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Redeplan  
AMÉRICA LATINA Y EL CARIBE



# Public procurement as a tool for development in Latin America and the Caribbean

## Economic and Technical Cooperation

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**F O R E W O R D**

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*This document has been prepared in compliance with Activity I.2.4 of the Work Programme of SELA for 2014, entitled "Public Expenditure and Procurement Systems in Latin American and Caribbean countries".*

*The document reflects the current landscape of public procurement in Latin America and the Caribbean as an instrument for national development, in line with international trends in this area and taking into account its share in the GDP of the region, its share in public expenditure and its relationship with vulnerable sectors of society.*

*The document consists of an Executive Summary, an Introduction and four chapters. Chapter I discusses the importance of public procurement in the GDP of the countries in the region, with the State leading in demand for goods and services, also promoting SMEs as a major supplier. Chapter II describes the international agreements and initiatives concerning public procurement, which have emerged in recent years, with influence and participation of Latin American and the Caribbean countries. Chapter III reviews the treatment of public procurement in free trade agreements negotiated by some countries in the region, and contains an evaluation of the experiences in the treatment of public procurement in the various subregional integration schemes.*

*Chapter IV reviews the most relevant aspects in national public procurement procedures, with an emphasis on the status of relevant regulations in Latin America and the Caribbean, as well as a brief analysis of national experiences of a group of countries from all subregions.*

*Finally, the paper concludes with a series of conclusions and recommendations of interest to the countries of the region in face of the challenge of an efficient and transparent use of public funds in favour of national and regional development.*

*This report was prepared by José Gabriel Villegas and Milagros Cruz, officials of the Direction of Relations for Integration and Cooperation of the Permanent Secretariat of SELA.*

## **EXECUTIVE SUMMARY**

The main objective of this study is to portray the current landscape of public procurement in Latin America and the Caribbean as a tool for national development. The paper is organised into four chapters.

Chapter I discusses the importance of public procurement – as an activity carried out by the State – in the Gross Domestic Product (GDP) of the countries of the region. The concept of public procurement has evolved to become a development tool that enables the incorporation of vulnerable sectors of society into the overall economic process, and to generate not only expenses to the state, but much of the dynamism of the domestic economy, with effects on employment generation, channelling of investment and productive development. The state, through its purchasing power, can influence sustainable development, promoting the production and marketing of more appropriate goods and services, adapted to social, environmental and economic contexts.

Through public spending, governments implement public policies and development plans; they affect aggregate demand, economic growth and employment; they condition macroeconomic stability and counteract market failures. The health sector is one of the largest sectors in which the state invests funds through public procurement, mainly through the supply of medicines and medical equipment.

Public procurement requires a comprehensive public policy design between state institutions – and not only specialized national authorities in the area – and private sector organizations, which are the main source of suppliers.

Small and medium-sized enterprises (SMEs) represent the main supplier of goods and services and the largest employer in Latin America and the Caribbean. The importance of SMEs in regional employment and production in the countries is an essential factor for the design of policies for their insertion in the public procurement system. Promoting policies to insert SMEs in public procurement implies the existence of formal requirements, which should not be considered as barriers or obstacles to trade; on the contrary, they should include elements of transparency as it involves the handling of public funds.

Chapter II describes international agreements and initiatives concerning public procurement, which have emerged in recent years, many of them with influence and participation of Latin American and Caribbean countries. Internationally, public procurement has been the object of legislation and agenda in the context of multilateral trade and development agencies, especially since the last decade of the 20<sup>th</sup> Century, with significant reforms in recent years.

Public procurement has been part of the multilateral trade agenda, formally, since 1979. The Government Procurement Agreement (GPA) is the legal instrument of the World Trade Organization (WTO) that specifically addresses the issue of public procurement, which maintains a plurilateral character. It is important to note that no country in Latin America and the Caribbean is part of the GPA, and only four are observers: Argentina, Chile, Colombia and Panama, of which none has expressed willingness to adhere to it.

The Model Law on Procurement of the United Nations Commission on International Trade Law (UNCITRAL), published in 2011, replaces the Model Law on Procurement of Goods, Works and

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Services of 1994, which aims to provide guidelines, particularly to developing countries<sup>1</sup> for the development of a legal framework for public procurement that promotes the economy, efficiency and competition in procurement, and at the same time, promotes integrity, trust, fairness and transparency in the procurement process.

Sustainable public procurement (SPP) is understood as any process through which organisations meet their needs for goods, services, labour and supplies in a way that they obtain value for their money based on their life cycle, in order to generate profits for the institution, society and the economy, while minimising the impact on the environment. At domestic level, only 40% of the legislation on public procurement of Latin America and the Caribbean includes some type of SPP policies, and only 19% of the regulations apply the concept of sustainability in public procurement.

In Chapter III we will review the treatment of public procurement in free trade agreements with an impact on a group of Latin American and the Caribbean countries. We will also assess the experiences on the treatment of public procurement in the various sub-regional integration schemes and mechanisms (MERCOSUR, CAN, ALBA, Pacific Alliance, SICA, CARICOM and OECS), highlighting the initiatives in the agricultural and pharmaceutical sectors; especially since their inclusion in the agenda of the Community of Latin American and Caribbean States (CELAC), especially family farming as a regional mechanism for the eradication of hunger and poverty, food security and nutrition, improving livelihoods, management of natural resources, environmental protection and sustainable development, particularly in rural areas.

Because of its importance in national economies, public procurement has become relevant also in the agenda of the regional integration systems and mechanisms in Latin America and the Caribbean. Also, through free trade agreements (FTAs), a significant number of countries in the region have expanded their public procurement markets to regional and extra-regional suppliers, with the North American Free Trade Agreement (NAFTA) as the starting point for negotiating government procurement chapters in free trade agreements, both at intra-regional and extra-regional level.

Chapter IV reviews the national procedures of public procurement systems, with an emphasis on the status of said legislation in Latin America and the Caribbean, plus a brief analysis of national experiences of a group of countries in all sub-regions, based on their regulatory and administrative reforms and developments. National procurement processes have shown in recent years an international trend of convergence on core principles such as open and effective competition, transparency and value for money. Promoting competition is one of the key issues to achieve a transparent and efficient procurement system, while collusion is one of the biggest threats.

The use of technological resources in public procurement systems in the region is, together with e-commerce, both a challenge and an opportunity for public sector reforms in many countries in the region. The use of e-procurement systems streamlines the preparation of tenders and therefore encourages the participation of a wider range – and a larger number – of potential suppliers in public procurement. Most countries in Latin America and the Caribbean have made significant efforts in the design and implementation of public policies on e-procurement based on “paperless” transactions, in order to promote transparency, security, efficiency and administrative effectiveness<sup>2</sup>, where public procurement could serve as a catalyst for national development of the information and communication technology (ICT) industry in the countries of the region.

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<sup>1</sup> United Nations. A/RES/66/95. Resolution approved by the General Assembly on 9 December 2011.

<sup>2</sup> SELA. Principles of digital signature and its status in Latin America and the Caribbean. p. 3.



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The success of electronic public procurement systems also depends on its adoption by suppliers. Therefore, the training of interested parties or potential suppliers is critical to achieve an efficient, transparent and effective procurement system. The professional training of civil servants is one of the unresolved tasks in the region. CELAC's mandate<sup>3</sup> to promote regional cooperation on public procurement has been replicated in a group of countries, mainly Chile, Ecuador, Peru, Dominican Republic and Uruguay.

Latin America and the Caribbean is undoubtedly vulnerable to the effects of natural disasters. Public procurement represents an important activity when it comes to the management of natural disasters. An estimated 40% of countries in the region establish residual clauses for emergencies or assigning discretion to officials to add other exclusions to the application of the rules.

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<sup>3</sup> CELAC. Plan of Action 2014.



## **INTRODUCTION**

Much has been written about the importance and the role of public procurement in national economies, especially in developing countries, as a strategic activity of the state. In Latin America and the Caribbean, this topic has gained significant importance, particularly due to the influence of public spending on the economy and growth of the countries of the region.

Latin America and the Caribbean is lagging behind on public procurement compared to other experiences of regional integration, especially in Europe. Nevertheless, international instruments and initiatives provide a starting point to undertake improvements in national public procurement systems in the region, especially in the field of policies and at the administrative level.

The various reforms in laws and procedures in several countries in Latin America and the Caribbean in the area of public procurement – particularly extensive in the last decade – have incorporated not only new technological tools, but a series of adjustments at the operational level, seeking to optimize the procurement processes and render them more transparent and reliable.

Discussions on government procurement now involve new elements, including the incorporation of small and medium-sized enterprises, the use of technological resources, family farming, elements of environmental sustainability, and procurement in disaster situations. These situations have promoted new forms of acquisitions, which have been reflected in both legislative reforms and in international and regional initiatives on the subject.

The analysis of public procurement systems in the region deserves a review of the functioning of the procurement process, which entails a scrutiny of the main aspects of national public procurement systems in a group of countries in the three subregions of Latin America and the Caribbean.

The purpose of this study is to reproduce the current situation of public procurement in Latin America and the Caribbean as a tool for national development, taking into account the share in GDP, in public spending, and its link to vulnerable sectors of society. Also, we review international proposals and trends in public procurement as a tool to promote development.



## I. PUBLIC PROCUREMENT AND ITS IMPACT ON THE NATIONAL ECONOMY

Understood as public procurement, government procurement or government purchases, this type of procurement has traditionally been conceived as a purely bureaucratic process associated with meeting collective needs as a responsibility of the State, and for its own operation. This concept has evolved to be understood as a development tool that enables the incorporation of vulnerable sectors of society into the overall economic process, and to generate not only expenses for the State, but much of the dynamism of the domestic economy, with effects on employment generation, channelling of investment and productive development.

According to the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), public purchases include three major functions<sup>4</sup> for the State: i) public interest; ii) administrative duties, and iii) economic duties, which must converge for an ultimate purpose, i.e. satisfy social needs through the efficient and transparent use of State funds.

### 1. Public procurement as a development tool: The State as main procurer

Public procurement in the region accounts for a smaller share of GDP than in more developed economies such as the United States or the European Union, and is even below the global average, with an approximate annual investment of \$800 billion.<sup>5</sup> The State, through its purchasing power, has an irreplaceable capacity to influence the design of public development policies, promoting the production and marketing of more appropriate goods and services in social, environmental and economic terms.

The indicator of the world's largest economy, the United States, barely exceeds the indicator of the region. China ranks below Latin America and the Caribbean. European countries, as a whole, spend the highest percentage of their GDP on public procurement worldwide (21.6%). All the major emerging economies, grouped in the BRICS countries, stand at 17.59%, close to the world average of 17.87% (Table 1).

**TABLE 1**  
**Share of public procurement in GDP (2012)**  
(Percentage)

Region	%PIB
European Union	21,66
World	17,87
Sub-Saharan Africa	17,82
BRICS	17,59
Middle East and North Africa	16,59
United States	15,68
Latin America and the Caribbean	15,52
China	13,71
Asia Pacific	13,01

*Source: Prepared by the authors, based on data from the World Bank.<sup>6</sup>*

Table 2 shows the share of public procurement in the GDP of the countries in the region, in the period between 2000-2012. Cuba stands out as the country with the largest share of GDP. In a

<sup>4</sup> ECLAC. Public procurement in regional agreements of Latin America with developed countries. p. 35.

<sup>5</sup> IDB. Efficiency and transparency in the public sector. Progress in public procurement in Latin America and the Caribbean (2002-2012). p. 3.

<sup>6</sup> Expenditure in Government Final Consumption (% GDP).

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second group, with figures over 20%, we find Brazil and Suriname. With figures between 15% and 20%, Caribbean countries have an important presence: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Colombia, Costa Rica, Grenada, Honduras, Jamaica, Saint Lucia and Saint Vincent and the Grenadines. In the fourth group, with figures between 10% and 15%, South American countries lead the list: Bolivia, Chile, Ecuador, El Salvador, Guatemala, Guyana, Mexico, Panama, Paraguay, Peru, St. Kitts and Nevis, Trinidad and Tobago, Uruguay and Venezuela. Finally, the Dominican Republic and Nicaragua are the countries with the lowest percentage of GDP allocated to government procurement, with figures under 10%.

Public spending as one of the main instruments of fiscal policy has three main functions (Musgrave, 1959): i) to stimulate and stabilise the economy; ii) to redistribute income and wealth to the most vulnerable groups; and iii) to allocate public funds efficiently in order to provide the goods and services required by society.

Current expenditure, through the acquisition of goods and services, is a potential tool for achieving fulfilment of the three functions described above for national development. The allocation of public funds to meet common needs can be a vital support to vulnerable sectors.

Through public spending, governments implement public policies and development plans; they affect aggregate demand, economic growth and employment; they condition macroeconomic stability and counteract market failures. In Latin America and the Caribbean, government purchases of goods and services accounted for 10-15%<sup>7</sup> of regional public spending for the period 1990-2009.

Implementing public procurement policies consistent with an appropriate regulatory framework is an important step towards cost savings for both institutions and consumers, as it provides access to better products, with an emphasis on value for money.

One of the strategies for allocating public funds in favour of national economic sectors is the execution of national procurement programmes. In the region there is a number of national programmes to promote domestic production that could have an impact on public procurement. The cases of Programme for the Promotion of the Domestic Market (Colombia); the MYPÉrú Programme (Peru) and *Compre Trabajo Argentino* (Argentina) are just a few examples. Such policies have been implemented for a long time by the developed countries, as is the case in the United States through the "Buy American" programme, created in 1933 and still in force.

The sectors of health, education, agriculture and infrastructure are the most relevant to public procurement, as the State is responsible for executing policies in these vital areas for economic and social development.

Health is one of the largest sectors in which the state invests most funds through public procurement, mainly for the supply of medicines and medical equipment. The World Health Organization (WHO) has presented the Operational Principles for Good Pharmaceutical Procurement (2001), which establish four strategic objectives: i) to acquire the right amount of the most cost-effective drugs; ii) to select reliable suppliers of high quality products; iii) to ensure timely delivery; and iv) to purchase at the lowest possible cost.

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<sup>7</sup> ECLAC. Evolution of the composition of Public Expenditure in Latin America and the Caribbean, years 1990-2009.

**TABLE 2**  
**Share of public procurement in GDP in Latin America and the Caribbean (2000-2012)**  
(Percentage of GDP)

Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Antigua and Barbuda	19	21	24	19	19	17	16	16	17	18	17	18	18
Argentina	14	14	12	11	11	12	12	13	13	15	15	15	17
Bahamas	11	11	11	11	12	11	12	12	13	15	15	15	15
Barbados	13	14	14	19	17	16	14	17	19	19	19	20	18
Belize	13	13	14	15	14	14	14	15	16	17	16	16	-
Bolivia	15	16	16	17	16	16	14	14	13	15	14	14	13
Brazil	19	20	21	19	19	20	20	20	20	21	21	21	21
Chile	12	12	12	11	11	10	10	10	11	13	12	12	12
Colombia	17	17	16	16	16	16	16	16	16	17	17	16	17
Costa Rica	13	14	15	14	14	14	14	13	14	17	18	18	18
Cuba	30	31	34	34	35	34	32	35	40	39	35	38	-
Dominica	19	18	17	15	14	16	16	16	14	17	17	17	18
Ecuador	9	9	10	11	11	11	11	11	12	14	13	13	13
El Salvador	10	10	10	10	10	10	10	9	9	11	11	11	11
Grenada	12	12	12	12	13	13	13	13	15	16	16	16	16
Guatemala	7	10	10	10	9	8	8	9	9	10	10	10	11
Guyana	25	26	26	28	27	27	15	15	15	16	15	15	13
Haiti	8	9	9	8	7	7	9	-	-	-	-	-	-
Honduras	13	15	15	15	15	16	15	17	17	19	18	16	16
Jamaica	14	14	15	14	13	14	14	15	16	16	16	16	16
Mexico	11	11	11	11	11	11	11	11	11	12	12	12	12
Nicaragua	9	9	9	9	9	9	9	8	8	8	8	9	9
Panama	13	14	15	14	14	13	12	11	10	13	13	12	10
Paraguay	11	10	9	9	9	9	10	9	9	11	10	10	12
Peru	11	11	10	10	10	10	10	9	9	10	10	9	10
Dominican Republic	8	8	9	7	6	7	7	7	8	8	8	7	8
St. Kitts and Nevis	11	11	10	9	11	11	9	9	10	11	11	11	10
St. Lucia	17	19	20	20	18	18	15	13	13	15	17	16	17
St. Vincent and the Grenadines	16	16	16	15	16	16	15	16	17	18	19	16	16
Suriname	37	32	29	25	25	23	-	-	-	-	-	-	-
Trinidad and Tobago	12	14	14	13	12	12	11	10	10	-	-	-	-
Uruguay	12	12	12	12	11	11	11	11	12	13	13	13	14
Venezuela	12	14	13	13	12	11	12	12	12	14	11	12	12

Source: World Bank.

According to UNCTAD, the main objective of public procurement is to optimise the use of state resources<sup>8</sup> to meet common needs, which is a tool for increasing and diversifying domestic production activity, because much of the national budget is committed to this procurement, hence the importance of increasing the efficiency of public spending to ensure the best possible procurement outcome in terms of quality/price ratio.

<sup>8</sup> UNCTAD. Promotion of development of local information technology sector through public procurement. p. 42.

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Public purchases require a comprehensive public policy design between state institutions – and not only specialised national authorities in the area – and private sector organisations, the main source of suppliers.

As shown in Table 3, there is no uniformity of institutional structures in the region in terms of procurement. In the Caribbean, mostly ministries of Finance are responsible for managing national procurement systems; in Central and South America there is more progress in favour of creating autonomous agencies with jurisdiction over the administration of purchases.

**TABLE 3**  
**National institutions for public procurement in Latin America and the Caribbean**

<b>Country</b>	<b>Entity</b>
Antigua and Barbuda	Ministry of Finance, Economy and Public Administration
Argentina	National Procurement Office
Bahamas	Ministry of Finance
Barbados	Ministry of Finance
Belize	Ministry of Finance
Bolivia	National Procurement Office
Brazil	Integrated System of Administration of General Services
Chile	Chile Compra
Colombia	National Agency of Public Procurement
Costa Rica	Ministry of Finance
Dominica	Ministry of Finance and Planning
Ecuador	National Service of Public Procurement
El Salvador	System of Procurement of the Public Administration
Granada	Ministry of Finance/Public Procurement Office
Guatemala	State Procurement Information System
Guyana	National Procurement and Tender Administration
Haiti	Commission Nationale des Marchés Publics
Honduras	State Procurement Information System
Jamaica	Ministry of Finance and Public Service
Mexico	Secretary of the Public Service
Nicaragua	Public Procurement of Nicaragua
Panama	Panamá Compra
Paraguay	Ministry of Finance
Peru	High Council of State Procurement
Dominican Republic	General Directorate of Public Procurement
St. Kitts and Nevis	Ministry of Finance
Saint Lucia	Ministry of Finance, International Financial Services and Economic Affairs
Saint Vincent and the Grenadines	Ministry of Finance and Economic Planning
Suriname	Ministry of Finance
Trinidad and Tobago	National Procurement Office
Uruguay	State Procurement Agency
Venezuela	National Procurement Service

Source: Prepared by the authors.



## 2. SMEs: The main potential supplier of the State

SMEs are the leading bidders on goods and services in Latin America and the Caribbean. These sectors are the largest employers in the region, between 30 and 50%,<sup>9</sup> with significant variations from country to country. In Mexico, they generate 52% of GDP and 72% of jobs,<sup>10</sup> in Ecuador, they represent 99% of registered suppliers (2013), with a total of 168,711 entities. The importance of SMEs for regional employment and national production is an essential factor to ensure policy design for insertion in the public procurement system.

One of the difficulties facing the region is the conception of a homogeneous term for SMEs, which varies from one country to another based on parameters such as number of employees, equity capital and turnover.

The figures given in Table 1, on the share of public purchases in GDP, are also reflected in the significant participation of SMEs in public procurement in developed economies, especially the United States and Europe (Italy 49%, The Netherlands 41%, Spain 35%, United Kingdom 31%, among others).<sup>11</sup> By contrast, the data for the countries of the region is limited, for which, based on the countries listed in Table 4, the proportion of sales of SMEs to the state varies between 14 and 50%. In Peru, the participation of SMEs amounted to 34.2% in 2012.<sup>12</sup>

**TABLE 4**  
**Participation of SMEs in public purchases**  
(Percentage)

Country	Micro	Small	Medium
Brazil	18	11	n.a.
Chile	15	21	14
Ecuador	23	20	12
Paraguay	14	18	13
Uruguay	14	14	14

*Source: Saavedra (2010).*

Both the OECD and ECLAC have established that financing is one of the main difficulties for the development of SMEs in Latin America and the Caribbean.<sup>13</sup> Therefore, apart from the inclusion of this type of industry in the regulations on public procurement, it is necessary to provide financial support for their competitiveness in national economies.

SELA has analysed the benefits<sup>14</sup> of ICTs for the promotion of SMEs and their inclusion in the knowledge economy, recognising their ability to adapt to technological changes and to respond to changes in the patterns of market demand, given their flexible nature and lower infrastructure costs. Consequently, the application of ICTs in public procurement processes has a positive impact on the efficiency of the contracting public institutions, thereby reducing the gap between the collective need and the supply of providers more swiftly and openly to society, which requires the application of appropriate technology and user-friendly access.

<sup>9</sup> SELA. Productive and Industrial Development Policies in LAC. p. 28.

<sup>10</sup> ProMéxico. SMEs, a fundamental link for growth in Mexico.

<sup>11</sup> Victoria Beláustegui. Sustainable Public Procurement in Latin America. Progress and key elements for development. p. 46.

<sup>12</sup> OECS. Estimation of participation of Micro and Small Enterprises (MSEs) in the state market, 2011 – 2012

<sup>13</sup> OECD-ECLAC. Latin American Economic Outlook. p. 96.

<sup>14</sup> SELA. Prospective vision of Small and Medium-sized Enterprises (SMEs). Responses for a complex and competitive future. p 11.

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The promotion of policies for inclusion of SMEs in public procurement implies the existence of formal requirements, which should not be considered as barriers or obstacles to trade; on the contrary, they should include elements of transparency as they involve the management of public funds.

In free trade agreements, as in the case of NAFTA, SMEs are viewed as key players in the public procurement market, in order to promote public procurement opportunities for this economic actor. The Free Trade Agreement (FTA) between Panama and Peru<sup>15</sup> recognises the importance of business alliances between suppliers of both parties, particularly SMEs and their participation in the bidding process.

## II. INTERNATIONAL INITIATIVES

### 1. Multilateral instruments

Internationally, public procurement has been the subject of legislation and agenda in the framework of multilateral levels on trade and development, with significant reforms in the last few years.

#### ***WTO's Government Procurement Agreement (GPA)***

Public procurement has been a part of the multilateral trade agenda, formally, since 1979, with the signing of the Tokyo Round Code on Government Procurement, which entered into force in 1981, and was revised in 1988, with the idea of establishing an agreed international framework of rights and duties in relation to laws, regulations, procedures, and practices related to the procurement of the public sector, aimed at achieving the liberalization and increasing expansion of world trade, and improving the international framework in which it takes place.<sup>16</sup>

The GPA, which revises the code of conduct of the Tokyo Round, was adopted on April 15, 1994, in the framework of the Uruguay Round, and is only binding for the parties that sign it, as it is a multilateral instrument in nature. On 30 March 2012, the Protocol that modifies the GPA of 1994 is agreed upon, entering into force on 6 April 2014, after its discussion at the 9<sup>th</sup> Ministerial Summit of the WTO in Bali, Indonesia, in December 2013.

The revised GPA is the legal instrument of the WTO, and deals specifically with the subject of public procurement, which maintains its multilateral nature. It is important to highlight that no Latin American or Caribbean country is part of the GPA, and only four are Observers: Argentina, Chile, Colombia and Panama; and none of them has expressed a desire to sign it. The role of observing member of the GPA allows the country to participate in the deliberations of WTO's Public Procurement Committee, and get related information, without having to assume any obligations in return. This condition allows the authorities of the countries to know the GPA directly, and its possible impact on the national system of public procurement. Likewise, it is possible to participate in technical assistance activities related to the GPA.

All Latin American and Caribbean countries, with the exception of the Bahamas,<sup>17</sup> play an active role in the WTO, and participate on its binding regulations and multilateral agreements. A relevant

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<sup>15</sup> Article 10.19.

<sup>16</sup> WTO. Tokyo Round Code on Government Procurement. Preamble.

<sup>17</sup> In joining process since 2001.

aspect for the countries of the region is the provisions on Article V of the revised GPA, in terms of the special and differentiated treatment for developing countries. The text reads:

“In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries (collectively referred to hereinafter as ‘developing countries’, unless specifically identified otherwise), recognizing that these may differ significantly from country to country. As provided for in this Article and on request, the Parties shall accord special and differential treatment to:

- a. least developed countries; and
- b. any other developing country, where and to the extent that this special and differential treatment meets its development needs.”

Is it appropriate for countries of the region to form part of the GPA along with economies such as the US, the European Union and Japan? The costs and benefits of being a part of the GPA for Latin American and Caribbean countries varies from one country to another. As we will analyze on the next chapter, the wide network of commercial agreements of an important number of countries of the region, with developed economies – most of them part of the GPA – already represents a commitment in the matter of public procurement.

According to the WTO, the US and the European Union share 75% of the total value of the opportunities for access to markets in the framework of the GPA.<sup>18</sup> As can be seen on Table 5, with the exception of Armenia, the rest of the GPA member countries are developed economies. China is the only BRICS member with the intention of being a part of it.

**TABLE 5**  
**Member countries of the Government Procurement Agreement (GPA)**

Countries	GPA 1994	GPA 2014
Armenia	x	-
Aruba	x	x
United States	x	x
Canada	x	x
Hong Kong	x	x
Iceland	x	x
Israel	x	x
Japan	x	x
South Korea	x	-
Liechtenstein	x	x
Norway	x	x
Singapore	x	x
Switzerland	x	-
Taiwan	x	x
European Union <sup>19</sup>	x	x

Source: WTO.

<sup>18</sup> WTO. Evaluation of Access Opportunities to Public Contracting Markets.

<sup>19</sup> 28 countries.

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The use of electronic means in public procurement processes, beyond the informative aspect, and of which Latin America and the Caribbean have already started a reform, have been incorporated into the new GPA text. The use of accessible ICTs that guarantee the transparency and safety of the parties<sup>20</sup> and the modality of electronic auction<sup>21</sup> are promoted by the revised GPA.

The GPA is administered by a Public Procurement Committee, comprised by its parties, which examine the application and operation of the GPA on a yearly basis, and will report annually to the General Council on its activities and on its application and operation.<sup>22</sup>

The Agreement establishes the basis for the scope of the instrument: i) not everybody or product/service can be included in the obligations of the contract, ii) the thresholds set for the different contracts, iii) the procedures for rectification and amendment, and publishing of announcements. At the same time, it makes reference to the basis for performing the contracts, through bidding processes. This Agreement allows the different parties to define on the lists the public bodies that will be governed by the mandates of the GPA, through positive listings.

Within the context of trade in services, WTO's General Agreement on Trade in Services (GATS), which is multilateral, is not applicable to public procurement, specifically in terms of national dealings and markets opening.<sup>23</sup> This instrument mandates multilateral negotiations on the treatment of public procurement in the framework of GATS; however, no progress has been made so far, almost two decades after its entering into force.

### ***Model Law on Government Procurement of Goods, Construction and Services***

The Model Law on Government Procurement of Goods and Construction of the United Nations Commission on International Trade Law (UNCITRAL), published in 2011, replaces the Model Law on Government Procurement of Goods, Construction and Services from 1994.

The main objective of this instrument is to provide guidelines, particularly for developing countries,<sup>24</sup> to formulate a legal framework for public procurement that promotes the economy, the efficiency, and the competition in contracting, and that, at the same time, fosters integrity, trust, equality, and transparency in the allocation process.

UNITRAL's Model Law includes 57 provisions, out of which 48 deal with the procurement process as a matter of law. Among them, the use of biddings as the favoured procedure for public procurement; the possibility of having only one supplier in the bidding process puts on the table the option of reconsideration and appeal; and, also, the characteristics the supplier or contractor should have in order to participate in the bidding processes, such as suitability, experience, reputation, reliability and professional and corporate competence, degree of participation of local suppliers and contractors, including the use of new technologies, among others.

The instrument is not binding in nature, and includes procedures and principles which objective is achieving the optimum use of resources, and avoid irregularities in the allocation process for public procurement projects. The text promotes objectivity, equality and participation, as well as

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<sup>20</sup> Revised GPA. Article III. Use of electronic means.

<sup>21</sup> Idem. Article XIV. Electronic auctions.

<sup>22</sup> The plurilateral Government Procurement Agreement (GPA).

<sup>23</sup> General Agreement on Trade in Services. Article XIII.

<sup>24</sup> United Nations. A/RES/66/95. Resolution approved by the General Meeting on 9 December 2011.

competence and integrity, in order to comply with such objectives. The Model Law advocates public procurement procedures based on the principle of competition through open biddings.<sup>25</sup>

The Model Law establishes ten<sup>26</sup> bidding methods, including the electronic inverse auction. It also promotes the availability of a centralized publishing mode that is easily accessible, and the publication of a code of conduct for the personnel in charge of government procurement. In the matter of disasters or emergency, the Model Law establishes the need to resort to open biddings or to any other competitive contracting method.<sup>27</sup>

### ***Organization for Economic Cooperation and Development (OECD)***

The Organization for Economic Cooperation and Development<sup>28</sup> (OECD), which has Chile and Mexico<sup>29</sup> as some of its members, established in 2003 a Round Table on Government Procurement of the Committee for Assistance to Development (CAD), in order to evaluate, in a comprehensive manner, the national government procurement systems, so as to allow for an exchange of experiences and best practices between countries of the region, and the identification of obstacles, based on the transparency and efficiency in the use of public resources.

With the idea of putting the national procurement systems to better use, an updating of the proposal was made in 2005, which was intended to evaluate the indicators made by the World Bank and CAD/OECD initiative; and also to monitor the performance measuring indicators, and examine procedures and policies of a country so as to measure the equivalence with the requirements of the bank for international public biddings.<sup>30</sup> Starting in 2006, the efforts have been focused on the creation of more solid procedures for evaluation and decision making.

## **2. Inter-American Network on Government Procurement**

The Inter-American Network on Government Procurement (RICG) was created in 2004, integrated by the government institutions of the American continent countries, with the exception of Cuba, and has the maximum responsibility in the matter of regulation, management, and modernization of public procurement.

It is a regional technical cooperation mechanism in which several bodies that give it institutional and financial support participate: The Organization of American States (OAS), which acts as Technical Secretary; the Inter-American Development Bank (IDB), and the International Development Research Centre (IDRC).

The objectives of the RICG are the strengthening of the capabilities of each country, in order to increase efficiency and transparency of government procurement; generate and maintain spaces for reflection, mutual knowledge of the sector, solidarian technical cooperation, training and exchange of experiences among member institutions, in order to contribute to the strengthening of government procurement practices in the American hemisphere, and create bonds between governments, society organizations linked to public procurement and international bodies; foster

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<sup>25</sup> Model Law of the CNUDMI on Government Procurement (2011)

<sup>26</sup> Idem. Article 27: open bidding, restricted bidding, quotation request, request of proposals without negotiation, two-phase bidding, request of proposals with dialogue, request of proposals with consecutive negotiation, competitive negotiation, inverse electronic auction, and contracting of a single supplier.

<sup>27</sup> Article 27.

<sup>28</sup> Methodology for the Evaluation of the National Systems for Public Procurement.

<sup>29</sup> Diagnosis of the procedures for public procurement of countries – DPAP.

<sup>30</sup> World Bank. National procurement systems.

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the incorporation of information and communication technologies, as tools for efficiency and transparency; and promote the coordination and regional harmonization on key aspects of the national systems for public procurement.<sup>31</sup>

Among the activities of the network are an annual high-level forum, several workshops and thematic seminars gathering RIGC members; online training courses for public officials in the Americas, in key areas of public administration, and Web sessions to facilitate the exchange of experiences and best practices.

IDB's Guide for the Acceptance of the Use of the National Procurement Systems is based on the tool developed by CAD/OECD in 2006, and includes a set of indicators and standards allowing for evaluating the systems and verifying their compliance with the international best practices in the matter of government procurement and contracting.<sup>32</sup>

### 3. Sustainable Government Procurement

Sustainable Government Procurement (SGP) is understood as every process made by organizations to satisfy their needs for goods, services, construction, and supplies, so they can get better value for their money based on the cycle of life, in order to generate benefits for the institution, for society and for the economy, and at the same time minimizing the impact on the environment.

Since 2009, the United Nations Environment Programme (UNEP) and the Marrakech Task Force (MTF) on Sustainable Public Procurement have committed to the project "Strengthening Capabilities for Sustainable Public Procurement," aimed at offering support to seven countries, among which there are four of the region: Costa Rica, Colombia, Chile and Uruguay.

SGP was identified on the Agenda 21 and on Chapter III of Johannesburg Plan of Implementation (2002) as one of the means to achieve sustainability.<sup>33</sup> The Marrakech Task Force on SGP was created in 2005 in one of the region's countries, Costa Rica, with the participation of Argentina, Mexico and a representation of the State of Sao Paulo (Brazil). This group was in force until 2011. The SGP initiative, promoted at the Rio+20 Conference (2012) by UNEP, intends to help governments to maximize the social and economic benefits of public procurement of goods and services.

The region has made progress in the implementation of this innovative conception of public procurement, especially after initiatives such the one made by member countries of the Common Market of the South (MERCOSUR), through the Promotion and Cooperation Policy on Sustainable Production and Consumption (2007), encouraging the adoption of sustainable production and consumption practices, aimed at increasing competitiveness and reducing the risks for human health and for the environment.

On a national scale, the legislation on public procurement of Latin American and Caribbean countries only contemplates about 40% of some form of SGP policies, reducing to 19% the negotiations that apply the concept of sustainability to public procurement.<sup>34</sup> However, this

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<sup>31</sup> Inter-American Network on Government Procurement.

<sup>32</sup> IDB. Guide for the Acceptance of the Use of the National Procurement Systems.

<sup>33</sup> UNEP. Implementing Sustainable Public Procurement. p. 3.

<sup>34</sup> RIGC. RIGC and the Landscape of Sustainable Public Procurement in Latin America.

innovative trend of procurement has caught the interest of the region, and is considered as one of the areas with the higher potential for implementation, both nationally and regionally.

Countries such as Argentina, Barbados, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Dominican Republic and Uruguay<sup>35</sup> have started programmes and initiatives on SGP in Latin America and the Caribbean. An example of this is the Manual on Single Procedure for Cataloguing and Sustainability from Argentina, the creation of a Consulting Council on SGP in Chile, where procurement orders with sustainable criteria went from 1.3% in 2009 to 11.7%<sup>36</sup> in 2011. Panama has an SGP Manual, Paraguay has an SGP Policy, and both Costa Rica and Uruguay have National SGP Plans, which justification is the support this type of public procurement gives to the attainment of strategic government objectives, supporting and leveraging social inclusion, equal opportunity, employment, local development, environmental protection, sustainable development, and improvement of public services policies.

The RICG considers the following limitations<sup>37</sup> for the development of the implementation of SGP policies in the region: i) limited political support; ii) lack of awareness of sustainability criteria by procurement units; iii) lack of coordination between government and environmental procurement agents, which prevents the existence of a comprehensive vision in the SGP; iv) insufficient offer of sustainable goods and services; v) lack of experience to evaluate sustainable goods; vi) non-existence of regulations in the matter; and vii) prevalence of higher prices in common goods.

#### 4. Extra-regional integration initiatives

##### *European Union*

The EU represents the integration mechanism with the highest level of coordination of regional policies in public procurement, and is the region with the highest GDP percentage / public procurement relationship in the world. EU Directives in the matter of public purchases are intended to eliminate the preferential treatment granted to national companies with a protectionist attitude.<sup>38</sup> Specifically, The European Directive on public procurement 2014/24 (2014) establishes the incorporation of a vulnerable social group, such as people with some kind of handicap, establishing that the rights of this group should be taken into account, particularly with the choosing of means of communication, technical specifications, allocation criteria, and contract execution conditions. This Directive defines the concept of public procurement in a broad manner, in the sense of getting the most benefits from the works, supplies or services required, beyond the bidding value or price.

The European Commission issued, in 2010, the European Strategy 2020, which tries to overcome the economic crisis in member countries, and turn the EU into a smart, sustainable and integrating economy, offering high employment, productivity and social cohesion levels. In terms of public procurement, such guidelines are focused on:

- SMEs: Improving access to capital and fully using the demand policies, through public contracting and smart regulations.

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<sup>35</sup> Victoria Beláustegui. Sustainable public procurement in Latin America. State of progress and key elements for its development. p. 45.

<sup>36</sup> See: [http://www.chilecompra.cl/index.php?option=com\\_content&view=article&id=782:concurso-casos-de-exito-en-compras-publicas-sustentables&catid=133:boletin-nd99-compras-sustentables-&Itemid=475](http://www.chilecompra.cl/index.php?option=com_content&view=article&id=782:concurso-casos-de-exito-en-compras-publicas-sustentables&catid=133:boletin-nd99-compras-sustentables-&Itemid=475).

<sup>37</sup> RICG. The RICG and the Landscape of Sustainable Public Procurement in Latin America.

<sup>38</sup> Fostering participation of small and medium-size companies in public procurement processes. p. 4.

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- Environment: Fostering green public procurement, such as the use of regulations, construction norms, and market instruments such as taxes, subsidies, and public procurement, in order to reduce the consumption of energy and resources, and use Structural Funds to invest in the energy efficiency of public buildings, and in more efficient recycling.
- Public procurement policy should guarantee a more efficient use of public funds, and public markets should continue to have a dimension that encompasses the whole of the EU.

In the area of electronic government and public procurement, the EU has made significant and important progress. The Green Book on the generalization of the resource to electronic public procurement in the EU (2010) represents the first approximation of this regional integration scheme for the reform of national regulations, and the modernization of the public procurement systems. The Action Plan of Electronic Administration for Europe 2011-2015 is intended to extend the use of the electronic government, including public procurement in the region to 50% of the population and to 80% of the businesspeople by 2016, with the implementation of regional regulations such as the Directive 2014/55 (2014) related to electronic billing in public procurement.

Among the initiatives for public procurement undertaken by the European Commission are:

- PEPPOL: Cross-border electronic public procurement project, managed by public sector bodies from several countries of the EU, and which objective is the facilitation of large-scale normalized IT services and infrastructures for the development and management of on-line Pan-European public procurement operations. The project will also provide solutions in the context of electronic orders and electronic billing, and will facilitate the necessary elements for the creation of systems for electronic catalogues, signature, and validation and Virtual File of the Company.
- Open e-PRIOR: It is intended to allow for the exchange of structured documents related to electronic catalogues, electronic orders, and electronic billing, between the Commission and its suppliers. Open e-PRIOR publicly facilitates this solution in a format of reusable open source.
- e-CERTIS: It is a tool that helps economic operators and allocating entities, in the first place, to help understand which information is being requested or facilitated; and, second, to find equivalent information reciprocally acceptable.

The European Code of best practices to facilitate the access of SMEs to public contracts (2008) allows contracting institutions of member States to fully use the potential of the regional Guidelines on public procurement, in order to guarantee equal conditions for all economic operators that wish to participate in public biddings. This Code acknowledges a series of obstacles<sup>39</sup> for the entering of SMEs to the market of European public procurement, which could be applied to the reality of Latin America and the Caribbean: i) difficulties related to the size of the contracts; ii) access to relevant information; iii) improvement of the quality and understandability of the information provided; iv) setting of training levels and proportionate financial requirements; v) relief of the administrative burden; vi) highlighting of the quality-price relationship, and not just in the price; vii) grant enough time to prepare quotations; and viii) make sure payment terms are complied with.

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<sup>39</sup> European Commission. European code of best practices to facilitate the access of SMEs to public contracts.



### ***Asia-Pacific Economic Cooperation Forum***

The Asia-Pacific Economic Cooperation Forum (APEC), which gathers 21 countries with presence in the Pacific, including Chile, Mexico and Peru, created (in 1995) the Group of Experts in Public Procurement, which has generated the (non-binding) Principles on Government Procurement (NBPs), based on: quality-price relationship; ii) open and effective competition; iii) due process; iv) fair treatment; and v) non-discrimination. One of the recommendations of the Group of Experts is the establishing of clear contracting laws, regulations, policies and procedures to ensure that procurement processes are open and transparent.

### **5. Procurement and development banking**

Public procurement practices are also developed by the financial institutions and for international development with an impact on countries of the region, such as the case of the World Bank, and the Inter-American Development Bank (IADB), as well as other development banks. These institutions have established procurement policies applicable to the execution of development projects financed by them (World Bank, IABD, Caribbean Development Bank (CBD), Central American Bank for Economic Integration (CABEI), through the internal Regulation applicable to procurement processes or to the contracting of goods and services; and CAD-Latin American Development Bank with the Guidelines for the procurement and contracting of goods, services and construction (2011).

### **III. PUBLIC PROCUREMENT IN THE CONTEXT OF REGIONAL INTEGRATION**

Given its importance for national economies, public procurement has also become relevant in the work agenda of regional integration systems and mechanisms in Latin America and the Caribbean. Also, through Free Trade Agreements (FTAs) a significant number of countries in the region have expanded their public procurement markets to regional and extra-regional providers.

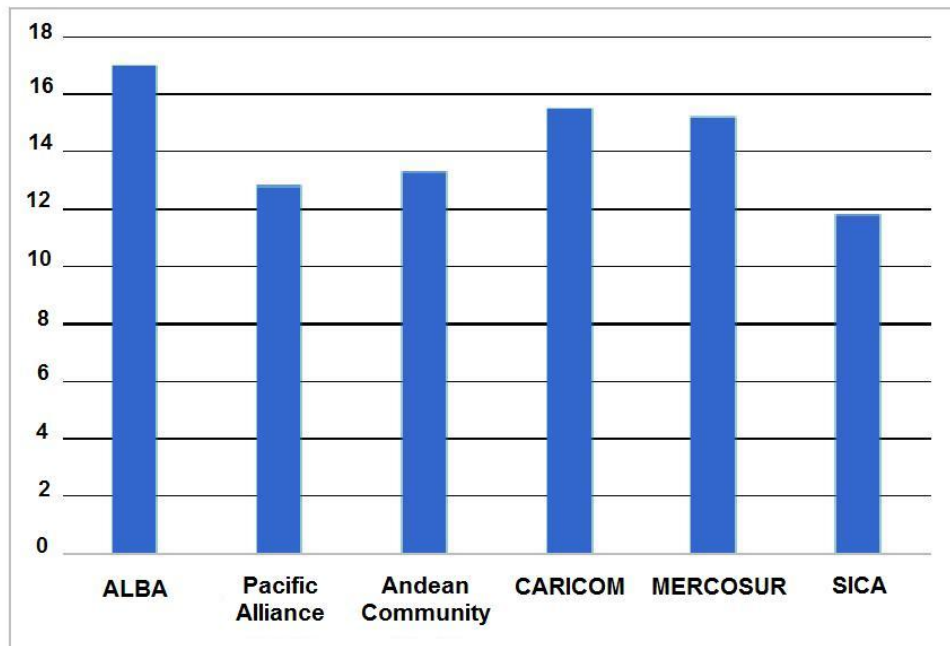
In Chart 1, at the sub-regional level, we see that the Caribbean Community (CARICOM) is the zone with the highest proportion of GDP used for public procurement in Latin America and the Caribbean (15.5%), followed by MERCOSUR (15.2%). The Bolivarian Alliance for the People of Our America (ALBA), which is in first place, is formed by Caribbean, Central American and South American countries, so the figures in this scheme cannot be assumed just for a single region.

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### CHART 1

#### Proportion of GDP committed to public procurement by regional integration group in Latin America and the Caribbean (2012)

(Percentage)



Source: Prepared by the author, based on World Bank data.

### 1. Regional Free Trade Agreements

NAFTA, which was adopted in 1994, and of which Mexico is a party, started a new stage in trade, both within the region as well as with partners outside the region, including public procurement. This agreement entered into force before the GPA, but it includes national treatment and non-discrimination principles for foreign providers.

The Dominican Republic-Central America Free Trade Agreement with the United States (CAFTA-DR)<sup>40</sup> is the first agreement that the region negotiated jointly with a partner outside the region.<sup>41</sup> CAFTA-DR is a standard applicable to trade flows between Central American countries and the Dominican Republic, regarding public procurement. The public procurement system derived from CAFTA-DR divides the regime into three parts: i) standards applied between the United States and each of the other parties; ii) standards applied between the Central American Parties; and iii) standards applied between each Central American Party and the Dominican Republic.

The entry into force of CAFTA-DR in the region's countries led to domestic regulatory and administrative changes to adapt the principles and mechanisms of an agreement established with the main economy of the world. Such is the case of Honduras, a country that eliminated the discriminatory requirement that foreign companies had to act through an agent of the country to be able to participate in public bids. Guatemala amended the national State contracting law, so that companies can oppose the awarding of bids through arbitration. Dominican Republic passed

<sup>40</sup> Member States.

<sup>41</sup> The regulations on public procurement in free trade agreements in Central America and the Micro and SMEs, p. 12.

a law on public procurement that contains clauses on transparency and non-discrimination, which reduces the requirements for national participation in construction works.<sup>42</sup>

This FTA has a list of public entities that are subject to this agreement, with a clear differentiation between the treatment given to the United States with the rest of the parties; ii) between Central America countries; and iii) between the Dominican Republic and the Central American Parties.

The Partnership Agreement between Central America and the EU includes chapters on public procurement, and promotes among its members technical cooperation and assistance in this matter, specifically the exchange of information on the legal frameworks related to public procurement.<sup>43</sup>

**TABLE 6**  
**Free Trade Agreements in Latin America and Caribbean countries with Chapters on public procurement**

Agreement	Chapter	Agreement	Chapter
CARICOM-Costa Rica	XV	CAFTA-DR	IX
CARICOM-DR	XI	CARIFORUM-EU	III
Central America-Chile	XVI	Chile-Australia	XV
Central America-Mexico	X	Chile-Canada	K
Central America-Panama	XVI	Chile-Korea	XV
Central America-DR	XII	Chile-United States	IX
Chile-Colombia	XIII	Chile-EFTA	V
Chile-Mexico	XV	Chile-Japan	XII
Colombia-Mexico	XV	Colombia-Canada	XIV
Colombia- Northern Triangle	XI	Colombia-EFTA	VII
Costa Rica-Peru	X	Colombia- United States	IX
Mexico-Nicaragua	XV	Colombia-Peru-European Union	VI
Panama-Peru	X	Costa Rica-Singapore	VIII
		Mexico-EFTA	V
		Mexico-Israel	VI
		NAFTA	X
		Panama-Canada	XVI
		Panama-United States	IX
		Panama-Singapore	VIII
		Peru-Canada	XIV
		Peru-Korea	XVI
		Peru-EFTA	VII
		Peru-United States	IX
		Peru-Japan	X

Source: SICE-OAS.

MERCOSUR Member States, except for Uruguay and the candidates Bolivia and Ecuador, have not signed any trade agreement that impacts public procurement national sectors. United States,

<sup>42</sup> Office of the US Trade Representative. Realities of the CAFTA-RD. Free Trade Agreements negotiated by the United States in the Americas, and the advantages and achievements of the provisions on public contracting.

<sup>43</sup> Article 58.

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Canada, and the European Union are the extra regional counterparts with the greatest amount of such instruments with countries in the region, to ensure that there is no discrimination and that there is national treatment between the market providers for public procurement.

The CARIFORUM<sup>44</sup>-EU Agreement is perhaps the most important trade agreement regarding public procurement with impact in the Caribbean region, besides CARICOM, which opens national markets to the region's providers, and to members of the European counterpart, the first region in the world with a percentage of public procurement with respect to GDP. This agreement, in its Article 169, also establishes the use of electronic media for public purchases:

3. When conducting procurement by electronic means, a procuring entity shall:
  - (a) ensure that the procurement is conducted using generally available and interoperable information technology products and software, including those related to authentication and encryption of information; and
  - (b) maintain mechanisms that ensure the integrity of, and prevent inappropriate access to, requests for participation and tenders.

Within the region, there are many agreements that don't incorporate disciplines on public procurement, confirming the idea the mandate to discuss this issue in trade negotiations depends on the will of the countries. Among them, the Northern Triangle (El Salvador, Honduras, and Guatemala), the agreement between CARICOM-Dominican Republic, the agreement between Canada and Costa Rica, as well as the FTA between Mexico and Panama. MERCOSUR has provisions regarding public procurement between its members, but not in its agreements with third parties. The FTA between Mexico and Uruguay (2003) delayed the negotiation on public procurement for the future, which according to the text of the agreement, should be within a two year period, but it has not happened in 2014.<sup>45</sup>

## 2. Regional Integration Mechanisms and Schemes

Public procurement has transcended the national sphere in Latin America and the Caribbean, since they are part of the work agenda of integration schemes and mechanisms in the region, with a diverse level of evolution and treatment, but converging in a common proposal within the framework of the Community of Latin American and Caribbean States (CELAC).

### ***Common Market of the South***

MERCOSUR has a Public Purchase Protocol, signed in 2006, which so far has only been ratified by Argentina. The purpose of the Protocol is to provide non-discriminatory treatment in the contracting carried out by public entities of suppliers and service providers established in member states, as well as of the goods, services, and public works originating from them.

This instrument establishes the commitment for member states to carry out agreements in successive negotiation rounds, to complete the market liberalization of public contracting between the parties. It also establishes the development of joint technical cooperation programs to foster a better understanding of the respective public contracting systems. By 2014, other Member States have had no intention to ratify said sub regional instrument.

<sup>44</sup> Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Dominican Republic, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

<sup>45</sup> Free Trade Agreement Mexico-Uruguay. Article 20-04.

The Technical Committee on Public Policies that Distort Competitiveness of MERCOSUR, emanating from Decision CMC N° 20/94 (1994), has the purpose of identifying public policy measures that given their discriminatory character, may distort any measure associated to the public procurement regime.

One of the initiatives in which MERCOSUR has made progress in the last few years, regarding public procurement, is the implementation of the CPS and of family farming through State acquisitions.

### ***Andean Community***

The Andean Community (CAN) has a provision on public procurement within the framework of Article 4 of Decision 439<sup>46</sup> (1998), establishing that the acquisition of services by government or public entities of member states is subject to the principle of national treatment between member states. Given that said resolution was not issued, since 1 January 2002 this provision is mandatory.

### ***Bolivarian Alliance for the Peoples of Our America***

During the VII Summit of ALBA-TCP held in Cochabamba, Bolivia (2009), a document entitled "Fundamental Principles of the People's Trade Treaty (TCP)", was approved which defines public procurement as a planning tool for development and the promotion of national production that must be strengthened through cooperation, participation and joint execution whenever convenient.<sup>47</sup>

Through the Founding Treaty of the Medication Regulating Centre, and the Grandnational Medication Registry in 2010 (ALBAMED), ALBA has taken concrete steps to foster the integration of public purchases, particularly in the health sector. In this connection, one of its member states, Ecuador, proposed within the framework of the VIII Economic Complementation Council of ALBA (2013), to foster a public procurement system that prioritizes local production as an instrument for development between the nine member states, which come from the three sub-regions of Latin America and the Caribbean. Two initiatives in this area are the Project for the Production of Prosthetics for Disabled people (ALBAPROR) and the centre for distribution and marketing of pharmaceuticals (ALBAFARMA).

### ***Pacific Alliance***

The Pacific Alliance has a Technical Group for Public Purchases, which also integrates the Additional Protocol to the Macro Agreement (Chapter VIII). The Business Council of the Pacific Alliance (CEAP), created in 2012, and a part of the scheme, in its meeting in Punta Mitla, Mexico (2014), recommended<sup>48</sup> the implementation of a pilot plan between two of its member states, Chile and Colombia, in order to promote the business and development of public procurement in both markets, which could then be extended to the other member states of the PA. The work plan includes four phases: i) identification of potential; ii) training of the business sector; iii) implementation; and iv) follow-up. This initiative has the support of the IDB.

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<sup>46</sup> General Framework of the Principles and Standards for the Liberalization of Trade in Services in the Andean Community.

<sup>47</sup> ALBA. *Fundamental Principles of the People's Trade Agreement – TCP. Number 14.*

<sup>48</sup> Pacific Alliance. Declaration of the Business Council of the Pacific Alliance, Punta Mitla, June 2014.

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### ***Central American Integration System***

As shown in Chart 1, at the sub regional level and in terms of integration schemes, the Central American Integration System (SICA) is the Latin American and Caribbean region that has the least participation of public procurement in GDP. However, SICA has important proposals and initiatives regarding public procurement, regarding administrative processes and institutional organization. It has also emphasized the joint procurement of medications.

The purposes of the Central American Public Procurement Strategy 2011-2015, implemented by the Central American Public Administration Institute<sup>49</sup> (ICAP), are: i) generate knowledge regarding public procurement in the Central American region ii) incorporate the new public administration in State procurement activities in the region's countries; and iii) standardize public procurement norms and procedures in the region.

In the health sector, since the presidential mandate of 2009,<sup>50</sup> SICA has adopted joint negotiation processes of medication prices and purchases through the Executive Secretariat of the Council of Ministers of Health of Central America (SE-COMISCA). Through this joint negotiation process, between 2012 and 2013, there was a savings of US\$ 20 million for public health services in participating countries, a 40% reduction in the purchasing price of medications for the region as a whole.<sup>51</sup> In 2014, an approximate savings of US\$ 2.9 million was achieved in the negotiation of 22 medications, of which 13 were allotted.

The First Meeting of Regional Authorities and Related Institutions in Public Purchases was held in Costa Rica (2012), with the participation of authorities from Honduras, Costa Rica, the Dominican Republic, El Salvador and Panama. At this event, the importance of institutional and national experiences that could be useful was acknowledged, to be replicated in other areas in the region, as well as the value of consistent and constant international cooperation.

The Dominican Republic hosted in June 2014, the V Central America and Dominican Republic Forum: Transparency, Participation, and access to Public Procurement, with emphasis on SMEs, within the framework of the Pro-Tempore presidency of SICA (I-2014). This meeting produced the Declaration of Santo Domingo, which proposes to take advantage of the opportunities that SICA offers to foster mechanisms of transparency and participation in public procurement as a tool for the development of productive sectors, particularly SMEs.<sup>52</sup>

Regarding transparency, the Declaration of Guatemala for a region free of corruption (2006) urges SICA countries to implement legal norms for public procurement in countries that have not done so yet, supported by effective and efficient systems that optimize and make the procedures for the purchase of goods and services by the State transparent.<sup>53</sup>

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<sup>49</sup> Specialized institution of SICA.

<sup>50</sup> Action Plan.

<sup>51</sup> SICA. The joint purchase of medications, a progress in the health systems in Central America.

<sup>52</sup> Declaration of Santo Domingo (2014). Number 7.

<sup>53</sup> Declaration of Guatemala for a region free of corruption. Number 5.

### ***Caribbean Community***

In 2011, CARICOM created the Working Group on Public Procurement. Despite the fact that the Chaguaramas Treaty (1973) and its Protocols which gave rise to CARICOM include the principles of non-discrimination and national treatment, they do not have specific provisions regarding public procurement.

The Revised Chaguaramas Treaty, which created the CARICOM Single Market Economy (CSME) states the need to promote, through an independent and binding instrument, public procurement<sup>54</sup> in CARICOM, and proposed the Framework Regional Integration Policy on Public Procurement (FRIP).

CARICOM promotes, through the Caribbean Centre for Development Administration,<sup>55</sup> (CARICAD) e-government among its members through the 2010-2014 e-Government Strategy, to improve the quality of services and promote greater participation opportunities through the use of standardized technological tools in national public procurement systems. This strategy replaces the first initiative which ended in 2007.

### ***Organization of Eastern Caribbean States***

The Eastern Caribbean Integration Initiative has taken steps toward implementing joint public procurement programs among its Member States,<sup>56</sup> highlighting the pharmaceutical sector, like in SICA and ALBA.

The Pharmaceutical Purchasing Service (OECS/PPS), which started in 1989, allows Member States (9) to have savings through a centralized bidding process for medications and medical equipment. For more than two decades, it has supplied medications to member states through an international public bidding system.

The initiative to establish an electronic Public Procurement System (e-PPS) has been implemented since 2013, to facilitate the process to purchase goods, mainly medications, among the members of this organization. According to the list of approved suppliers for the 2014-2016 period, out of a total 366 registered, only 23 come from 13 countries of the region, with Panama (5), Mexico (4), Colombia, and Costa Rica (3) as the main places of origin.

At the private level, there is an academic and conceptual initiative for sub-regional integration regarding public procurement in the Caribbean. It is the Caribbean Procurement Institute (CPI), established in 2006 in Trinidad and Tobago, which has carried out activities and research programs on public procurement policies in Caribbean countries. In 2008, the CPI fostered the creation of the Caribbean Association of the Procurement Professionals (CAPP) in order to foster the professionalization of public officials regarding national public procurement institutions.

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<sup>54</sup> Article 239.

<sup>55</sup> CARICAD is one of the institutions of CARICOM, in charge of promoting, strengthening and improving the capacities and management systems in the Caribbean, for the creation and implementation of public policies to support sustainable development programs in the region.

<sup>56</sup> Antigua and Barbuda, Dominica, Granada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.

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### ***Community of Latin American and Caribbean States***

The creation of the regional agenda within the framework of CELAC integrates several activities and issues that are part of the public procurement policies in the region's countries, among them:<sup>57</sup> i) the promotion of sustainable rural development and family farming; ii) the promotion of government transparency based on the free access of citizens to public information, and open government initiatives; iii) the promotion of the use of resources and areas of opportunity of the e-Government Network of Latin America and the Caribbean; iv) the increase of financial, human, and material resources to develop infrastructure in the region; and v) the promotion of public policies in harmony with nature.

In 2013, the Finance Working Group of this mechanism, at its second meeting, proposed the need for regional cooperation to strengthen public procurement, acknowledging that this activity is a tool that could contribute to the development and integration of national productive systems.<sup>58</sup> Likewise, it establishes that the Finance Working Group analyzes public procurement systems in Latin America and the Caribbean, and establishes possible inter-institutional cooperation mechanisms, which was stated in the CELAC Action Plan for 2014.<sup>59</sup>

### **3. Family Farming: rural contribution to development**

One of the aspects that CELAC and the United Nations Food and Agriculture Organization (FAO) promotes is family farming (FF), which includes agricultural, livestock, forestry, fishery, and aquatic production, which despite the great heterogeneity between the countries, and within each country, has the following main characteristics: i) limited access to land resources and capital; ii) prevailing use of the family work force; and iii) that it constitutes the main source of income of the family nucleus.<sup>60</sup>

The objectives of FF are to eradicate hunger and poverty, food and nutritional security, improve standard of living, natural resources management, environmental protection, and sustainable development, particularly in rural areas. 2014 was declared by the FAO as the "International Family Farming Year".

In the Andean countries, public procurement of food represented in 2010,<sup>61</sup> 7% for Bolivia, 4.1% for Peru, and 2.7% for Ecuador. In Brazil, the National Program to Strengthen Family Farming (PRONAF) created in 1995, has fostered the participation in the Food Procurement Program created in 2003, to allow small farmers to access State purchases. In Ecuador, there is a Food Provision Program (PPA), to guarantee the provision of food and complementary services, facilitating the incorporation of small producers as State suppliers. Paraguay has Decree N° 1056713 establishing the complementary purchasing modality, called "Simplified Process for the Acquisition of Agricultural and Livestock Products for FF".

In April 2013, the Project "Implementation of a Public Procurement Model for Family Farming for School Food Programs" started in three countries in Latin America and the Caribbean: Nicaragua,

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<sup>57</sup> CELAC. CELAC Action Plan 2014.

<sup>58</sup> Declaration of Quito (2013). II Meeting of Finance Ministers of CELAC.

<sup>59</sup> The Finance Working Group will inform the areas of CELAC Member States that are responsible for and/or involved in public procurement, about the importance of analyzing the various systems that exist in this area in the region's countries, and the possible cooperation mechanisms.

<sup>60</sup> FAO.

<sup>61</sup> Agrónomos y Veterinarios sin Fronteras. Las compras públicas: ¿alternativa de mercado para la agricultura familiar campesina? p. 17.



Honduras and Paraguay", which promotes the use of FF in student food programs in rural schools of those countries.

The Specialized Meeting on Family Farming of MERCOSUR (REAF) has a Thematic Group on Trade Facilitation, to facilitate the access of FF to the markets, fostering their inclusion in national productive chains. One of the priorities of this Work Group is the participation of producers in public procurement processes. Within this framework, there is a Regional Program for the "Exchange of experiences on public procurement policy management models for Family Farming". In Uruguay, there is the Rural 2008 Project: "Pilot plan for collective marketing and access to public procurement markets". Haiti is another example, implementing family farming in the area of public procurement, with the cooperation of Brazil and the World Food Program.

FF has promoted the convergence of social and economic vulnerable systems to achieve development through public procurement, meeting such needs as food security by supporting small producers through national food programs.

#### **IV. NATIONAL PROCEDURES FOR PUBLIC PROCUREMENT SYSTEMS**

National procurement processes have shown in recent years an international trend of convergence on core principles such as open and effective competition, transparency and quality-price ratio (value of money).<sup>62</sup>

In Latin America and the Caribbean, the development of national procurement systems (NPS) has been divergent in relation to the implementation of electronic systems. The existence and knowledge of an annual plan for comprehensive and transparent public procurement for the entire public administration is the starting point in the planning of future acquisitions by the different state institutions.

##### **1. Status of legislation in Latin America and the Caribbean**

In Latin America and the Caribbean, procurement systems have undergone reforms in their legal and institutional framework since the last decade of the last century. The IDB argues that as a result of the reforms in their public procurement systems, governments in Latin America and the Caribbean saved more than \$100 billion in recent years. However, it is important to note that some States still lack autonomous laws on the subject, as in the case of Bolivia, whose laws do not provide an explicit definition of government procurement, and Uruguay, where there is no precise definition of public procurement.<sup>63</sup>

Unlike the rest of the region, the Caribbean States have not undergone major reforms in their procurement systems. CARICOM member countries Jamaica, Belize, Guyana, Granada and Haiti show policy-level reforms in public procurement; for other member states there are no legal frameworks for government procurement that centralise the national system, through a particular entity.<sup>64</sup>

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<sup>62</sup> IPEA. O Poder de Compras Governamental como instrumento de Desenvolvimento Tecnológico: Análise do caso brasileiro. p.7.

<sup>63</sup> FLACSO. Public procurement in Latin America and the Caribbean. To internationalise or not internationalise? Who, How, When?

<sup>64</sup> Public Procurement Policy Considerations in the Caribbean: Trade, Governance and Development.

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As shown in Table 7, only in the last decade have some legal and administrative reforms been implemented in national public procurement systems, especially in incorporating technology into national public procurement systems.

**TABLE 7**  
**Legal framework in the field of public procurement in Latin America and the Caribbean**

Country	Legislation	Year
Antigua and Barbuda	The Procurement and Contract Administration Act	2011
Argentina	National Public Administration Regime	2001
Bahamas	Financial Administration and Audit Act	1973
Barbados	Financial Management and Audit Act	2011
Belize	Finance and Audit Reform Act	2005
Bolivia	High Decree No. 181 (Basic Norms of the Assets and Services Administration System)	2009
Brazil	Federal Law N° 8.666. Bidding and Contracting Processes of the Public Administration	1993
Chile	Law N° 19.886, on the Bases of Administrative Contracts for Supply and Provision of Services	2003
Colombia	General Procurement Statute for the Public Administration	2012
Costa Rica	Administrative Procurement Act	1995
Dominica	Finance Act	1995
Ecuador	Public Procurement Law	2008
El Salvador	Law on Acquisitions and Contracting of the Public Administration	2014
Grenada	Public Procurement and Contract Administration	2007
Guatemala	State Procurement Act	1992
Guyana	Procurement Act	2003
Haiti	Public Procurement Act	2009
Honduras	State Procurement Act	2001
Jamaica	Financial Administration and Audit Act	2011
Mexico	Law on Acquisitions, Leases and Services of the Public Sector	2009
Nicaragua	Law on Administrative Procurement of the Public Sector	2010
Panama	Law 22 on Public Procurement	2006
Paraguay	Law 3.439	2007
Peru	State Procurement Act	2014
Dominican Republic	Law on Purchases and Procurement of Assets, Services, Works and Concessions of the Dominican State.	2012
Saint Kitts and Nevis	Finance and Audit Amendment Act	1998
Saint Vincent and the Grenadines	Financial and Audit Act	1964
Saint Lucia	Finance and Audit Amendment Act	1998
Trinidad and Tobago	Central Tenders Board Ordinance	1961
Uruguay	Decree No. 150/012 TOCAF (Amended Text of Accounting and Financial Administration of the State)	2012
Venezuela	Law on Public Procurement	2008

Source: Prepared by the authors.

## 2. Transparency

Public procurement represents a potential area for cartel-like activities and other fraudulent practices,<sup>65</sup> by both government officials and suppliers. Transparency in public procurement contains three elements: advertising to interested suppliers, limited discretion to bidders, and a monitoring system and rules.

From the multilateral point of view, there are several initiatives related to this issue. The United Nations Convention against Corruption (2005), to which 26 countries in the region are party, provides a number of recommendations to the states on transparency in the management of public procurement.

### **United Nations Convention against Corruption**

#### **Article 9 – Public procurement and management of public finances**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

- a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances.

Such measures shall encompass, inter alia

- a) Procedures for the adoption of the national budget;
- b) Timely reporting on revenue and expenditure;
- c) A system of accounting and auditing standards and related oversight;
- d) Effective and efficient systems of risk management and internal control; and
- e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

A novel regional experience has been initiated in the Dominican Republic (2014), with the so-called Citizen Observatory on Public Procurement, an initiative of the civil society in order to promote efficiency and transparency in the public procurement system. This proposal affirms the role of the State as the sole representative of public procurement, and is not limited to transactional interaction between government institutions and suppliers. Venezuela has also established the

<sup>65</sup> WTO. Policies on competition and public procurement: Two missing links in the debate on public health. p. 27.

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concept of Communal Procurement Committees,<sup>66</sup> composed of members of the community who may select contractors, establishing mechanisms for monitoring and accountability.

In the regional legislation, 19 countries in the region have mechanisms for civil society participation in public procurement processes:<sup>67</sup> Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, St. Lucia and Venezuela.

The OECD Anti-Corruption Programme for Latin America<sup>68</sup> came into force in 1999, and sets out measures to deter, prevent and penalise individuals and businesses that promise, give or cover up gratuities to public officials in international business transactions.

The five Latin American countries that are party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions are Argentina, Brazil, Chile, Colombia and Mexico. These countries provide a link between the OECD, other nations and organisations in the region, contributing to the achievement of the programme's objectives.

The WTO Working Group on Transparency in Government Procurement, formed in 1996, which the Latin American and Caribbean Economic System (SELA) requested to join as an observer institution, was established in compliance with the decision taken at the WTO Ministerial Conference held in December 1996, to "establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement."<sup>69</sup>

Although the Doha Ministerial Declaration (2001) included the need for an agreement on transparency in government procurement, the Working Group established in its latest report (2003) that the instrument should be limited to transparency; exclude market access and should not affect the right of Member States to use public procurement to support domestic businesses and purchase goods from domestic industries,<sup>70</sup> recognising the role of purchases as a tool for development.

As in the cases of the use of ICTs and cooperation between the parties, transparency in public procurement procedures is part of the FTAs signed by countries of the region. This is the case of the instrument signed between Costa Rica and Peru (2011),<sup>71</sup> which states that each institution should promptly inform participating suppliers of its decision to award a contract, and upon request, it shall do so in writing. Also, after an award, the contracting entity shall publish in electronic or print media, widely available and easily accessible to the public, a notice containing at least the following information on the award of the contract. This content is very similar to the GPA mandate on transparency, set forth in Article XVI.

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<sup>66</sup> Law on Public Procurement. Chapter V.

<sup>67</sup> ISRC. Public Procurement in Latin America and the Caribbean. Diagnosis and challenges. p. 92.

<sup>68</sup> OECD Anticorruption Programmes for Latin America.

<sup>69</sup> WTO. 2000 Report of the Working Group on Transparency in Government Procurement to the General Council. WT/WGTGP/4.

<sup>70</sup> WTO. 2003 Report of the Working Group on Transparency in Government Procurement to the General Council. WT/WGTGP/7.

<sup>71</sup> Article 10.13 Transparency of Information of Public Procurement.

### 3. Competition policy

Promoting competition is one of the key requisites to achieve transparent and efficient procurement, while collusion is one of the biggest threats. Collusion or bid rigging in procurement occurs when businesses, which would otherwise have competed without sharing information with each other, agree to raise prices or reduce the quality of products or services to be provided to purchasers interested in obtaining such products or services through a competitive process.<sup>72</sup>

Competitive bidding processes enable governments to obtain the best price-quality relation based on planning and budget (best value for money). Effective competition can be increased if a sufficient number of credible bidders are willing to respond to the invitation to tender and these bidders have incentives to compete for the contract.

Consequently, one of the obstacles to ensure open participation of providers, whether national or foreign, is the establishment of a bidding system based on free competition between the parties. Latin America and the Caribbean does not have national competition authorities in all the countries.

**TABLE 8**  
**Competition Institutions in Latin America and the Caribbean**

Country	Institution
Argentina	National Commission for the Defence of Competition
Barbados	Fair Trading Commission
Brazil	Conselho Administrativo de Defesa Econômica
Chile	National Economic Prosecutor
Colombia	Superintendency of Industry of Commerce
Costa Rica	Commission to Promote Competition
Ecuador	Superintendency of Control of Market Power
El Salvador	Superintendency of Competition
Guyana	Competition and Consumer Affairs Commission
Honduras	Commission for the Defence and Promotion of Competition
Jamaica	Federal Trade Commission
Mexico	Federal Commission of Economic Competition
Nicaragua	National Institute of Promotion of Competition
Panama	Authority for Consumer Protection and Defence of Competition
Peru	National Institute for the Defence of Competition and Protection of Intellectual Property
Dominican Republic	National Commission for the Defence of Competition
Trinidad and Tobago	Fair Trading Commission
Uruguay	Commission for the Promotion and Defence of Competition
Venezuela	Superintendency for the Promotion and Protection of Free Competition

*Source: Prepared by the authors.*

One of the success stories in the region on competition policy in public procurement was applied by the Mexican Social Security Institute (IMSS) and the former Federal Competition Commission (CFC) on the purchase of generic drugs. The CFC investigated the existence of monopolistic

<sup>72</sup> OECD - Guidelines for Fighting Bid Rigging in Public Procurement.

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practices in these markets and found evidence of collusive behaviour. Therefore, procurement processes were amended under the guidelines of the OECD to prevent such practices.

### 4. E-Government

E-government may be seen as one of the main instruments of modernisation of the state and is the result of the strategic and intensive use of ICTs in the internal relations of its own entities and also in public sector relations with citizens and businesses, either in the supply of public services or government procurement processes.<sup>73</sup>

Electronic public procurement (EPP) has proven to be one of the most effective and efficient tools for good governance of the procurement process.<sup>74</sup> ICTs have revolutionised the way of contracting in public entities.<sup>75</sup> Although the use of ICT in public procurement remains a relatively new policy area in most developing and emerging economies in Latin America and the Caribbean, 70% of purchases are already published and advertised on the Internet.<sup>76</sup>

The use of technological resources in public procurement systems in the region is, together with e-commerce, a challenge and an opportunity for public sector reforms in many countries in the region. This is in order to increase transparency and confidence in the public, allowing an efficient use of state funds in the acquisition of assets and services required for its operation. Similarly, the use of e-procurement systems streamlines the preparation of tenders and therefore encourages the participation of a wider range and a larger number of potential suppliers in public procurement.

Most Latin American and Caribbean countries have made significant efforts in the design and implementation of public policies on e-government based on “paperless” systems, in order to promote transparency, security, and administrative efficiency,<sup>77</sup> where public procurement could serve as a catalyst for national development of the ICTs industry in the countries of the region.

As shown in Table 9, the Caribbean sub-region has a higher Internet penetration in the population (Saint Kitts and Nevis, Barbados, and Bahamas), with percentages above countries like Brazil, Colombia, Argentina and Mexico, which encourages the implementation of electronic public procurement systems.

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<sup>73</sup> ALADI. Study on Digital Government. p. 2.

<sup>74</sup> UNDESA. E-Procurement: towards transparency and efficiency in public service delivery. p. vii.

<sup>75</sup> ECLAC. Digital Economy for structural change and equality. p. 93.

<sup>76</sup> IDB. Progress in public procurement in Latin America and the Caribbean. p 4.

<sup>77</sup> SELA. Foundations of digital signature and its status in Latin America and the Caribbean. p. 3.

**TABLE 9**  
**Use of Internet in Latin America and the Caribbean (2012)**  
Percentage of population (%)

<b>Country</b>	<b>%</b>
Saint Kitts and Nevis	79.3
Barbados	73.3
Bahamas	71.7
Chile	61.4
Trinidad and Tobago	59.5
Antigua and Barbuda	59
Argentina	55.8
Dominica	55.2
Uruguay	55.1
Brazil	49.8
Colombia	49
Saint Lucia	48.6
Costa Rica	47.5
Saint Vincent and the Grenadines	47.5
Jamaica	46.5
Panama	45.2
Dominican Republic	45
Venezuela	44
Latin America and the Caribbean	42.7
Grenada	42.1
Mexico	38.4
Peru	38.2
Ecuador	35.1
Suriname	34.7
Bolivia	34.2
Guyana	33
Paraguay	27.1
Cuba	25.6
El Salvador	25.5
Belize	25
Honduras	18.1
Guatemala	16
Nicaragua	13.5
Haiti	9.8

*Source: World Bank.*

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The potential for SMEs to become suppliers of the State has been greatly expanded thanks to ICTs, and also to establish a virtual link with other companies, and thus, build capacities, receive transfers of technology and facilitate business with these companies.<sup>78</sup>

Access to ICTs in the region is a challenge for the effective implementation of a national e-procurement system, additional to the regulations and reforms in the process of adapting national systems to the technological resources. Therefore, ICTs are the most effective tool to ensure efficiency and transparency of public procurement systems.

In Latin America and the Caribbean, the experiences in moving towards an e-government have set a positive trend. For example, Uruguay has an E-Government and Information Society Agency (AGESIC) since 2012 in conjunction with a National Action Plan for Open Government (PGA) 2014-2015; Peru has a National Office of E-Government and Information Technology (ONEGI); Ecuador created the Sub-Secretariat for E-Government; and Argentina implemented a National E-Government Plan (2005).

Similarly, the use of electronic platforms for public procurement has shown an uneven development in the Caribbean region. For example, countries like Guyana, Haiti, Suriname, Trinidad and Tobago, Bahamas, Belize and Barbados do not have an e-procurement Web portal. Meanwhile, the Dominican Republic, Ecuador, El Salvador, Paraguay, Venezuela, Colombia and Jamaica have only information portals. There has been progress in transactional or more developed portals in Argentina, Brazil, Chile, Costa Rica, Mexico and Peru.<sup>79</sup>

Table 10 shows the entity in charge of the national procurement system, indicating whether it has an electronic platform for public procurement in Latin America and the Caribbean.

**TABLE 10**  
**Public e-procurement systems in Latin America and the Caribbean**

Countries	Entity in charge	Public e-procurement
Antigua and Barbuda	Government procurement, Trade, Industry and Commerce Department	
Argentina	National Procurement Office	X
Bahamas	Ministry of Finance	
Barbados	Central Purchasing Department of the Ministry of Finance	
Belize	Ministry of Finance	
Bolivia	National Procurement Office	X
Brazil	Secretariat of Logistics and Information Technology. Ministry of Planning, Organisation and Management	X
Chile	Directorate of ChileCompra, Ministry of Finance	X
Colombia	National Procurement Agency 'Colombia Compra Eficiente'	X
Costa Rica	Directorate of Administration of Assets and Administrative Procurement, Ministry of Finance	X

<sup>78</sup> SELA. Productive Development and Industrialisation in Latin America and the Caribbean. p. 33.

<sup>79</sup> See: [http://www.derecho.usmp.edu.pe/itaest2011/Articulos\\_estudiantiles/02-2011.Referencia.de.las.contrataciones.del.Estado.en.America.Latina.pdf](http://www.derecho.usmp.edu.pe/itaest2011/Articulos_estudiantiles/02-2011.Referencia.de.las.contrataciones.del.Estado.en.America.Latina.pdf).



<b>Countries</b>	<b>Entity in charge</b>	<b>Public e-procurement</b>
Dominica	Procurement Office. Ministry of Finance and Planning	
Ecuador	National Public Procurement Service (SERCOP)	X
El Salvador	Regulatory Procurement Unit. Ministry of Finance	X
Grenada	Bureau of Public Procurement. Ministry of Finance, Planning, Economy, Energy, Foreign Trade and Cooperatives	
Guatemala	Regulatory Directorate of State Procurement and Acquisitions, Ministry of Public Finance	X
Guyana	National Procurement and Tender Administration, Ministry of Finance	
Haiti	National Public Procurement Commission (CNMP)	
Honduras	Regulatory Office of State Procurement and Acquisitions	X
Jamaica	Procurement and Asset Policy Unit, Ministry of Finance and Public Service	
Mexico	Public Procurement Policy Unit, Ministry of Civil Service	X
Nicaragua	State Procurement, Ministry of Finance and Public Credit	X
Panama	General Directorate of Public Procurement	X
Paraguay	National Directorate of Public Procurement	X
Peru	Supervisory Agency of State Procurement (OSCE)	X
Dominican Republic	General Directorate of Public Procurement	X
St. Kitts and Nevis	Ministry of Finance	
St. Vincent and the Grenadines	Ministry of Finance and Economic Planning	
St. Lucia	Ministry of Finance, Economic Affairs, Planning and Social Security	
Trinidad and Tobago	National Procurement Office, Cabinet Secretariat	
Uruguay	State Procurement Agency (ACCE)	X
Venezuela	National Procurement Service, Ministry of Production and Commerce	X

*Source: Prepared by the authors.*

ECLAC has outlined three benefits of using ICTs in public procurement:<sup>80</sup>

- i. **Governance:** ICTs applied in the entire procurement process can make information available to citizens, supervisory bodies, entrepreneurs and the general community, not only about procurement process, but on the entire procurement governance system. It allows monitoring of how the state uses its budget, making it easier for citizens to demand integrity and accountability.
- ii. **Effectiveness:** the costs associated with public procurement, both for suppliers and contracting entities are reduced through standardisation, paperless operations, swift transactions, shorter processes. Contracting entities are able to extract more “value for

<sup>80</sup> ECLAC. Manual for public e-procurement for Latin America. p.33.

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money” for their goods and services purchased by having more offers at better prices through less expensive selection methods.

- iii. **Balanced Development:** It reduces information asymmetry, generating competition and participation of providers, and consequently, it lowers costs of goods and services purchased. Higher publicity rates curb monopolies and dismantle the barriers that affect the participation of small and medium enterprises, allowing even regionally providers to be informed about the business opportunities offered by the contracting entities at all levels of government.

One of the most important aspects is to have an electronic Register of Providers, to have a readily available, updated and transparent list of potential suppliers for a specific good or service.

The transition to a fully electronic public procurement system does not entail difficulties of essentially technical or technological nature. It is primarily a political and economic challenge that cannot be overcome without a strong commitment at the highest political level of the countries.<sup>81</sup>

### 5. Technical Cooperation and Professional Training

The success of public e-procurement systems also depends on its adoption by providers, so the training of stakeholders or potential suppliers is critical to achieve an efficient, transparent and effective procurement system.

Professional training of civil servants is one of the unfinished tasks in the region. CELAC's mandate<sup>82</sup> to promote regional cooperation on public procurement has been replicated in a group of countries, mainly Chile, Ecuador, Peru, Dominican Republic and Uruguay.

The Government Procurement Agreement between Chile and Uruguay (2009) is an important experience for bilateral commitment in the region. It was established under the Montevideo Treaty which created the Latin American Free Trade Association (LAFTA, which was later on replaced by ALADI), so it is open to accession by any other member of the integration scheme. The purpose of this instrument is the reciprocal opening of public procurement markets through the principle of non-discrimination to goods and services. This agreement, like the GPA, establishes the creation of a bilateral Commission for evaluation and administration.

Experiences of bilateral cooperation in public purchases include: Technical Cooperation Project between Chile and Peru to develop Sustainable Public Procurement, Institutional Cooperation Agreement between Ecuador and the Dominican Republic (2014), Technical and Scientific Cooperation between Chile and Paraguay, and the Agreement on Sustainable Public Procurement between Costa Rica and Panama.

The commitment to cooperation between procurement systems and authorities in the region poses a challenge for the development of a possible regional public procurement system, which already shows progress in integration schemes and mechanisms mentioned above. The Asian (APEC) and European experiences, with higher levels of integration in public procurement, can be a reference that can be adapted to national conditions and realities of Latin America and the Caribbean.

<sup>81</sup> European Commission. Strategy for public e-procurement. p. 14.

<sup>82</sup> CELAC. Action Plan 2014.

Technical cooperation on procurement between parties has also been provided for in FTAs, as in the case of NAFTA:

The Parties shall cooperate, on mutually agreed terms, to achieve a greater understanding of their procurement systems, with a view to achieving the greatest access to opportunities in public procurement for all providers.

- i. Each Party shall provide the others, and the suppliers of these parties, based on cost recovery, information concerning training and guidance programmes about their government procurement systems, and non-discriminatory access to any programme they develop.
- ii. Training and guidance programmes referred to in paragraph 2 include: i) training of public sector staff directly involved in procurement processes; ii) training of suppliers interested in pursuing acquisition opportunities in the public sector; iii) explanation and description of specific aspects of the public procurement system of each Party, including its challenge mechanism; iv) information on market opportunities in government procurement.

## **6. Natural disasters**

Undoubtedly, Latin America and the Caribbean is vulnerable to the effects of natural disasters. In Central America and the Caribbean there are hurricane seasons, the Andes has still active volcanoes; the large South American jungle and the tropical climate of many countries in Central America and the Caribbean make them prone to heavy rains, floods and landslides as well as climate phenomena such as El Niño or La Niña.<sup>83</sup>

The need for the State to acquire goods and/or services in face of a natural emergency transcends the primary function of this activity, so much so that an estimated 40% of countries in the region establish residual or emergency clauses, or assigning discretion to officials to incorporate other exclusions to the application of the rules.<sup>84</sup>

Public procurement represents an important activity in the management of natural disasters. Such is the case of Haiti after the earthquake in January 2010. The Law of the State of Emergency authorises the procurement of goods, services and works in disaster situations. As part of this episode, the neighbouring country, the Dominican Republic, issued an emergency decree<sup>85</sup> on public procurement to address the humanitarian situation in Haiti due to the earthquake.

Another example is Chile, where direct procurement is allowed in case of emergencies or unforeseen situations, under Law No. 19.886. In Costa Rica, through the National Commission for Risk Prevention and Emergency Response, Article 24 of the Regulation of the Law on National Emergencies and Risk Prevention establishes the Contracted Services Under the Exception Regime. In Bolivia, there is a type of procurement in case of disasters and/or emergencies, which allows public entities to procure goods and services exclusively to deal with disasters and/or national emergencies, according to Law No. 2140 of 2000 for risk reduction and disaster management.

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<sup>83</sup> SELA. Continuity of business and operations during disasters in Latin America and the Caribbean. Balance and recommendations. p. 7.

<sup>84</sup> Public procurement in Latin America and the Caribbean. Diagnosis and challenges.

<sup>85</sup> Presidency of the Republic. Decree 24-10.

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### 7. Experiences of national systems

Below is an analysis of the national public procurement systems of a group of countries in the region belonging to the Caribbean, Central American and South American subregions that have undertaken legal and administrative reforms in the past decade and can be considered examples for the other members of the region.

#### 7.1. The Caribbean

##### *Barbados*

Barbados has one of the most advanced public procurement systems in the Caribbean subregion. However, on the regulatory level, it does not have an autonomous law that regulates public procurement, as a result of which the regulations for this system are set forth in Part XVII of the 2011 Financial Management Audit Act that deals with Acquisitions. The drafting of a public procurement bill is currently under way,<sup>86</sup> as is the transformation of the Central Purchasing Department, which is to be named the Government Procurement Department.

In the area of e-government, Barbados is to become one of the first countries in the Caribbean to have a national public procurement web portal. The agency in charge of public procurement is the Ministry of Finance and Economic Affairs, which, through the Special Projects Unit, is forming a partnership with PROACTIS, a company that engages in electronically updating the purchases of goods and services, in order to establish, together with the IDB, a selection and contracting system in Barbados that was developed in 2013.<sup>87</sup>

Among the main advantages of this system are the most transparent and environmentally responsible procurement processes (CPS), promotion of greater competition among bidders, and the adoption of good international procurement practices. Moreover, it is expected that a suppliers' registry will be created, that acquisitions and contracts will be documented, and that the supplier qualification process will be simplified via the creation of questionnaires.

##### *Haiti*

In 2005, the Haitian Government adopted a new Procurement Decree and created the National Commission for Public Procurement (CNMP). Some years later it became one of the Caribbean countries to have a set of autonomous public procurement regulations: the 2009 Public Procurement Act. This reform was implemented following the 2010 earthquake, when the importance of public procurement in the event of natural disasters – as a result of which Haiti has suffered millions in economic losses and losses of human life and infrastructure – became evident.

Public procurement viewed as an opportunity for rebuilding and for boosting national innovation should be used strategically when developing projects by contracting a national or a local company and by making government more accountable to the country's citizens.<sup>88</sup> International humanitarian aid agencies that took part in the rebuilding of Haiti stated that it was necessary for appropriate national emergency contracting mechanisms to be developed for responding to disasters, besides equipping them with appropriate procurement tools in order to identify suitable suppliers.

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<sup>86</sup> Public Procurement Policy Considerations in the Caribbean: Trade, Governance and Development.

<sup>87</sup> Case Study: Modernisation of the National Procurement System.

<sup>88</sup> Public Procurement Policy Considerations in the Caribbean: Trade, Governance & Development

### ***Jamaica***

In Jamaica, as is customary in the Caribbean subregion, the Ministry of Finance and Planning is the national agency that carries out the public procurement policy. The law governing this policy is the Financial Administration and Audit (FAA) Act.

According to the Jamaican Government's Public Procurement Policy,<sup>89</sup> the country's contracting strategy must be governed by ten principles: i) economy; ii) competition; iii) efficiency; iv) equity; v) integrity; vi) fairness; vii) transparency; viii) accountability; ix) reliability; and x) value for money.

Jamaica's National Development Plan (Vision 2030) recognizes the importance of public procurement as a tool for developing the country, in particular via streamlining the contracting processes used by ministries and state agencies, as well as by improving the design of purchases with a sustainable impact on the environment.<sup>90</sup> The promotion of environmentally responsible public procurement is a commitment undertaken by the State with the establishment of the Environmental Guide to Green Procurement.

### ***Trinidad and Tobago***

The legal and regulatory framework for public contracting in Trinidad and Tobago is governed by the 1961 Central Tenders Board Ordinance. This ordinance was developed as a system of controls and procedures to guarantee efficiency in public procurement by establishing a single authority, the Central Tenders Board.<sup>91</sup>

Subsequent modifications to this ordinance have had to deal with the challenges of developments in the technological environment, both nationally and internationally. In 2010, a Public Procurement and Disposal of Property Bill, which is still (by 2014) in the process of being reviewed, was drawn up. Trinidad & Tobago's Ministry of Finance has implemented a web-based procurement tool (*finance.gov.tt*) that allows suppliers to submit bids online for supply contracts of goods or services.<sup>92</sup>

## **7.2. Central America and Mexico**

### ***Costa Rica***

The legal framework for public procurement has its starting point in the provisions of Article 182 of Costa Rica's Political Constitution, from which the principles and parameters for regulating tenders come. These guidelines are developed in Act 7494 (1995) on Government Contracting, last amended in 2009, which is the main legal provision applicable to the public procurement regime in Costa Rica.

The Ministry of Finance is the office in charge of administering the State's public procurement through the General Directorate for Asset Administration and Government Contracting (DGABCA) as the agency in charge. The State procurement system has several types of tender available to it: public tenders and short or direct tenders; it also has some types of special contracting, such as

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<sup>89</sup> Ministry of Finance and the Public Service. Public Sector Procurement Policy, p. 6.

<sup>90</sup> Jamaica National Development Plan, p. 213.

<sup>91</sup> Reform of the public sector procurement regime. Ministry of Finance. 2005

<sup>92</sup> United Nations E-Government Survey 2010

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tenders with financing, auction sales, requalification, and award by the "Dutch auction procedure," for which it has a suppliers' register.

Costa Rica's Comptroller General's Office has the Integrated Contracting Activity System (SIAC), designed to register, organize, integrate, maintain, and provide information on government contracting by bodies and entities subject to inspection by the Comptroller General's Office, incorporating principles of transparency in the procurement process. The law against corruption and illicit enrichment in government office and the Competition Promotion Commission's (COPROCOM) Manual of Best Government Contracting Practices also offer a series of recommendations.

Act No. 7494 on Government Contracting establishes that there shall be free access to procurement processes with the purpose of achieving the participation of a larger number of offerors, equal treatment of potential offerors, and a ban on the State imposing restrictive conditions on access to the tendering process through the enactment of legal or regulatory provisions; it also orders the use of favourable evaluation criteria for SMEs in State procurement.

Article 2 of the Regulations to the 2006 Government Contracting Act establishes free competition among offerors, so avoiding technical, legal or economic restrictions that limit the participation of potential offerors.

In 2002, Act No. 8262 for Strengthening Small and Medium Enterprises was passed. One of the purposes of this law is to facilitate SMEs' access to goods and services markets, including access to public procurement. In turn, Decree 37427-H, issued in 2012, amends the Regulations to the Government Contracting Act and acknowledges the efforts being made by the SMEs registered with the Ministry for the Economy, Industry and Trade to try to sell to the State, and for that reason they are granted competitive advantages over tenders.<sup>93</sup>

There are more than 15 different platforms, the majority created by local governments, where both digital platforms and physical transactions are in use. The two platforms most used by public institutions are Mer-Link and ComprRed.

In the area of e-government, the Presidency of the Republic has a body called the Technical Digital Government Secretariat, which has developed a project for digitalizing Costa Rica's State Procurement System where it proposes a new electronic procurement model based on the use of information and communication technologies via the Mer-Link platform.

In early 2013, a directive<sup>94</sup> was issued according to which the government services could not undertake new developments of electronic public procurement systems. As a result, a start was made on creating a Unified Electronic Public Procurement System, which involved reforming a series of rules and regulations, including the Regulations to the Government Procurement Act. The Central Government should be implementing and using the Unified Electronic Public Procurement System by mid-2014, once it has signed an agreement with Mer-Link for regulating the levels of service and contract terms.

In order to perfect the public procurement system in Costa Rica, a series of international agreements have been generated in recent decades under free trade agreements, whose body of regulations includes government procurement. Consequently, Costa Rica has 13 trade agreements,

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<sup>93</sup> *Análisis de la realidad de acceso y participación de las PYME en las compras públicas en Costa Rica*. CEGESTI. 2012.

<sup>94</sup> *Directriz No. 044-MH-MICITT*.

the main ones being with Mexico, the Dominican Republic, Chile, Canada, CARICOM, China, Peru, the United States, Singapore, the European Union, Panama, and Colombia.

The main government procurement portals have training courses and the Integrated Contractual Activity System Web page also offers training for users. Mer-Link has a training platform for the different procurement system modules.

In addition, in 2011 a joint effort was made by the Presidency of the Republic and the Ministries for the Environment, Energy, Telecommunications, Finance, Industry, and Trade, as well as the Ministries of Planning and Economic Policy and Labour and Social Security, to implement a National Sustainable Public Procurement Policy by means of a law.<sup>95</sup>

In Costa Rica's system of laws, the norms for Sustainable Procurement are summed up in Article 59 of the Government Contracting Act,<sup>96</sup> which requires an environmental study for every contracting procedure that is conducted. Article 148 of the Regulations to the 2006 Government Contracting Act, in turn, states that entities that take part in contracting processes must seek to safeguard the environment and endeavour to preserve or restore the environmental conditions affected by the works. Moreover, Article 29 of the Comprehensive Waste Management Act<sup>97</sup> (No. 8839) authorizes government service institutions to promote the procurement of reusable, recyclable, biodegradable, and appreciable materials.

### ***El Salvador***

El Salvador's Constitution establishes that any procurement of goods or acquisition of works that involves public funds shall be subject to public tender.<sup>98</sup> The Government Services Regulatory Acquisitions and Contracting Unit (UACI), attached to the Ministry of Finance, is the agency responsible for El Salvador's public procurement.

The 2010 Government Services Acquisitions and Contracting Act, amended in 2014, includes the setting up of Bid Evaluation Committees for tenders or competitive tenders or competitive tenders by invitation, whether national or international, which brings procedures of transparency to the public procurement process. El Salvador has also integrated ICTs with the implementation of its Electronic Public Procurement System (CompraSal), which has had a Web page since August 2014. Thanks to the Annual Acquisitions and Contracting Schedule (PAAC) it is possible to learn of the procurement plans envisaged by El Salvador's public institutions, of which there are 327 in total.

On the matter of support for SMEs, the regulations establish that, in the case of procurement of goods and services from this type of enterprise, contracting entities must acquire from SMEs at least the equivalent of 12% of the annual budget allocated to the procurement of goods and services and also to procure goods and services from enterprises located in the place where the contracting takes place.<sup>99</sup> Environmental sustainability of public procurement was included in the Five-Year Development Plan 2010-2014 in that it proposed the gradual introduction of environmental criteria in public goods and services procurement programs<sup>100</sup> by state institutions.

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<sup>95</sup> *Plan Nacional de Compras Públicas Sustentables para Costa Rica* (2012-2016).

<sup>96</sup> *Ley de Contratación Administrativa*.

<sup>97</sup> *Ley para la Gestión Integral de Residuos*.

<sup>98</sup> *Constitution of El Salvador*, Article 234.

<sup>99</sup> *Ley de adquisiciones y contrataciones de la administración pública*. 39.C

<sup>100</sup> Paragraph 182.

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### *Mexico*

In Mexico, the agency in charge of public procurement nationwide is the Government Office Secretariat (SFP), which operates through the Public Contracting Policy Unit. Contracting is included in the National Development Plan 2013-2018, which provides for programs for the development of suppliers interested in supplying the State with goods and services by:<sup>101</sup>

- Promoting public sector contracting as a tool for operating supplier development programs focused on increasing the participation of domestic companies in the value chain and improving the terms of procurement for agencies and entities.
- Implementing strategic public procurement schemes that seek to attract investment and technology transfer.
- Promoting innovation through the demand for government goods and services.
- Taking greater advantage of reserved areas of procurement negotiated in free trade agreements.
- Developing a system of industrial compensations for strategic government purchases.
- Strengthening mechanisms for ensuring that government procurement favours products that are certified to Official Mexican Standards.

The Mexican Constitution establishes that all public procurement shall be by means of a call to public tender to ensure the best conditions available for the State in terms of price, quality, financing, timeliness, and other pertinent circumstances.

In Mexico, the umbrella national public procurement system law is the Public Sector Acquisition, Leasing and Services Act sanctioned in 2000 and amended in 2009. Account should also be taken of the Public Works and Associated Services Act (2000). Public institutions are under the obligation to post their annual procurement plan on CompraNet.<sup>102</sup>

Mexico is one of the countries in the region that have held and promoted public procurement fairs and macro events as a mechanism for including potential suppliers. The "*Expo Compras del Gobierno*" (Government Procurement Fair), held annually, has counted on the participation of the 17 federal secretariats and 94 decentralized institutions, including the Mexican State's main buyers: Petróleos Mexicanos (PEMEX), the Mexican Social Security Institute (IMSS), and the Federal Electricity Commission (CFE).

In the area of development and support of SMEs, the Mexican State promotes the procurement of competitive domestic products and services by the public sector and foreign buyers,<sup>103</sup> which came to 52,327 in 2013 under the Government Procurement Program.

The professionalization of public procurement has been developed in Mexico. The Government Contracting Standards Unit trains government officials in order to update and develop their knowledge of the regulations having to do with public procurement financed with federal funds or with loans from international financial bodies.

<sup>101</sup> National Development Plan 2013-2018. Strategy 4.8.3. Orienting public spending and making it more efficient in order to strengthen the domestic market.

<sup>102</sup> *Ley de adquisiciones, arrendamientos y servicios del sector público*. Article 21.

<sup>103</sup> *Ley para el desarrollo de la competitividad de la micro, mediana y pequeña empresa*. Article 4.II



### 7.3. South America

#### ***Argentina***

The purpose of Decree 1023/2001 on the National Government Services Contracting Regime, which governs public procurement in Argentina, is for works, goods and services to be obtained with the best technology, in a timely fashion, at the lowest possible cost, and from the best quality suppliers. Some of its principles are: contracting efficiency, promoting the participation of interested parties and competition among offerors, transparency in procedures, advertising and dissemination of offers, accountability of public officials in managing contracting, and equal treatment of interested parties and offerors.

The national government procurement system applies to the central government, decentralized agencies, national universities, and the armed and security forces. However, its scope does not extend to the provinces, the municipalities or bodies that have a specific contracting regime; state-owned companies, trust funds in which the State has a holding, public sector financial entities, and multilateral credit agencies are also excluded. In this case, the Federal Government Contracting Network initiative was created in 2009 with the purpose of strengthening the procurement systems of the agencies in the provinces and the country's regional governments.

In Argentina, awards must be made in favour of the most convenient bid for the contracting body, taking into account the price and quality of the product or service being offered by means of tenders or competitive tenders, public auctions, short tenders or competitive tenders or competitive bidding, or direct contracts.

The National Contracting System and the National Contracting Office (ONC) were created by Decree 1545 (1994). The ONC is the governing body of the National Government Contracting System responsible for establishing the rules, systems and procedures governing contracting, whereas the management of purchases is handled by the central government's institutions.

Decree 893 (2012) regulates the government contracting regime under which the e-system ArCompra<sup>104</sup> is made available as a means for performing all procurement procedures electronically, so making it possible to unify them and implement framework contracts through the ONC.

The body of regulations on public procurement introduces elements of procurement sustainability (sustainable public procurement, SPP). The inclusion of environmentally friendly and socially responsible criteria in procurement catalogues is being studied by the ONC in order to include this in its goods and services identification system.

#### ***Brazil***

Brazil has Law 8,666<sup>105</sup> (1993) that regulates public procurement nationwide. It also has Law 10,520 (2002) or law on tendering and negotiations for the acquisition of goods and services, which simplifies tendering processes on the administrative level.

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<sup>104</sup> Provision 69/2014, National Contracting Office, 28 August 2014, available at: <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=234157>

<sup>105</sup> Lei N° 8.666

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The Ministry of Planning is the institution in charge of the acquisition of goods and services through the Logistics and Information Technology Department (SLTI), which handles e-tenders, offers, contracts, and supplier registration. There is also a general services administration system (SIASG) that is responsible for carrying out electronic public contracting operations on behalf of the government services.<sup>106</sup> There is a Single Supplier Registration System, which registers the individuals or companies interested in participating in government service tenders, thus making it possible to monitor the performance of registered suppliers.

Today, the so-called e-tendering is the procurement mode most used by the government services. Via this mechanism suppliers compete to offer the best price, so reducing transaction times and increasing the number of offerors.

In 2006, Brazil adopted a policy of giving preference to domestic companies, in particular SMEs. Complementary Law 123 (the General Law on SMEs) establishes the advantages for this group, such as purchases below a certain amount, exclusive tendering or subcontracting.

In 2011, the Program for Speeding up Growth (PAC) in public schools and the Single Health System (SUS) were adopted, along with an Acquisition Plan, which was created to make the contracting processes for projects such as the 2016 Olympic Games easier.

In the area of e-government, the portal Comprasnet started to operate in 2000. Run by the Ministry of Planning, Comprasnet is in charge of carrying out e-contracting processes on behalf of the government services and handling information relating to contracting and suppliers in a way that is more competitive, standardizing procedures without resorting to direct contracting. This portal permits the monitoring of public tendering processes, registers purchases in the Integrated Financial Administration System for the purpose of allocating contracts, and allows suppliers to sign up with the Suppliers Registration System, obtain offers, and take part in the e-contracting of goods and the contracting of services.

Via its electronic platform,<sup>107</sup> the Government of Brazil, with the collaboration of the Ministries of Planning, Development, the Economy, Industry, and Trade, provides training in public tendering and contracting management as a best practices measure for improving access for small and medium enterprises, as well as for other applicants.

In 2011, Brazil launched the National Action Plan for Sustainable Production and Consumption (PPCS)<sup>108</sup> with the purpose of tying in the economic, social and environmental aspects of development, giving priority to the acquisitions of recycled or recyclable products, environmental sustainability, energy efficiency, reduced water consumption, the use of renewable energies, and garbage handling, among other things.

In 2012, an initiative to acquire sustainable products was consolidated with the publication of Decree 7,746, which regulates Article 3 of Law 8,666 (1993) that establishes criteria, guidelines, and practices for promoting sustainable national development in contracts entered into by federal government services. The decree also created the Interministerial Commission for Sustainability in

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<sup>106</sup> Government Procurement Management. Ministry of Planning.

<http://www.comprasestatales.gub.uy/Documentos/evento/presentacion10.pdf>

<sup>107</sup> Government Procurement Training. See: <https://www.comprasgovernamentais.gov.br/paginas/escola-de-logistica/capacitacao>

<sup>108</sup> Sustainable Procurement in Brazil.

Government Services (CISAP) for promoting sustainability actions, criteria, and practices in public contracting processes.<sup>109</sup>

Twenty years after the enactment of the national procurement law, the Institute for Applied Economic Research (IPEA) has broached the need to reform this law, with the following objectives:<sup>110</sup> 1) give priority to the result of the tender over the process; 2) increase the purchasing power of the State in favour of the citizen by expanding the options in terms of the criteria the institution can take into account when selecting a supplier in order to comply with broad social objectives and permitting it to combine criteria as efficiently as possible; 3) generate career incentives for public procurement officials; 4) reduce or eliminate the possibilities of manipulating results and corrupt practices; 5) reduce transaction costs by increasing technical efficiency through the adoption and dissemination of the best practices; and 6) make the procurement process more transparent and predictable for society as a whole.

### **Chile**

Chile has a modern public procurement process in that it permits equal access to business opportunities and promotes transparency and efficiency in tendering processes. Law 19,886, promulgated in 2003,<sup>111</sup> establishes: i) an open market; ii) public bidding; iii) access via the e-market, participation mandatory; and iv) a control and impugment system through which the government's actions may be audited and investigated.

Upon the creation of the Public Procurement Act, the Public Procurement and Contracting Directorate, a service attached to the Ministry of Finance and supervised by the Presidency of Chile, became a formal institution. ChileCompra administers Chile's Public Procurement System, where bodies of the State autonomously conduct their procurement and contracting activities and where suppliers make their offers.

The aforementioned law makes reference to two exceptional types of contracting (Article 7): the private tender or proposal and direct treatment or procurement. In the case of the private tender, the procedure is for an invitation to tender to be issued, whereupon proposals are made; and in the case of direct treatment, the requirements for a public bidding process are omitted during the negotiation.<sup>112</sup>

In the case of contracting suppliers, the Public Procurement and Contracting Directorate is the office in charge of keeping a register, which facilitates contracting formalities. While the law does not state that registering is mandatory in order to be able to bid, it does make it a requirement for executing the contract. In 2006, the number of suppliers registered came to 224,141, approximately 93% of whom were self-employed or micro and small enterprises.<sup>113</sup>

Besides, there is a Competencies Accreditation process for public bodies, the objective of which is to verify that those who are involved in the acquisition processes in each institution have the necessary aptitudes, knowledge and skills to perform the activities making up their job function, thus generating transparency and efficiency in contracting processes undertaken by the State.<sup>114</sup>

<sup>109</sup> Decree 7,467 Sustainability criteria in contracting by government services.

<sup>110</sup> IPEA. *A Agenda Perdida das Compras Públicas: rumo a uma reforma abrangente da lei de licitações e do arcabouço institucional*. p. 15.

<sup>111</sup> Modifications to the regulations to Law 19,886. Ministry of Finance. 2011.

<sup>112</sup> Direct Treatment Contracting Procedures. ChileCompra.

<sup>113</sup> Office of the Comptroller General of the Republic.

<sup>114</sup> *Compras públicas y libre competencia. Fiscalía General Económica*. 2011.

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In Chile there is a mechanism of framework agreements, a predetermined procurement method via a catalogue so that public bodies may access it directly. This allows them to issue a purchase order directly to suppliers that have submitted tenders previously, thus shortening procurement processes.<sup>115</sup>

The modernity of the Chilean State's public acquisition procedures stems from the use of the new technologies to speed up the processes of accrediting tenders and bids. ChileCompra, as already mentioned, acts as an electronic information intermediary between the offeror and the supplier. Moreover, it has an official electronic register of suppliers and a virtual platform for tenders. Everything is covered by the Public Procurement Act.

The Public Procurement and Contracting Directorate has a training platform that offers training courses for companies and individuals who apply for and wish to participate in one of the State's tendering processes.

On the matter of contracting, the Public Procurement Act establishes that, in the case of public tenders, it is possible to use sustainability criteria to decide which bid to accept. In 2012, 15% of the purchase orders in the public procurement system were issued to companies that had passed the sustainability criteria via ChileCompra.<sup>116</sup> Chile has a Sustainable Public Procurement Consulting Council, whose purpose is to review the plans and the implementation of sustainable criteria, where the main authorities having competence in the matter take part: ministries, foundations, universities, and the ChileCompra Directorate. Besides this, Chile is participating in a pilot sustainable procurement project with the United Nations Environment Program (UNEP).

For dealing with natural disasters, Chile has Law No. 19,886 (2003), which authorizes the use of direct awards by means of a resolution classifying the event as such and stating the merits of the case issued by the head of the contracting entity, without detriment to special provisions in the event of earthquakes and catastrophes contained in the pertinent legislation.<sup>117</sup>

The Governments of Peru and Chile have held meetings, through their competent bodies, to exchange experiences and to be able to incorporate environmental, social and economic factors into the various public procurement models. The AGCI (Chile's Agency for International Cooperation) and Germany's Federal Ministry for the Environment, Nature Conservation, and Nuclear Safety have also held encounters under an agreement that seeks to develop and strengthen Chile's capacity for making progress in implementing sustainable and eco-labelled public procurement, based on Germany's experience.

### **Colombia**

The national public procurement authority in Colombia was created only recently by means of Decree 4,170 (2011), which establishes the National Public Contracting Agency (*Colombia Compra Eficiente* – Colombia Efficient Procurement) replacing the Inter-Sectoral Public Contracting Commission, set up in 2004.

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<sup>115</sup> *Licitaciones de Convenio Marco*.

<sup>116</sup> See: [http://www.comprassustentables.cl/index.php?option=com\\_phocadownload&view=category&id=2&Itemid=2](http://www.comprassustentables.cl/index.php?option=com_phocadownload&view=category&id=2&Itemid=2).

<sup>117</sup> Article 8.

Transparency in public procurement has been extensively regulated in the Colombian system, which has Law 1,150 (2007), under which measures for efficiency and transparency in public procurement were introduced.

Incentives for SMEs are also part of the national rules and regulations that apply to public procurement. Decree 1,510<sup>118</sup> (2013) provides that the contracting entity must establish, in line with proposal qualification criteria, the incentives for domestic goods, services and offerors – or those deemed to be domestic in situations where the national treatment criterion applies – in the terms and conditions for contracting. These institutions may also issue invitations to tender restricted to domestic SMEs domiciled in the departments or municipalities where the contract is going to be performed. Information and Communication Technologies (ICTs) have been incorporated into Colombia's national public procurement system with the Electronic Public Contracting System (SECOP).

Law 1,508 (2012), whereby the legal regime for Public-Private Partnerships is established as an instrument for forming partnerships with private capital, is applicable to all contracts in which public entities award a private supplier the design and construction of an infrastructure and associated services or its construction, repair, upgrading or equipping, activities that shall also involve the operation and maintenance of said infrastructure.<sup>119</sup>

### ***Ecuador***

Ecuador is one of the countries in the region to have recently implemented legal and administrative reforms in its national public procurement system, in particular since the promulgation of the 2008 Constitution, which establishes that public procurement must comply with criteria of efficiency, transparency, quality, and environmental and social responsibility.<sup>120</sup> Ecuador's Constitution also states that priority should be given to domestic goods and services, in particular those from the popular and solidary economy and SMEs.

In 2013, public procurement accounted for 34% of the Ecuadorian State's general budget. The impact of this figure can be seen in the national production matrix, where public procurement (2011) exceeds the total value of non-oil exports.<sup>121</sup> As can be seen in Chart 2, the amount allocated to public procurement in Ecuador increased significantly during the period 2010-2013.

Public procurement in Ecuador is regulated under the National Public Contracting System Act, sanctioned in 2008 and amended in 2013, which establishes that the procurement policy shall be consistent with the following principles:<sup>122</sup> legality, fair treatment, equality, quality, modern technology, timeliness, concurrence, transparency, advertising, and national participation.

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<sup>118</sup> Article 151.

<sup>119</sup> Article 3. Scope of application.

<sup>120</sup> Constitution of the Republic of Ecuador (2008), Article 288.

<sup>121</sup> See: <http://www.scpm.gob.ec/wp-content/uploads/2013/07/Salom%C3%B3n-Tenorio.pdf>

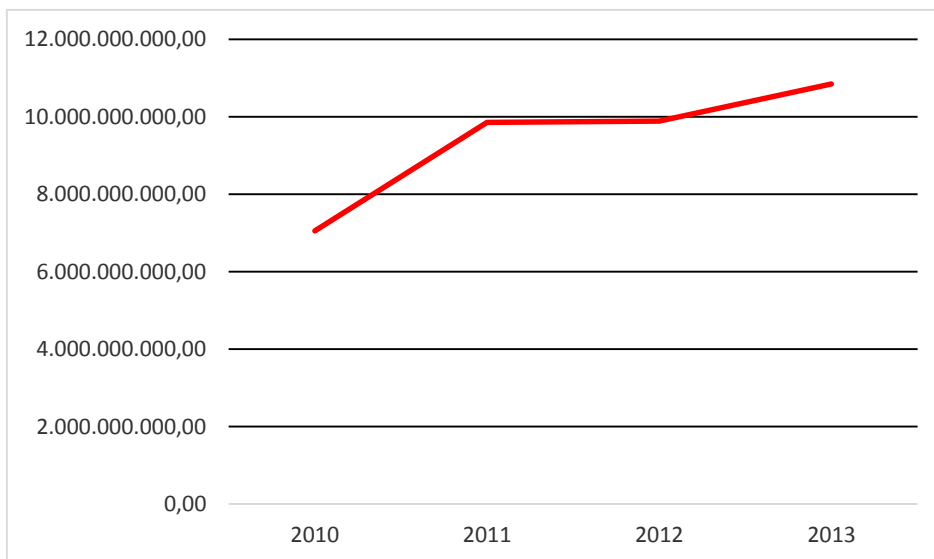
<sup>122</sup> *Ley Orgánica del Sistema Nacional de Contratación Pública*, Article 4.

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### CHART 2

#### Investment in public procurement in Ecuador

(US\$)



Source: SERCOP.

Ecuador has a public electronic procurement system as well as a variety of initiatives for developing and providing support for vulnerable sectors, among them the SMEs, such as the Electronic Handicrafts Catalogue. The *Hilando Desarrollo* (Spinning Development) Programme is an initiative whereby school uniforms are issued free of charge to students in primary, basic and basic general education in rural and urban areas, including Amazonia. One aspect worth noting is that contracting public institutions in Ecuador must conduct inclusion procurement studies.

Inclusive Fairs are defined as procedures carried out by contracting entities, with no consideration being given to contracting amounts, for the purpose of fostering the participation of artisans and micro and small producers and service providers through the acquisition of domestically produced goods and services, including those services whose sole and exclusive purpose is the repair, refurbishment, remodelling, adaptation or improvement of an already existing building or infrastructure.

The aforementioned framework public procurement law establishes that, in cases of an emergency,<sup>123</sup> the works, goods or services, including consulting services, that are strictly required in order to overcome the emergency situation may be contracted directly and under the responsibility of the highest authority. This includes the possibility of hiring foreign companies without it being necessary for them to have previously met the requirements of domicile or presentation of guarantees.

The *Plan Nacional de Buen Vivir* (National Good Living Plan) 2013-2017 identifies public procurement as a strategic element of the State in transforming the national production matrix.

<sup>123</sup> Article 6.31 defines emergency situations as those generated by serious events such as accidents, earthquakes, floods, droughts, grave internal disturbances, imminent external aggression, international war, natural catastrophes and other catastrophes as a result of force majeure or an act of God, on the national, sectoral or institutional level.

Objective 10.7 of this plan proposes seven goals<sup>124</sup> that are to be developed within the context of the national public procurement system:

- i. Establish mechanisms so that public investment is an agent that drives the transformation of production based on priority sectors.
- ii. Generate promotion methods and mechanisms, predictability, management models and financing in order to take advantage of the positive externalities of public investment and thus promote private investment.
- iii. Foster import substitution by implementing mechanisms that will guarantee that local production chains are given priority in public procurement by the different levels of government, state institutions, and state-owned companies.
- iv. Define a market reserve margin in public procurement to boost the MISME and Popular and Solidary Economy (PSE) sector by increasing their participation as suppliers to the State, taking into account absorption of domestic production, supply, and suppliers' productive capacity.
- v. Promote innovation and the transfer of know-how and technologies in the procurement of imported services for the development of strategic industries and priority sectors.
- vi. Preserve the power of the State for promoting the transformation of the production matrix through public procurement from Ecuadorian suppliers in any international trade negotiations between Ecuador and other countries.
- vii. Maximize the incorporation of capital goods and national raw materials in the State's strategic projects through the unbundling of packaged technology and the coordination of public and private actors, universities, and actors in the popular economy and rural and fishing communities.

The Popular and Solidary Economy Act (2012) establishes public procurement as one of the measures for fostering domestic organizations engaged in production<sup>125</sup> by setting preference margins in favour of organizations belonging to the popular and solidary economy and popular economic units. This law states that it is through the inclusive fair that the State institutions will give priority to the procurement of goods and services from said suppliers.

The concept of the popular and solidary economy includes all forms of economic organizations where their members, individually or collectively, organize and develop processes for the production, trading, marketing, financing and consumption of goods and services in order to meet needs and generate revenues based on relations of solidarity, cooperation, and reciprocity, giving priority to work and the human being as the subject and purpose of their activity, geared to good living), in harmony with nature, above appropriation, lucre, and the accumulation of capital.<sup>126</sup>

The National Public Contracting Service (SERCOP), Ecuador's national public procurement agency, has a digital educational platform<sup>127</sup> through which virtual courses on the national public procurement system are given, geared to both government officials in contracting entities and potential suppliers.

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<sup>124</sup> Government of Ecuador. *Plan Nacional del Buen Vivir* 2013-2017 p. 304.

<sup>125</sup> Article 132.

<sup>126</sup> Idem, Article 1

<sup>127</sup> See <http://www.sercopcapacita.gob.ec/virtual/>

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### *Uruguay*

Law No. 18,834 (2011) reformed Uruguay's national public procurement system, created in 2008, by incorporating FTA associated tools, such as the creation of a suppliers register. In Uruguay, significant headway has been made in support for SMEs wishing to penetrate public procurement, above and beyond legal and regulatory reforms. Law No. 18,362 (2008) created the Public Contracting Program for Development, under which special contracting regimes and procedures may be used that are adapted to the purposes of developing domestic suppliers, in particular micro, small and medium enterprises and small agricultural and livestock producers, and encouraging scientific-technological development and innovation.

Instruments that may be used under this program include preferential price margins and market reserve mechanisms in favour of domestic producers and suppliers. In all cases, domestic producers and suppliers will be required to provide counterpart goods and services that contribute to the sustainability, in the medium term, of the activities being stimulated. This initiative includes subprograms with the emphasis on SMEs, the agricultural sector, and inclusion of ICTs in Uruguay's public procurement.

Granting preferential treatment for domestic tenders is covered in Law 18,362, which establishes two regimes: Giving Preference to Domestic Industry (PIN) and the Public Contracting Programme for Development (PCPD).



## CONCLUSIONS AND RECOMMENDATIONS

- Public procurement is a strategic activity for the State that combines environmental, technological, social and commercial elements, promoting the incorporation of vulnerable social sectors as a tool for national development.
- Latin America and the Caribbean have a lower public procurement/GDP ratio than more developed economies, including the global average of 17.87% (2012). In terms of regional integration schemes, SICA is the scheme with the lowest percentage of GDP committed to the procurement of goods and services by the State, whereas the countries of ALBA and CARICOM invest the largest percentage in this activity.
- The acquisition of goods and services should not focus solely on the administrative procedure of finding the best supplier in terms of the price offered; account should be taken of the lifecycle of the product or service, from the time it is selected through to its consumption or completion of the work.
- Besides being subject to national laws on public procurement, a sizeable group of countries in Latin America and the Caribbean have voluntarily joined different regulatory frameworks on the regional and international levels, thus permitting the systematization of procurement processes, improving transparency, and implementing innovations through agreements, models, working groups and bilateral cooperation initiatives.
- SMEs are the State's main potential suppliers, and for that reason policies to guarantee their participation in public procurement processes, taking into account their productive and financial capacity, should be promoted.
- It is necessary to promote programs so that SMEs can develop their capacity for competing in the public procurement of other FTA signatory States, and thus take part in the export process. SMEs should be treated separately in policies of inclusion in and access to public procurement markets.
- The signing of NAFTA in 1994 started a new stage in trade treatment, both at the intra-regional level and with extra-regional partners, including public procurement.
- Public procurement has been negotiated with a group of countries in the region under free trade agreements, mainly with extra-regional partners (United States, European Union and Japan).
- Unlike other regions, mainly Europe, Latin America and the Caribbean do not have a binding umbrella instrument on public procurement. However, recent initiatives have been presented in the different subregional schemes for regional integration, such as OECS, SICA, MERCOSUR and ALBA.
- There is no willingness at the regional level to join the Government Procurement Agreement (GPA) nearly 20 years after it went into effect. However, this instrument is a model for the negotiation of regional trade agreements with inclusion of the public procurement issue for the countries of Latin America and the Caribbean.
- Regulatory reforms in national public procurement systems in the past decade have made it possible to increase transparency in operations, improve the quality-price ratio, promote competition, and perfect the management of procurement processes by simplifying and standardizing procedures, including ICTs.
- Transparency in matters relating to tenders and contracts handled by national public institutions is a key element in the fight against corruption.
- The design of a competitive public procurement system requires that competition be included in laws and regulations on public procurement. Moreover, it is necessary to promote cooperation among procurement bodies and authorities and competition authorities that have been set up in most countries in the region.

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- The vulnerability of Latin America and the Caribbean to natural disasters has been incorporated into the regulations on public procurement in emergency situations, facilitating the expediting of goods and services procurement processes.
- The use of ICTs should be geared to improving public services, organizing contracting entities, and informing and training suppliers in all areas involved in public procurement processes.
- Implementation of technical infrastructure for electronic public procurement should be promoted in the countries of the region, thereby reducing the existing unequal digital gap among the countries of Latin America and the Caribbean.
- Public procurement is not an activity that falls only to national institutions having direct competence in the matter, and for that reason inter-institutional cooperation among national procurement agencies, competition promotion agencies and research institutions should be promoted, something that has been proposed within CELAC.
- The agricultural and pharmaceutical sectors have made the biggest strides in bilateral and regional cooperation in the area of public procurement in Latin America and the Caribbean.
- The professionalization of public officials in charge of implementing the public procurement policy is an opportunity and a challenge for the countries of the region as a fundamental part of setting up efficient and transparent public procurement systems capable of building a national development tool.

**GLOSARY OF TERMS**



## **GLOSSARY OF TERMS**

ALBA	Bolivarian Alliance for the Peoples of our America
APEC	Asia-Pacific Economic Cooperation Forum
BRICS	Brazil, Russia, India, China, South Africa
CABEI	Central American Bank for Economic Integration
CAFTA-DR	Dominican Republic-Central America Free Trade Agreement with the United States
CAN	Andean Community
CARICOM	Caribbean Community
CDB	Caribbean Development Bank
CELAC	Community of Latin American and Caribbean States
CFC	Federal Competition Commission (Mexico)
ECLAC	Economic Commission for Latin America and the Caribbean
EPP	Electronic Public Procurement
EU	European Union
FAO	United Nations Food and Agriculture Organization
FF	Family Farming
FTAs	Free Trade Agreements
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
ICAP	Central American Public Administration Institute
ICTs	Information and Communication Technologies
IDB	Inter-American Development Bank
IDRC	International Development Research Centre
LAFTA	Latin American Free Trade Association (later on replaced by the Latin American Integration Association, ALADI)
MERCOSUR	Common Market of the South
NAFTA	North American Free Trade Agreement
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OECS	Organization of Eastern Caribbean States
OECS/PPS	OECS/Pharmaceutical Procurement Service
RICG	Inter-American Network on Government Procurement
SE-COMISCA	Executive Secretariat of the Council of Ministers of Health of Central America

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SELA	Latin American and Caribbean Economic System
SICA	Central American -Integration System
SMEs	Small and Medium-sized Enterprises
SPP	Sustainable Public Procurement
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Program
WHO	World Health Organization

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