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*Tendering Procedures*

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.
2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.
3. For the purposes of this Agreement:
  - (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.
  - (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.
  - (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.

**1.2 Article VII as an example of an "affirmative obligation"**

1. The Panel in *Guatemala – Cement I* referred to Article VII as an example of an "affirmative obligation" in the WTO Agreements that requires a Member to do something:

"Clearly, the WTO Agreements impose obligations on Members which govern 'measures' traditionally defined (e.g., a tariff or quantitative restriction), but many other obligations imposed by the Agreements do not apply to or are not implemented in the context of 'measures'. Examples of the latter include affirmative obligations that require a Member to do something, such as enact domestic law or regulations, undertake some mandatory procedure, or undertake some specified action such as submitting a notification to the WTO. In such cases of affirmative obligations on Members, the failure of a Member to effectuate the obligation by taking necessary action, such as the failure of a Member to enact certain intellectual property protections, to open a procurement to public bidding<sup>1</sup>, or to make a required notification, can give rise to disputes."<sup>2</sup>

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<sup>1</sup> (*footnote original*) Agreement on Government Procurement, Article VII. See Norway - Procurement of Toll Collection Equipment for the City of Trondheim, GPR.DS2/R, adopted 13 May 1992, para. 5.1. In this case, the Panel concluded that the Government of Norway had not complied with its obligations under the Tokyo Round Agreement on Government Procurement in its conduct of the procurement in question in that the single tendering of the procurement in question was not justified under the Agreement.

<sup>2</sup> Panel Report, *Guatemala – Cement I*, para. 7.25.