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MODIFICATIONS TO APPENDIX I OF THE EUROPEAN COMMUNITIES AND THE UNITED STATES

Communication from the European Communities and the United States

The attached communication* dated 22 December 1995 from the Permanent Representative of the Commission of the European Communities to the International Organizations in Geneva and the Chargé d'Affaires of the Permanent Mission of the United States to the WTO has been received with the request that it be circulated to the Members of the Interim Committee.

*English only

MODIFICATIONS TO APPENDIX I OF THE EUROPEAN COMMUNITIES
AND THE UNITED STATES

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between the European Communities and the United States. Article XXIV of the Agreement contains the provisions on its entry into force and, in conformity with those provisions, I have the honour to send to you the attached communication.

The attached communication from the delegations of the European Communities and the United States contains (i) the General Notes contained in Appendix I of the EC and (ii) Annexes 2 and 3 and the General Notes contained in Appendix I of the US, as amended by the bilateral agreement reached between the EC and the US in Marrakesh in April 1994.

This communication is to be considered a formal notification pursuant to the IWG's Decision of 17 January 1994 on Modifications of the Annexes to Appendix I to the Agreement on Government Procurement before its entry into force on 1 January 1996 and to have been the subject to the consultation of other signatories following a previous communication from the delegations of the European Communities and the United States on 14 June 1994 in conformity with the decision taken by the Interim Committee on 7 December 1995.

This communication is the first step in notifying the full results of the EU-US bilateral agreement pursuant to the IWG's Decision of 17 January 1994 on Modifications of the Annexes to Appendix I to the Agreement on Government Procurement before its Entry into force on 1 January 1996.

A second communication will be made and be subject of the consultation foreseen in the above mentioned IWG's Decision of 17 January 1994 with respect to the mutual coverage agreed between the EU and the US on 19 January 1995 as a result of EU enlargement.

MODIFICATIONS TO APPENDIX I OF THE EUROPEAN COMMUNITIES

AMENDED GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF
ARTICLE III OF APPENDIX I OF THE EC

General notes and derogations from the provisions of Article III

1. The EC will not extend the benefits of this Agreement:

- as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
- as regards the award of contracts, other than for suppliers, listed in Annex 2 to the suppliers and service providers of the USA;
- as regards the award of contracts by entities listed in Annex 3 paragraph
 - (a) (water), to the suppliers and service providers of Canada and the USA;
 - (b) (electricity), to the suppliers and service providers of Canada, Hong Kong and Japan;
 - (c) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (d) (ports), to the suppliers and service providers of Canada;
 - (e) (urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA

until such time as the EC has accepted that the Parties concerned give comparable and effective access for EC undertakings to the relevant markets;

- to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:

- Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2 paragraph 2, until such time as the EC accepts that they have completed coverage of sub-central entities;
- Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EC law, until such time as the EC accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

- Israel, Japan and Korea in contesting the award of contracts by EC entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.
3. Until such time as the EC has accepted that the Parties concerned provide access for EC suppliers and service providers to their own markets the EC will not extend the benefits of this Agreement to suppliers and service providers of:
- Canada, as regards procurement of FSC 36,70 and 74 (special industry machinery: general purpose automatic data processing equipment, software supplies and support equipment (except 7010 ADPE configurations): office machines, visible record equipment and ADP equipment);
 - Canada, as regards procurement of FSG 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment;
 - Korea and Israel as regards procurement by entities listed in Annex 3 paragraph (b), as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - the USA as regards procurement by entities listed in Annex 3 paragraph (d), as regards procurement of dredging services and procurement related to shipbuilding;
 - Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. The Agreement 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. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human funding programmes.
6. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications are not included.
7. This Agreement shall not apply to contracts awarded by entities in Annex 3:
- for the purchase of water and for the supply of energy or of fuels for the production of energy;
 - for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-member country;

- 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 other entities are free to sell or hire it under the same conditions as the contracting entity.
8. This Agreement shall not be applicable to contracts:
- for the acquisition or rental of land, existing buildings or other immovable property or concerning rights thereon;
 - for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.
9. This Agreement shall not be applicable to the award of service contracts by Spanish entities listed in Annex 3 before 1 January 1997 or to the award of contracts by Greek or Portuguese entities listed in Annex 3 before 1 January 1998.

MODIFICATIONS TO APPENDIX I OF THE UNITED STATES

ANNEX 2

Sub-Central Government Entities which Procure in Accordance With the Provisions of this Agreement

Thresholds 355,000 SDRs for supplies and services; 5 million SDRs for construction

List of Entities

Arizona

Executive branch agencies

Arkansas

Executive branch agencies, including universities but excluding the Office of Fish and Game and construction services

California

Executive branch agencies

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services
Connecticut Department of Transportation
Connecticut Department of Public Works
Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)
State Universities
State Colleges

Florida*

Executive branch agencies

Hawaii

Department of Accounting and General Services (with the exception of procurements of software developed in the state and construction)

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Illinois*

Department of Central Management Services

Iowa*

Department of General Services
Department of Transportation
Board of Regents' Institutions (universities)

Kansas

Executive branch agencies, excluding construction services, automobiles and aircraft

Kentucky

Division of Purchases, Finance and Administration Cabinet, excluding construction projects

Louisiana

Executive branch agencies

Maine*

Department of Administrative and Financial Services
Bureau of General Services (covering state government agencies
and school construction)
Maine Department of Transportation

Maryland*

Office of the Treasury
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Human Resources
Department of Licensing and Regulation
Department of Natural Resources
Department of Public Safety and Correctional Services
Department of Personnel
Department of Transportation

Massachusetts

Executive Office for Administration and Finance
Executive Office of Communities and Development
Executive Office of Consumer Affairs
Executive Office of Economic Affairs
Executive Office of Education
Executive Office of Elder Affairs
Executive Office of Environmental Affairs
Executive Office of Health and Human Service
Executive Office of Labor
Executive Office of Public Safety
Executive Office of Transportation and Construction

Michigan*

Department of Management and Budget

Minnesota

Executive branch agencies

Mississippi

Department of Finance and Administration (does not include services)

Missouri

Office of Administration
Division of Purchasing and Materials Management

Montana

Executive branch agencies (only for services and construction)

New York*

State agencies
State university system
Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates

In addition to the exceptions noted at the end of this annex, transit cars, buses and related equipment are not covered.

Nebraska

Central Procurement Agency

New Hampshire*

Central Procurement Agency

Oklahoma*

Office of Public Affairs and all state agencies and departments subject to the Oklahoma Central Purchasing Act, excluding construction services.

Oregon

Department of Administrative Services

Pennsylvania*

Executive branch agencies, including:

Governor's Office
Department of the Auditor General
Treasury Department
Department of Agriculture
Department of Banking
Pennsylvania Securities Commission
Department of Health
Department of Transportation
Insurance Department
Department of Aging
Department of Correction
Department of Labor and Industry
Department of Military Affairs
Office of Attorney General
Department of General Services
Department of Education
Public Utility Commission
Department of Revenue
Department of State
Pennsylvania State Police
Department of Public Welfare
Fish Commission
Game Commission
Department of Commerce
Board of Probation and Parole
Liquor Control Board
Milk Marketing Board
Lieutenant Governor's Office
Department of Community Affairs
Pennsylvania Historical and Museum Commission
Pennsylvania Emergency Management Agency
State Civil Service Commission
Pennsylvania Public Television Network
Department of Environmental Resources
State Tax Equalization Board
Department of Public Welfare
State Employees' Retirement System
Pennsylvania Municipal Retirement Board
Public School Employees' Retirement System

Pennsylvania Crime Commission
Executive Offices

Rhode Island

Executive branch agencies, excluding boats, automobiles, buses and related equipment

South Dakota

Central Procuring Agency (including universities and penal institutions)

In addition to the exceptions noted at the end of this annex, procurements of beef are not covered.

Tennessee

Executive branch agencies (excluding services and construction)

Texas

General Services Commission

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration
Department of Transportation
State Universities

In addition to the exceptions noted at the end of this annex, procurements of fuel, paper products, boats, ships and vessels are not covered.

Wisconsin

Executive branch agencies, including

Department of Administration
State Correctional Institutions
Department of Development
Educational Communications Board
Department of Employment Relations
State Historical Society
Department of Health and Social Services
Insurance Commissioner

Department of Justice
Lottery Board
Department of Natural Resources
Administration for Public Instruction
Racing Board
Department of Revenue
State Fair Park Board
Department of Transportation
State University System

Wyoming*

Procurement Services Division
Wyoming Department of Transportation
University of Wyoming

Notes to Annex 2

In addition to the conditions specified in the General Notes, the following conditions apply:

1. For those states marked by an asterisk with pre-existing restrictions, the Agreement does not apply to procurement of construction-grade steel (including requirements on subcontracts), motor vehicles and coal.
2. The Agreement shall not apply to preferences or restrictions associated with programs promoting the development of distressed areas and businesses owned by minorities, disabled veterans and women.
3. Nothing in this annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. The Agreement shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway projects.

ANNEX 3

All Other Entities which Procure in Accordance With the Provisions of this Agreement

Threshold: 400,000 SDRs for supplies and services (except as specified below)
5 million SDRs for construction

List of Entities

The following entities at the SDR equivalent of \$250,000 for supplies and services:

Tennessee Valley Authority

Power Marketing Administrations of the Department of Energy

- Bonneville Power Administration
- Western Area Power Administration
- Southeastern Power Administration
- Southwestern Power Administration
- Alaska Power Administration
- St. Lawrence Seaway Development Corporation

The following entities are 400,000 SDRs for supplies and services:

The Port Authority of New York and New Jersey with the following exceptions:

- Maintenance, repair and operating materials and supplies (e.g., hardware, tools, lamps/lighting, plumbing);
- In exceptional cases, individual procurements may require certain regional production of goods if authorized by the Board of Directors;
- Procurements pursuant to multi-jurisdictional agreement (i.e., for contracts which have initially been awarded by other jurisdictions).

The Port of Baltimore (subject to the conditions specified for the state of New York in Annex 2)

The New York Power Authority (subject to the conditions specified for the state of New York in Annex 2)

Rural Electrification Administration Financing:

- (1) waiver of Buy American restriction on financing for all power generation projects (restrictions on financing for telecommunication projects are excluded from the Agreement);
- (2) application of Code-equivalent procurement procedures and national treatment to funded projects exceeding the thresholds specified above.

Notes to Annex 3

1. With respect to these entities, the Agreement shall not apply to restrictions attached to Federal funds for airport projects.
2. The conditions specified in the General Notes apply to this Annex.

General Notes

1. Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses.
2. Except as specified otherwise in this Appendix, procurement in terms of U.S. coverage does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to this agreement.
3. Procurement does not include the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.
4. Where a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract.
5. For goods and services (including construction) of the following countries and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 or the waiver described in Annex 3:

Canada
Austria
Switzerland
Norway
Sweden
Finland
Japan

The United States is prepared to amend this note at such time as coverage with respect to these annexes can be resolved with a Party listed above.

6. For construction services of the Republic of Korea and suppliers of such services, this Agreement applies only to procurement of the entities listed in Annexes 2 and 3 above a threshold of 15 million SDRs.
7. For goods and services (including construction) of Japan and suppliers of such goods and services, this Agreement does not apply to procurement by the National Aeronautics and Space Administration.
8. A service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4.