for in Article 65 of the Agreement covers procurements made in support of safeguarding nuclear materials or technology.
- 9. Notwithstanding any other provision of Chapter V, an entity may impose a local content requirement of no more than:
 - (a) 40 per cent, for labour-intensive turnkey or major integrated projects; or
 - (b) 25 per cent, for capital-intensive turnkey or major integrated projects.

For purposes of this paragraph, a ‘turnkey or major integrated project’ means, in general, a construction, supply or installation project undertaken by a person pursuant to a right granted by an entity with respect to which:

- (a) the prime contractor is vested with the authority to select the general contractors or subcontractors;
 - (b) neither the Government of Mexico nor its entities fund the project;
 - (c) the person bears the risks associated with non-performance; and
 - (d) the facility will be operated by an entity or through a procurement contract of that entity.
- 10. Notwithstanding the thresholds set out in Annex XVI.A, Article 57 (national treatment and non-discrimination) applies to any procurement from locally-established suppliers of oil and gas field supplies or equipment by Pemex at any project site where it performs works.
 - 11. In the event that Mexico exceeds in any given year the total value of contracts it may set aside for that year in accordance with paragraph 6 or paragraphs 1, 2 and 4 of Section 1, Mexico shall consult with the EFTA States with a view to agreement on compensation in the form of additional procurement opportunities during the following year. The consultations shall be without prejudice to the rights of any Party under Chapter VIII (dispute settlement).
 - 12. Nothing in Chapter V shall be construed to require Pemex to enter into risk-sharing contracts.

PART B – EFTA STATES

- a. General notes and derogations by Iceland to Annex XII through XVI**
1. Contracts awarded by entities in Annex XII.B.1.a (central government entities) in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.
 2. With regard to Annex XII.B.2.a (government enterprises), Chapter V shall not apply to the following contracts:
 - contracts which the contracting entities under paragraph 5 award for the purchase of water;
 - contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;
 - contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Annex XII.B.2.a or for the pursuit of such activities in a non-EEA country;
 - contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
 - contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.
 3. With regard to Annex XIV.B.a, Chapter V shall not apply to the following:
 - contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
 - contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
 - contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: “Lög um opinber innkaup” (52/1997) and Regulation (302/1996) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
 - contracts of employment.

4. Chapter V shall not apply to contracts awarded under:
 - an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
 - an international agreement relating to the stationing of troops;
 - the particular procedure of an international organization.
5. Chapter V shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.

b. General notes and derogations by Liechtenstein to Annex XII through XVI

1. Chapter V shall not apply to contracts awarded under:
 - an international agreement and intended for the joint implementation or exploitation of a project by signatory States;
 - the particular procedure of an international organization.
2. Chapter V shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
3. The provision of services, including construction services, in the context of procurement procedures according to Chapter V is subject to the conditions and qualifications for market access and national treatment as will be required by the Principality of Liechtenstein in conformity with its commitments under the General Agreement on Trade in Services (GATS).

c. General notes and derogations by Norway to Annex XII through XVI

1. Contracts awarded by entities in Annex XII.B.1.c (central government entities) in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.
2. With regard to Annex XII.B.2.c, Chapter V shall not apply to the following contracts:
 - contracts which the contracting entities under paragraph 5 award for the purchase of water;
 - contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;

- contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Annex XII.B.2.c or for the pursuit of such activities in a non-EEA country;
 - contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
 - contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.
3. With regard to Annex XIV.B.c, Chapter V shall not apply to the following:
- contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
 - contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
 - contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: "Lov om offentlige anskaffelser m.v." (LOV 1992-11-27 116) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
 - contracts of employment.
4. Chapter V shall not apply to contracts awarded under:
- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
 - an international agreement relating to the stationing of troops;
 - the particular procedure of an international organization.
5. Chapter V shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
6. Chapter V does not apply to procurement subject to secrecy or other particular restrictions with regard to the safety of the realm.
7. When a specific procurement may impair important national policy objectives, the Norwegian Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in Chapter V. A decision to this effect will be taken at the Norwegian Cabinet level.

8. Norway reserves its position with regard to the application of Chapter V to Svalbard, Jan Mayen Island and Norway Antarctic possessions.
9. All petroleum companies in Norway, including the public undertakings, operate on a commercial basis. They apply procurement procedures in accordance with the Utilities Procurement Directive of the EC (Council Directive 93/38/EEC of 14 June 1993), which applies to all companies, both public and private. According to Article 3 of the mentioned Directive, a special procedural regime applies to the petroleum sector (Norwegian regulation: 'forskrift' 18 June 1999 no.667). Norway shall ensure that the special procedural regime and the award of contracts, as set out in the aforementioned Norwegian regulation, be made on the basis of objective, non-discriminatory, transparent and competitive criteria with respect to the suppliers of the other Parties to this Agreement. The competition for contracts is open to any company regardless of nationality. Interested suppliers participate in a pre-qualification procedure carried out by *Achilles* on behalf of the petroleum companies. *Achilles* is accessible to any interested supplier (www.achilles.no).

d. General notes and derogations by Switzerland to Annex XII through XVI

1. Chapter V shall not apply to contracts awarded under:
 - an international agreement and intended for the joint implementation or exploitation of a project by signatory States;
 - the particular procedure of an international organisation.
 2. Chapter V shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
 3. The commitments of Switzerland with respect to services under Chapter V are limited to the initial commitments specified in the final offer of Switzerland presented under the General Agreement on Trade in Services (GATS).
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