

# TRADE AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, AND COLOMBIA, ECUADOR AND PERU

## VIII MEETING OF THE GOVERNMENT PROCUREMENT SUB-COMMITTEE MINUTES

### Videoconference (PE HOST) NOVEMBER 17, 2021

#### Introduction

Colombia, Ecuador, the European Union (EU) and Peru ("the Parties") attended the VIII meeting of the Sub-Committee virtually (via Microsoft Teams). The Peruvian delegation (chair) welcomed the participants (listed under Annex I).

#### 1. Adoption of the draft Agenda

PE presented the agenda which had been circulated previously for consideration of the Parties. Due there were no further comments on this matter, the Parties finally adopted the agenda.

#### 2. Issues presented by Parties

##### 2.1 Issues presented by the European Union

##### *a. In relation to Colombia: Access to procurement entities at the sub-central level of government in Colombia— Clarifications on Implementation of Committee Decision 1/2017*

The EU stressed that this is a longstanding issue as EU companies' have limited access to public tenders at sub-central level in Colombia. The EU signalled long-standing problems in procurement entities, among others, operating transport and metros (such as: Metro de Medellín and Metro de Bogotá). The EU also considered there is a lack of transparency in tendering procedures.

In this sense, the EU considers that there is currently an imbalance between Colombia's coverage and the EU's coverage in the FTA. The EU noted the limited access for EU companies to the Colombian market, dominated by domestic companies. It also recalled that the aim of an Agreement is to facilitate trade, and as in the current situation EU companies are not granted national treatment, invited Colombia to find a solution. The EU also inquired about the indicative list of procuring entities which are covered by the Agreement, including the timeline for work and in which manner will be drafted, and suggested to be shared in advance.

Colombia mentioned that the work related to drafting of the first indicative list of Decision 1/2017 is still in progress and perhaps for next year (mid 2022) it will be completed. Also, Colombia pointed out that this is just an illustrative list that seeks to reflect, in a non-exhaustive manner and only for EU's information, the entities covered by Decision 1/2017. Moreover, Colombia clarified that the list does not involve any additional obligations apart from obligations that are already on the Agreement and the Annex of Government Procurement.

Regarding Corporaciones Autónomas Regionales (CARs), Colombia indicated that after internal consultations and detailed research, they determined its legal nature is not regional, but national level, as it was established by National Constitution. Nonetheless, the Agreement states that only

national level entities that are expressly mentioned are covered by the Government Procurement chapter (GP Chapter). Colombia explained that as CARs were not listed at the time when the Agreement was negotiated, it is clear that they were excluded. However, Colombia would be open to negotiate bilaterally with the EU the inclusion of these entities in the Agreement under reciprocal basis.

In respect to Metro de Medellín and Metro de Bogotá, Colombia clarified that these are not covered by Decision 1/2017, since they are considered of "industrial or commercial character" under Colombian law and, consequently, excluded from the GP Chapter. Moreover, Colombia stated that it has not listed those agencies in any GP chapter, not even with the EU, having provided the EU so far with the best market access commitments possible. Finally, both Parties agreed to have bilateral conversations regarding the interpretive list issue.

*b. In relation to Peru: issues of overly restrictive technical specifications and of reference to standards in technical specifications*

The EU reiterated its concern about this issue, as the drafting of overly restrictive technical specifications by Peruvian contracting authorities constitutes an obstacle for EU companies wanting to access public procurement markets in Peru and thus impedes competition. In particular, the EU noted that drafting of overly restrictive technical specifications has a "chilling effect", deterring EU companies from participating in tenders, and excluding potential innovation brought by EU suppliers.

In addition, the EU asked regarding the initiative for a new draft of Public Procurement Law (which was mentioned on last Subcommittee meeting) and the implementation of regulation on technical specifications and standards.

Peru explained that one of the actions to solve this issue was to continue and strengthen the capacity building that has been given to different entities (Supervising Agency on Government Procurement - OSCE, Ministry of Economy and Finance - MEF, PERU COMPRAS, representatives from ministries who are responsible for homologation processes and legal division of Ministry of Foreign Trade and Tourism - MINCETUR) since 2019.

Due to the COVID-19 pandemic, it could not be possible to do these training courses in presential format. Thus, it was necessary to adapt to this situation and to invite public officials of all ministries and regional governments whose work is related to government procurement processes, to two training courses that were finally provided by videoconference: i) first one held on April 15<sup>th</sup> 2021, which was provided with support of the MEF with a platform that could had a large number of attendees and after it, the training was recorded and published on official MEF channel on YouTube, also counting with almost 1,000 public officials all over the country responsible of public procurement that were trained, from all Ministries, Regional Governments and Municipalities; ii) and second training was held on May 27<sup>th</sup> 2021, with almost 300 participants, particularly from Regional Governments.

Both trainings were about the importance and scope of the main obligations assumed by Peru in Public Procurement, according to the Free Trade Agreements, and did special emphasis on Technical Specifications, explaining the obligations of the chapter on Government Procurement, the use of international standards, the main problems identified when establishing technical specifications and suggestions on how to avoid them, as well as the scope and importance of the OSCE report number 283 of 2019 (first report in referring to trade obligations on government

procurement of the FTAs of Peru with the US and EU).

After both trainings, nowadays, public official of other entities contact more frequently MINCETUR in order to ask or clarify their doubts regarding the application of technical specifications provisions contained in the FTAs. Besides, OSCE risk division, which is responsible for given answers to the observations of the tender documentation submitted to them by any interested suppliers is increasing the mentions to FTA obligations as a reference in its legal analysis.

Also, PE mentioned that INACAL (National Institute of Quality) develops technical standards through the establishment of specialized Committees for that purpose, using as a general rule, existing international standards as a base of their work.

Regarding the initiatives for a new Public Procurement Law, there were two: one in 2020 and the other this year. Both had the aim of making it simpler, based on general principal and guidelines, intended to strengthen the competences of OSCE and PERU COMPRAS as well as to leave specific provisions related to tendering procedures and the implementation of FTAs obligations in its correspondent Regulation.

In the case of the strengthening of OSCE, the projects included providing it with more budget with the aim to count with more public officials during the consultation and observation of tender documentation stages, to solve any issue that may arise related to technical specifications prior the commencement of the tendering procedures.

However, the political crisis of November 2020, and several changes in the government, including the new government that assumed the power at the end of July 2021, could not make possible that these initiatives succeed.

In this sense, Peru mentioned that is not aware of a new initiative for a new Public Procurement Law in this government due that political situation is still quite sensitive, but in case there will be another one, that will be communicated to EU as soon as possible, as it was done before in case of the last initiative, in which was provided the link of its prepublication on MEF website to the delegation of the EU in Lima, in order to provide comments and any proposal.

Finally, to this day, Peru indicated that there is no information whether a Peruvian technical standard (Norma Técnica Peruana) has been already approved by INACAL (Instituto Nacional de Calidad). Nevertheless, it is certain that the abovementioned standard would be based on ISO, as it is an international standard, complying this way with the provision of article 181.2 b) of the FTA with the EU.

## **2.2 Issues presented by Colombia, Ecuador and Peru**

### **2.2.1 Issues presented by Colombia:**

*Barriers for the effective access of Colombian proponents to public tenders in the European Union.*

Colombia mentioned that has identified some constraints related to the access to the EU government procurement market. Some issues are related to the language used in tendering documentation, time frames for submitting tenders, complying with experience required and technical requirements which make difficult to Colombian suppliers to participate in tenders in the EU countries.

Moreover, Colombia expressed its concern on the potential impact of European green deal on government procurement opportunities such as distance and the possibility of obtain that procurement from closer parts.

These concerns are based on a survey that was made to 240 Colombian companies related to their interest in government market, their chances to access to European market and their level success in participating in this market. As a result, it was concluded there is a lack of participation of Colombian companies in European market.

Regarding the issues found in relation to the EU system, these are:

- Language, due that those tender documents are in language of the EU countries as: Bulgarian, Greek, German, Dutch, etc, and are not available in Spanish.
- Submission time frames are very short.
- Specific regulations to apply to some sectors are not considered very transparent and easy to find, and for this reason Colombian Companies require the service of advisers, lawyers, which increases their costs.
- Demonstration of technical, and financial capacity, due that financial capacity is demonstrated in euros and the experienced required is only of tendering processes in Europe.
- Lack of clarity in the wording of the invitation to tender.

In consequence, this represents major costs and times for Colombian companies to prepare their tenders.

Colombia pointed other specifics concerns in matter of technical and functional specifications related to environment criteria. On this point, Colombia mentioned the specific case of the supply of flowers, which establishes limits in terms of carbon print, local origin, seasonal flowers, transport distance, others.

The EU explained functioning of Green Public Procurement (GPP) in the EU, which is a voluntary instrument to be applied in a non-discriminatory manner, and has a key role to play in the EU's efforts to become a more resource-efficient economy. The GPP criteria have been designed with the requirements of the EU procurement rules in mind. However, individual contracting authorities must ensure that their use of the criteria, like all requirements in tender documents, respects the laws and principles which apply. The EU underlined that principles such as transparency, non-discrimination and linking all requirement with the subject matter of the contract need to be taken into account in using GPP.

Concerning Tenders Electronic Daily (TED), the EU explained its functionalities (including a translation tool) and pointed out its main characteristics such as providing information on procurement awards and calls for tenders. The access to TED database and the database functionalities are available to companies from the EU and outside of the EU. Regarding the potential difficulties for Colombian businesses with TED database, the EU reverted to available on-line training materials and possibility to organise a seminar to better understand EU procurement system and related TED database.

Colombia noted that the European companies participate in tender processes in Colombia in every province, municipality and at a national level, but this is not the same situation of Colombian

companies in tender processes in the EU. For this reason, Colombian companies state that the obstacles they face are not the same for EU Companies because they are not in the same conditions to participate and, as a result, are not playing in an equal level.

Finally, the EU and Colombia agreed to have a further discussion on this issue at bilateral level.

#### **2.2.2 Issues presented by Ecuador:**

*Capacity development and strengthening for the use of the SIMAP/TED system by our public officials, as well as businesspersons interested in participating in procurement opportunities in the European Union.*

Ecuador reiterated the request to develop capacity building for the use of the SIMAP/TED system, which has been required since 2019.

Colombia and Peru joined in this request in order that this training could be provided for the three countries and by videoconference.

EU mentioned that is aware that this request is still pending as more information about the specific needs related to TED system is needed, also in order to coordinate the topics and speakers for the potential training. In this sense, it was agreed that EU will send the correspondent links to the available on-line training tools in order that the other Parties can check its content, take notes of the specific topics that would like to clear in the training and communicate them to the EU.

#### **2.2.2 Issues presented by Peru:**

There were not issues presented by Peru.


#### **2.3 AOB**

None of the Parties raised other topic of discussion beyond the content of this agenda.

#### **2.4 Conclusions**

All Parties acknowledged that the VIII Government Procurement Sub-Committee was a fruitful meeting in order to strengthen the dialogue between the Parties and ensure an effective implementation of the Agreement and ways of mutual cooperation.

  
**Bojan Pavlek**  
**European Union**

  
**Mauricio Salcedo**  
**Colombia**



**Javier Latorre**  
Ecuador



**Claudia Gutiérrez**  
Peru

**ANNEX:**

**PARTICIPANTS TO 8TH MEETING OF SUBCOMMITTEE ON PUBLIC  
PROCUREMENT MEETING (NOVEMBER 17, 2021)**

**I. COLOMBIA**

**Ministry of Trade, Industry and Tourism (MINCIT)**

Mauricio Andrés Salcedo Maldonado

María Elisa Abril Barreto

Valentina Botello León

**Colombian Mission to the European Union**

Sandra Catalina Charris Rebellón

Angela Jeaneth Ospina Enciso

**National Procurement Agency (Colombia Compra Eficiente)**

Nathalia Andrea Urrego Jiménez

David Torres Rojas

Camilo Perdomo Villamil

**II. ECUADOR**

**Ministry of Production (MPCEIP)**

Javier Latorre

Dulce María García

Pamela Granja

**SERCOP**

Robin Gonzales

**III. EUROPEAN UNION**

**EU Commission Directorate-General For Trade (DG TRADE)**

Bojan Pavlek,

Fernando Dominguez Perals

**EU Commission DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW)**

Manuel Hubert

**Delegation of the European Union to Peru**

Alexandre Mateus

Ilias Tsilekas

Roberto Rodriguez

**Delegation of the European Union to Colombia**

Pablo Neira

Bernat Montagut

**Delegation of the European Union to Ecuador**

Monica Jativa

#### **IV. PERU**

**Ministry of Foreign Trade and Tourism (MINCETUR)**

John Cusipuma

Claudia Gutiérrez

Jose Luis Cano

**Ministry of Economy and Finance (MEF)**

Luzmila Zegarra

Cristina Huaranga

**National Procurement Agency (OSCE)**

Patricia Seminario

Carla Flores



Christian Chocano

**Ministry of Foreign Affairs**

David Celis

