

17. Replace Chapter 17 (Consultations and Dispute Settlement) with:

## **CHAPTER 17**

### **GOVERNMENT PROCUREMENT**

#### **Article 1 Objectives**

The objectives of this Chapter are to recognise the importance of promoting the transparency of laws, regulations and procedures, facilitating participation by MSMEs, ensuring integrity, promoting environmentally sustainable procurement and the use of electronic means in procurement, and enhancing co-operation among the Parties, regarding government procurement.

#### **Article 2 Scope**

1. This Chapter shall apply to the laws, regulations and procedures of a Party regarding government procurement implemented by its central government entities, as defined or notified by that Party for the purposes of this Chapter.
2. Nothing in this Chapter shall require a Least Developed Country Party to undertake any obligation regarding transparency and co-operation. A Least Developed Country Party may benefit from co-operation among the Parties.

#### **Article 3 General Principles**

The Parties recognise the role of government procurement in furthering the economic integration of the region so as to promote growth and employment. Where government procurement is expressly open to international competition, each Party shall consider ways to promote and apply important principles of transparency, value for money, and accountability and due process in its government procurement

procedures, where appropriate and consistent with that Party's laws, regulations and procedures.

#### **Article 4 Transparency**

1. Each Party shall make publicly available any law, regulation or procedure regarding government procurement, including, to the extent possible and as appropriate, information on where tender opportunities and contract award notices are published.

2. If a Party maintains any law, regulation or procedure that provides preferential treatment for domestic goods, services or suppliers, including MSMEs, the Party shall endeavour to make such laws, regulations or procedures, including the criteria for eligibility, publicly available.

3. To the extent possible and as appropriate, each Party endeavours to make available and update the information referred to in Paragraphs 1 and 2 through electronic means.

4. Each Party shall specify in Annex 17A (Paper or Electronic Means Utilised by Parties for the Publication of Transparency Information) the paper or electronic means utilised by that Party to publish the information referred to in Paragraphs 1 and 2.

5. Each Party endeavours to make the information referred to in Paragraphs 1 and 2 available in the English language.

6. To the extent possible and if appropriate, where a request has been made by an unsuccessful supplier, a Party's procuring entity is encouraged to provide that unsuccessful supplier with an explanation of the reasons why the procuring entity did not select that supplier's tender, or an explanation of the advantages of the successful supplier's tender.

**Article 5**  
**Use of Electronic Means**

In respect of procurement conducted by entities within the scope of this Chapter, the Parties shall endeavour to use electronic means to the widest extent practicable for the publication of notices, tender documentation, information exchange and communication, and the submission of tenders.

**Article 6**  
**Environmentally Sustainable Procurement**

The Parties recognise that government procurement can contribute to environmental sustainability. Accordingly, the Parties shall endeavour to incorporate environmentally sustainable procurement policies and practices to the extent possible and as appropriate.

**Article 7**  
**Ensuring Integrity in Procurement Practices**

1. Each Party shall ensure that criminal or administrative laws, regulations, and procedures exist to address corruption in its government procurement. This may include rendering ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory.
  
2. Each Party shall have in place laws, regulations or procedures to manage any potential conflict of interest on the part of those engaged in or having influence over a government procurement.

**Article 8**  
**Facilitation of Participation by MSMEs**

The Parties recognise the important contribution that MSMEs can make to economic growth and employment, and the importance of facilitating the participation of MSMEs in government procurement.

**Article 9**  
**Co-operation**

1. The Parties shall endeavour to co-operate on matters relating to government procurement, with a view to achieving a better understanding of each Party's respective government procurement systems. Such co-operation may include:

- (a) exchanging information on Parties' laws, regulations and procedures, and any modifications thereof;
- (b) providing training, technical assistance or capacity building to Parties, and sharing information on these initiatives;
- (c) sharing information on best practices, including those in relation to MSMEs;
- (d) sharing information on electronic procurement systems; and
- (e) sharing information on developing and expanding the use of electronic means in government procurement systems.

**Article 10**  
**Review**

The Parties may review this Chapter pursuant to Article 10 (Review) of Chapter 21 (Final Provisions) with a view to

improving this Chapter to facilitate government procurement, as agreed by the Parties.

### **Article 11 Contact Points**

Each Party shall, within 30 days of the date of entry into force of the Second Protocol for that Party, designate one or more contact points to facilitate co-operation and information sharing under this Chapter and notify the other Parties of the relevant details of that contact point or those contact points. Each Party shall promptly notify the other Parties of any change regarding the relevant details of its contact point or contact points.

### **Article 12 Non-Application of Dispute Settlement**

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.