

CHAPTER FIVE: PROCUREMENT**Article 508: Regional and Economic Development****Exceptional Circumstances**

1. A Party may, under exceptional circumstances, exclude a procurement from the application of this Chapter for regional and economic development purposes, provided that:

- (a) the exclusion of the procurement does not operate to impair unduly the access of persons, goods, services or investments of another Party;
- (b) the exclusion of the procurement is not more trade restrictive than necessary to achieve its specific objective;
- (c) notice of all such excluded procurements is provided no later than the time the contract is awarded by the methods usually used to publish this type of procurement under Article 506(2); this notice must provide details of the exceptional circumstances and, when published on an electronic tendering system, it must be accessible for a period of time sufficient to allow suppliers to become aware of the procurement; and notice of all such excluded procurements with details of the exceptional circumstances is also given to other Parties no later than the time the contract is awarded via email transmitted to the Internal Trade Secretariat which will redistribute it to the contact points designated under Article 512;¹ and
- (d) the Party seeks to minimize the discriminatory effects of the exclusion on suppliers of the other Parties.

2. In the case of a dispute relating to a procurement excluded from the application of this Chapter under paragraph 1, factors such as the following are to be taken into account in the dispute resolution process:

- (a) the frequency of the use by the Party of such exclusions for its procurements;
- (b) the extent to which the use by the Party of the exclusion for the particular procurement may contribute to economic development objectives or to the reduction of economic disparities;
- (c) whether the use of the exclusion for the particular procurement was applied in a manner to minimize the discrimination among bidders; and
- (d) the extent to which the use by the Party of the exclusion affects the development of competitive Canadian companies.

¹ This paragraph was amended by the Seventh Protocol of Amendment.

Transitional and Non-Conforming Procurement Measures

3. A Party may continue the transitional procurement policies and programs listed in Column I of Annex 508.3 until January 1, 1996.
4. A Party may continue the non-conforming procurement policies and programs listed in Column II of Annex 508.3, provided that the Party:
 - (a) prepares an annual written report on such policies and programs; and
 - (b) conducts a review of such policies and programs, no later than January 1, 1998, to ensure that they meet their regional and economic objectives.