

APPENDIX B

**U.S. Notification to the WTO Committee on Government Procurement under Article
XXIV:6(a) of the Agreement on Government Procurement**

**MODIFICATION TO APPENDIX I
OF THE UNITED STATES**

Pursuant to Article XXIV:6(a) of the Agreement on Government Procurement (the "GPA"), the United States notifies the Committee of modifications to its General Notes and Annex 3 of Appendix I. These modifications implement an Agreement between the Government of Canada and the Government of the United States on Government Procurement (hereinafter "Canada-U.S. Agreement"), which enters into force on February 16, 2010. It provides for reciprocal market access opportunities at the sub-central level. These modifications will not affect the mutually agreed coverage provided to the other Parties under the GPA. The modifications are:

1. Modification to Note 5 of General Notes in Appendix I: Based on the Canada-U.S. Agreement, the condition set out in Note 5 of the U.S. General Notes with respect to Annex 2 of Appendix I of the GPA has been met. Therefore, the United States is amending Note 5 to remove the non-application of its coverage in Annex 2 to Canada.

2. Modifications to Annex 3 of Appendix I: Based on the Canada-U.S. Agreement, the United States is modifying Annex 3 by adding seven programs under List C and providing that with respect to those programs, the domestic purchasing requirement of section 1605(a) of the *American Recovery and Reinvestment Act of 2009* (ARRA) will not be applied as a condition of ARRA financing of those programs with respect to Canadian iron, steel, or manufactured goods in procurement above the Annex 3 threshold for construction services. The United States is not undertaking any other commitments with respect to those programs. These modifications will apply to Canada and are subject to negotiation of mutually acceptable commitments with other Parties.

In accordance with the Canada-U.S. Agreement, Canada will submit to the Committee a parallel communication notifying the modifications to Appendix I that implement its obligations under the Canada-U.S. Agreement.

Attachment A to this document contains the modifications to U.S. General Note 5 and Annex 3 of Appendix I in red-line/strikeout form. Attachment B contains a clean text version of the U.S. General Notes and Annex 3 after the modifications.

ATTACHMENT A

GENERAL NOTES

1. Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses.
2. Except as specified otherwise in this Appendix, procurement in terms of U.S. coverage does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to this agreement.
3. Procurement does not include the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.
4. Where a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract.
5. For goods and services (including construction) of the following countries and suppliers of such goods and services, this Agreement does not apply to procurement by the entities in List A and B in Annexes 2 and 3 or the waiver described in List B of Annex 3:

Canada

The United States is prepared to amend this note at such time as coverage with respect to ~~these a~~ Annexes 3 can be resolved with a Party listed above.

6. For construction services of the Republic of Korea and suppliers of such services, this Agreement applies only to procurement of the entities listed in Annexes 2 and 3 above a threshold of 15 million SDRs.
7. For goods and services (including construction) of Japan and suppliers of such goods and services, this Agreement does not apply to procurement by the National Aeronautics and Space Administration.
8. A service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4.
9. The United States will not extend the benefits of this Agreement to Japan as regards the award of contracts by entities listed in Annex 3 that are responsible for the generation or distribution of electricity.

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDRs for supplies and services (except as specified below)
5 million SDRs for construction

List of Entities:

List A: The following entities at the SDR equivalent of \$250,000 for supplies and services:

Tennessee Valley Authority

Power Marketing Administrations of the Department of Energy

- Bonneville Power Administration
- Western Area Power Administration
- Southeastern Power Administration
- Southwestern Power Administration
- St. Lawrence Seaway Development Corporation

List B: The following entities are 400,000 SDRs for supplies and services:

The Port Authority of New York and New Jersey with the following exceptions:

- Maintenance, repair and operating materials and supplies (e.g., hardware, tools, lamps/lighting, plumbing);
- In exceptional cases, individual procurements may require certain regional production of goods if authorized by the Board of Directors;
- Procurements pursuant to multi-jurisdictional agreement (i.e., for contracts which have initially been awarded by other jurisdictions).

The Port of Baltimore (subject to the conditions specified for the state of New York in Annex 2)

The New York Power Authority (subject to the conditions specified for the state of New York in Annex 2)

Rural Utilities Service Financing:

- (1) waiver of Buy American restriction on financing for all power generation projects (restrictions on financing for telecommunication projects are excluded from the Agreement);
- (2) application of Code-equivalent procurement procedures and national treatment to funded projects exceeding the thresholds specified above.

List C

1. U.S. Department of Agriculture, Rural Utilities Services, *Water and Waste Disposal Programs* (Note 3)
2. U.S. Department of Agriculture, Rural Housing Service, *Community Facilities Program* (Note 3)

3. U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *Energy Efficiency and Conservation Block Grants* (Note 3)
4. U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *State Energy Program* (Note 3)
5. U. S. Department of Housing and Urban Development, Office of Community Planning and Planning and Development, *Community Development Block Grants Recovery (CDBG-R)* (Note 3)
6. U. S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Public Housing Capital Fund* (Note 3)
7. U.S. Environmental Protection Agency, *Clean Water and Drinking Water State Revolving Funds*, for projects funded by reallocated ARRA funds where the contracts are signed after February 17, 2010 (Note 3)

Notes to Annex 3

1. With respect to these entities, the Agreement shall not apply to restrictions attached to Federal funds for airport projects.
2. The conditions specified in the General Notes apply to this Annex.
3. For the programs in List C, entities shall not impose, through September 30, 2011, the domestic purchasing requirement of section 1605(a) of the *American Recovery and Reinvestment Act of 2009* (ARRA) as a condition of ARRA financing of those programs with respect to Canadian iron, steel, or manufactured goods in procurement above the threshold for construction applicable to this Annex. The United States undertakes no other commitments with respect to these programs.
4. The United States is prepared to amend Note 3 to apply the commitments therein to any other GPA Party's iron, steel, or manufactured goods, subject to the negotiation of mutually acceptable commitments.