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Article VIII

Qualification of Suppliers

In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:

(a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;

(b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;

(c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

(d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;

(e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;

(f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;

(g) each Party shall ensure that:

(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and

(ii) efforts be made to minimize differences in qualification procedures between entities.

(h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

1.2 Article VIII(c) – "participate" in a procurement

1. The Panel in *Canada – Wheat Exports and Grain Imports* touched upon the meaning of the term "participate" in Article VIII(c) in the context of interpreting the expression "compete for participation" in Article XVII:1(b) of the GATT 1994. The Panel stated that it had no difficulty accepting the notion that enterprises interested in buying the product offered for sale by a state trading enterprise may compete to "participate" in the state trading enterprise's sales within the meaning of Article XVII:1(b) of the GATT 1994, and then noted that:

"It is instructive to note here that the term 'participate' appears to be used in very similar context in the *WTO Agreement on Government Procurement*. Article VIII(c) of the *Agreement*, which deals with the 'Qualification of Suppliers', provides ...

Of course, the closest analogy in the state trading context to the situation envisaged in Article VIII(c) would not be an export STE, but an import STE. Under the second clause of Article XVII:1(b), an import STE is to afford the enterprises of other Members adequate opportunity to 'compete for participation in [its] purchases'. We wish to stress, however, that we refer to Article VIII(c) purely for illustrative purposes; we do not rely on that provision as relevant context."¹

Current as of: December 2020

¹ Panel Report, *Canada – Wheat Exports and Grain Imports*, fn 156.