

(xii) Government procurement

92. Since October 1991, when the "Buy Argentina" programme was eliminated, there has been no requirement for government to use, or a preferential margin favouring, domestic companies, except for telecommunications where a 10% preferential margin remains in force; in practice, this margin does not apply because of privatization in the sector (Chapter IV).¹ In case of equality of bids, preference is given to suppliers of domestic goods and to local bidders for services and public works contracts.² Argentina is not a member of the WTO Committee on Government Procurement, although it has been an observer since April 1997, with a view to deciding on its eventual accession to the Agreement.³

93. In 1997 the Argentine public procurement market was estimated at more than US\$2.2 billion or 45% less than in 1993; between 1994 and 1996 public expenditure for the purchase of goods and services stabilized at an annual average level of about US\$2.5 billion.⁴ For 1998, the authorities have announced a US\$1.9 billion investment in public works.⁵ No detailed operational data is available because the Argentine statistical system does not allow for the breakdown of data by: share of services procurement in total procurement; share of procurement of each service in total domestic output of the service; or share of procurement of each service in total domestic consumption of the service.⁶

94. No MFN treatment provisions are contained in the domestic legislation, which distinguishes between goods and services, and public works.⁷ At present, three procurement or contracting procedures are available: public or open tendering; selective or private tendering (at least six registered suppliers on a rotating basis); and direct contracting (three suppliers). Direct contracting may be awarded in the case of small amounts or for reasons of urgency, unforeseen circumstances, State security, single supplier, void or unacceptable tender, scientific, special licences or privileges, specific technical or artistic works, need for secrecy, etc. Table III.6 indicates the threshold values for selecting a procedure.

95. Preference is given to the use of public tendering.⁸ Notices of tenders and direct contracting are published in the Official Bulletin (or in two mass circulation newspapers of the Federal Capital) and on the notice-board of the procuring body; when it is presumed that interest may exist abroad,

¹ Between November 1989 and October 1991, the "Buy Argentina" programme was suspended and replaced by a 10% preference for domestic goods and services; this preference was eliminated by Decree 2284/91 (31 October 1991) ratified by Law 24307 (23 December 1993).

² For price comparison purposes, the price of a foreign good includes all import duties, taxes and charges. Imported raw materials, inputs or materials must not exceed 50% of the total cost of a domestic good.

³ WTO documents GPA/M/5, 11 April 97, and WT/L/206, 24 April 1997.

⁴ Data based on government expenditure for goods and services cited in MEOSP (1997), and MEOSP's website.

⁵ *Latin American Weekly Report*, 2 September 1997.

⁶ WTO document S/WPGR/W/11/Add.19, 2 May 1997.

⁷ Legislation, cited in WTO document S/WPGR/W/11/Add.19, 2 May 1997.

⁸ WTO document S/WPGR/W/11/Add.19, 2 May 1997.

publication in other countries may be authorized.⁹ All state contracts are published in the Official Bulletin.¹⁰

96. Generally, there is no requirement of prior enrolment in a register to allow potential suppliers to tender for the supply of goods and services under public procurement procedures. Nevertheless, a roster of suppliers (bidders or contractors) is kept by the National General Accounting Office; the procuring entity may request that a firm registers in the roster within five days following the opening of a bid. Moreover, for public works tenders, enrolment in the National Register of Public Works Building Contractors is an essential prerequisite for the qualification and authorization of firms; participation of non-registered local firms may be permitted in case of exceptional factors affecting the execution of the work. Foreign firms participating in international tenders do not need to be established in Argentina.

Table III.6
Threshold values for selecting public tender procedures

	Direct contract	Selective tender	Public tender
Goods and services	Up to US\$100,000	Up to US\$1 million	Over US\$1 million
Public works	Up to US\$69,000		Over US\$69,000
	Supplementary works for an ongoing work according to scale (limit of US\$26,000 for works up to a value of US\$129,500 or from 5 to 20% of the original cost for larger amounts).		Over US\$69,000
Public works concession	No threshold stipulated	No	No threshold stipulated

Note: No comments were provided by the Argentine authorities to the WTO Secretariat on the content of this table.

Source: WTO document S/WPGR/W/11/Add.19, 2 May 1997.

92. Since 1994, the government procurement regime has been based on the centralization of rule-making and the decentralization of operational functions. Thus, the National Procurement Office in the Secretariat of Finance of MEOSP is responsible for policy- and rule-making as well as elaborating operational management systems, while each Ministry, decentralized body and state enterprise carries out its procurement in an independent manner. Public entities maintain a purchasing need register and elaborate their procurement programmes in the framework of development plans set down by the appropriate ministry or secretariat.

93. Procurement of goods and services by the National Administration is also subject to mandatory controls by the Office of the Auditor-General (SIGEN) through a Reference Price System; these affect public tendering (over US\$750,000), selective tendering (not less than US\$500,000) and direct contracting (at least US\$75,000). SIGEN may control any procurement operation regardless of value thresholds as well as contracts under the public works regime.

94. In August 1996, the MEOSP was charged with the preparation of a new regulatory and operational framework, encompassing changes since 1972, with a view to improving transparency and flexibility in public procurement procedures as well as increasing competition, thus improving the

⁹ Several tenders have reportedly been disqualified on minor points of detail or through failure to comply with customers' special requirements. Omissions in filling in the bid forms open the bidder to legal objections from competitors, against which it is difficult to appeal successfully (Dun & Bradstreet Information Services (1996).

¹⁰ Dun & Bradstreet Information Services (1996).

quality of public expenditure.¹¹ Future regulations may include new principles as well as procurement and suppliers' screening procedures.

95. At regional level, work on public procurement has been undertaken in the context of the FTAA (Working Group on Public Procurement) and, since 1994, the MERCOSUR Technical Group No. 4 and Ad Hoc Group on Government Procurement (established in 1997).¹² Preparatory work within MERCOSUR has consisted of: identifying procurement policies that may distort competition; classifying applied measures into MERCOSUR-compatible and non-compatible; and formulating proposals for the harmonization or progressive elimination of measures, as appropriate. By August 1996, MERCOSUR members had exchanged their domestic legislation for study by partner countries. In the context of the Ad Hoc Group on Government Procurement the objective is the elaboration of a regime of procurement of goods and services with provisions on its scope, national treatment, disciplines and transparency procedures as well as institutional matters; criteria, procedures and deadlines for the negotiation of disciplines were dealt at the first meeting of the Ad Hoc Group on Government Procurement in March 1998. At the FTAA level, following the submission of replies to a questionnaire for the establishment of an inventory of national legislations, a Negotiation Group was established in March 1998 to carry out negotiations aimed at expanding access to the government procurement markets of the FTAA countries. More specifically, this is to involve the establishment of a normative framework ensuring transparency, the setting of scope for non-discrimination, and the adoption of dispute settlement procedures.¹³

¹¹ Replies of Argentina to the Working Group on Public Procurement in the context of the project on the Free Trade Area of the Americas and *Jefe de Gabinete de Ministros* (1997).

¹² GMC Resolution 79/97.

¹³ Ministerial Declaration of San José, Fourth Trade Ministerial Meeting, 19 March 1998. More information on the FTAA negotiations is found in Chapter II of this report.