

(v) Government procurement

145. Uruguay has not adopted the WTO Agreement on Government Procurement, which is a plurilateral agreement and not covered by the Single Undertaking of the Uruguay Round.

146. Since 1997 government procurement procedures have been regulated by Decree No. 194/997 which stipulates that contracting should be conducted by means of a public tender.¹ However, other methods such as an "abbreviated tender" or direct purchases can be used, depending upon the value of the contract (Table III.7). In addition, the Executive can authorize special regimes and procedures for contracting if the characteristics of the market or of the goods and services to be acquired so require it (Article 34). Tenders are public and open to all bidders, domestic and foreign (Article 43).

¹ This section is based on Decree No. 194/997 - *Apruébase el Texto Ordenado de Contabilidad y Administración Financiera y Normas Concordantes y Complementarias* (T.O.C.A.F.), 10 June 1997.

Table III.7
Government procurement

Types of procurement	
1.	By abbreviated tendering when the amount does not exceed Ur\$700,000, this limit being fixed at Ur\$4.1 million for State industrial and commercial autonomous entities and decentralized services (listed in Article 221 of the Constitution) (Article 41).
2.	Directly when the amount does not exceed Ur\$35,000, this limit being fixed at 105,000 pesos for State industrial and commercial autonomous entities and decentralized services (listed in Article 221 of the Constitution) (Article 41).
3.	Directly or by procedure determined by the contracting authority for reasons of sound administrative practice in the following cases: <ul style="list-style-type: none"> - Between State organizations and departments or with non-governmental public entities; - when in a public or abbreviated tender procedure or auction contracts are not awarded or no valid or acceptable bids are submitted or the bids are clearly unsuitable. In this case the contract must be awarded on the same basis and specifications as those of the unsuccessful procedure, in some cases with invitations being extended to the original bidders in addition to those whom the administration considers necessary; - to purchase exclusively manufactured goods or contract for exclusive services, provided that they cannot be replaced by similar goods or services; - for purchasing, executing or restoring works of art and scientific or historical works; - purchases of goods not produced or supplied in the country which must be made through international organizations; - repair of machinery, equipment or engines whose dismantling, movement or prior inspection would be burdensome in the event of an invitation to tender; - contracts which must be concluded in foreign countries; - when the circumstances require that the operation must be kept secret; - in emergencies (a certificate of the Ministry of Economy and Finance is required); - when there is an obvious shortage of the goods or services to be procured; - the purchase of goods sold at public auctions; - the purchase of livestock for breeding, where special specimens are involved; - the sale of products intended for economic development or for the satisfaction of sanitary requirements; - purchases of teaching or bibliographic material from abroad; - the purchase of fresh food; - the purchase abroad of crude oil and its derivatives, basic oils and additives for lubricants; - purchases made within the framework of intergovernmental agreements or with foreign State entities involving an exchange for national exports.

147. The invitation to participate in a public tender or a bid is published in the Official Journal and in one other newspaper of wide circulation and, if considered necessary to ensure widespread publicity, is also publicized by other means. To promote the participation of foreign suppliers, tenders are publicized abroad through Uruguay's diplomatic missions. These announcements take place 15 days prior to the date of the opening of the tender, or 30 days prior to the opening date when the participation of foreigners in the process is deemed necessary. In cases of emergency these periods can be reduced (Article 47).

148. At least six companies are invited to participate in the "abbreviated tender", three days in advance of the opening date. This time period could be reduced even to 48 hours if circumstances so require it. The tender takes place even if less than six companies present their bids (Article 48).

149. Contracts for purchasing and contracting goods and services financed by international financial agencies, such as the Inter-American Development Bank and World Bank, stipulate the procurement procedures. However, these procedures must respect the general principles of administrative contracts, especially when selecting the suppliers (Article 42).

150. State and para-state institutions give preference to national over foreign products, where these are of similar quality. This requirement allows local bidders to win contracts even if their bids are up to 10% higher than foreign bids.² In contracts for public works preference is given to those that ensure the highest utilization of domestic raw materials and labour. Among foreign bidders, preference is shown to those who offer to purchase and use local products.³ The authorities indicated that imports are a major component of government purchases, since the required goods can often not

² Law No. 16.170 of 28 December 1990, which stipulated that the margin of preference of 40% established in 1961 was to be reduced 10% by 1992.

³ Bureau of National Affairs, Inc. (1997).

be supplied locally. However, given the decentralization of public purchases, the authorities were unable to supply the Secretariat with detailed data regarding total public sector purchases or the share of imports therein.

151. In cases in which the public contract entails the purchase of products abroad, the law stipulates that preference is to be given to those bidders that ensure market access for Uruguayan exports (Article 53), but the authorities noted that in practice this is not applied.

152. The Uruguayan Constitution allows for the possibility of recourse to administrative and judicial bodies if an interested party wishes to contest the award of a contract (Articles 317-319 and 309-313 of the Uruguayan Constitution).

153. There is a resolution of the MERCOSUR Common Market Group, already endorsed by the Council of Ministries, which establishes the creation of an ad hoc group in charge of designing a government procurement regime for MERCOSUR.⁴ This group met for the first time on 26-27 March 1998 and, in another meeting in June 1998, the members agreed to start negotiations.

⁴ *Diario El País*, 15 December 1997.