



# *CAFTA-DR Facts*

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## **U.S. Free Trade Agreements in the Western Hemisphere and the Benefits and Accomplishments of Government Procurement Provisions**

The government procurement chapter of a free trade agreement (FTA) ensures that purchases made by government entities are conducted in a non-discriminatory, predictable and transparent fashion. The chapter also provides guaranteed market access for each Party's suppliers to the government procurement of the other Parties. FTA government procurement chapters cover purchases of goods and services (including construction) by major government entities and enterprises at the central government level. In addition, the U.S.-Chile FTA and the Dominican Republic-Central America-United States FTA (CAFTA-DR) provide coverage at the sub-central level.

Each Party specifies in an annex to the chapter the procurement that it covers under the FTA. The FTA annex specifies the government entities covered by the chapter, specific goods and services that are excluded from coverage of the chapter, and the monetary thresholds above which the chapter applies. Parties may also exclude from the disciplines of the chapter measures that are necessary for the public good, including the environment and intellectual property, or for national security.

### **Examples of chapter provisions guaranteeing equal access, transparency and predictability:**

- A trading partner's procuring entities are prohibited from favoring a domestic supplier over a U.S. supplier in procurement covered by the chapter.
- A trading partner's procuring entities are required to publish notices of their intended procurements and provide the time and information necessary for suppliers to submit responsive tenders.
- A trading partner is obligated to establish or maintain an independent authority with the power to review a supplier's complaints regarding the conduct of government procurement, such as complaints that the supplier was treated unfairly in the procurement process.
- The use of technical specifications in procurements are disciplined, including through requirements that they be based on international or recognized national standards, and whenever appropriate, in terms of performance, rather than design, requirements.
- The chapters include a general prohibition of offsets, such as local content requirements.
- The chapter also provides for certain exclusions such as the U.S. reservation for small business and minority set-aside programs.

**Some of the specific benefits and accomplishments of the procurement provisions of U.S. FTAs in the Western Hemisphere are as follows:**

**NAFTA**

- NAFTA has given U.S. suppliers access to important Mexican government-controlled enterprises such as PEMEX (national oil company) and CFE (National electric company).
- U.S. suppliers of oil and gas field equipment and services, heavy electrical equipment, communications and computer systems, electronic, steel and pharmaceutical products and medical equipment and construction services particularly benefit from the NAFTA's government procurement provisions.
- NAFTA has substantially increased opportunities for U.S. exports to Canada and Mexico in construction and environmental services, as well as computer software and design.
- NAFTA has allowed for performance incentives in services contracts such as drilling activities. This means, for example, that for the first time, a U.S. firm can be rewarded if it completes a contract early or drills a productive well. Previously, contractors in the oil industry were paid a flat fee, regardless of performance.
- NAFTA permits U.S. firms to negotiate directly with buyers of natural gas and electricity and to conclude sales and supply contracts with the buyers. PEMEX and CFE participate as the entities responsible for transporting the gas or electricity.

**CAFTA-DR**

- As a result of the Agreement, Honduras has eliminated the discriminatory requirement that foreign firms act through a local agent in order to participate in public tenders.
- Guatemala will use its Internet-based open procurement system known as Guatecompras to ensure full transparency in procurement actions. The value of public procurements through Guatecompras has increased from \$112 million in 2004 to nearly \$2 billion as of August 2006. Additionally, the national procurement law was amended to provide arbitration for firms to dispute awards of tenders.
- In order to implement the Government Procurement Chapter, the Dominican Republic passed a procurement law to ensure that procuring entities conduct procurements in a transparent and non-discriminatory manner. It also calls for the Dominican Republic to reduce domestic participation requirements in construction projects.
- In order to ensure integrity in the procurement process and fight corruption, CAFTA-DR governments are required to establish debarment procedures to disqualify suppliers that engage in fraudulent or illegal activities.
- Prior to CAFTA-DR, U.S. companies operating in the region complained of inadequate notification of pending procurements and vague bidding timetables. As a result of the Agreement, governments are obligated to keep tenders open for specified periods and publish notices of intended procurement.

## Chile

- In response to the Chapter's requirement that there be advance public notice of procurements, the Chilean government created ChileCompra, the most advanced online government procurement site in Latin America. It has boosted the opportunities for U.S. exporters to sell to the Chilean government and has increased transparency in the Chilean public purchasing market.
- U.S. firms are guaranteed fully transparent procurement procedures to sell goods and services to a wide range of Chilean government entities, including airports and seaports.
- For the first time, build-operate-transfer contracts (BOTs) were expressly recognized as within the scope of the Government Procurement chapter of a U.S. free trade agreement. BOTs act as financing vehicles for large-scale construction projects including public work facilities.
- In another first for a U.S. free trade agreement, the Government Procurement Chapter specifically requires that each government make solicitation of a bribe and the bribery of either domestic or foreign procurement officials a criminal offense.