services or supplies for the preceding three years derives respectively from the provision of such services or supplies to undertakings with which it is affiliated.[5]

5. This Agreement does not cover procurement:

(i) by a joint venture, formed exclusively by a number of procuring entities for the purposes of carrying out activities within the meaning of paragraphs (a) to (f) of this Annex, to one of these procuring entities, or

(ii) by a procuring entity to such a joint venture of which it forms part, provided that the joint venture has been set up to carry out the activity concerned over a period of at least three years and the instrument setting up the joint venture stipulates that the procuring entities, which form it, will be part thereof for at least the same period.

6. The following shall not be considered as covered procurement:

- procurement by procuring entities operating in the fields of:

(i) production, transport or distribution of drinking water covered under this Annex;

(ii) production, transport or distribution of electricity covered under this Annex;

(iii) airport facilities covered under this Annex;

(iv) maritime or inland port or other terminal facilities covered under this Annex; and

(v) urban railway, tramway, trolley bus or bus services covered under this Annex in regard of supplies, services, suppliers and service providers from Canada;

- procurement by procuring entities operating in the field of production, transport or distribution of drinking water covered under this Annex in regard of suppliers and service providers from the United States;

- procurement by procuring entities operating in the field of maritime or inland port or other terminal facilities covered under this Annex of dredging services or related to shipbuilding in regard of suppliers and service providers from the United States;

- procurement by procuring entities covered under this Annex of air traffic control equipment in regard of suppliers and service providers from the United States;

- procurement by procuring entities operating in the field of airport facilities covered under this Annex in regard of suppliers and service providers from the United States and Korea;

- procurement by procuring entities operating in the field of urban railway, tramway, trolleybus or bus services covered under this Annex in regard of suppliers and service providers from the United States;

- procurement by procuring entities operating in the field of urban railway covered under this Annex in regard of suppliers and service providers from Japan;

- procurement by procuring entities operating in the field of railways covered under this Annex in regard of goods, suppliers, services and service providers from Armenia; Canada; Japan; the United States; Hong Kong, China; Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu;

- procurement by procuring entities operating in the field of high-speed railways and high-speed railways infrastructure in regard of goods, suppliers, services and service providers from Korea;

- procurement by procuring entities covered under this Annex of good or service components of procurement which are not themselves covered procurement in regard of suppliers and service providers from the United States;

- procurement by procuring entities operating in the field of production, transport or distribution of electricity covered under this Annex in regard of suppliers and services providers from Japan;

- procurement by procuring entities operating in the field of production, transport and distribution of electricity covered under this Annex of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables) in regard of suppliers from Korea;

- procurement by procuring entities operating in the field of production, transport and distribution of electricity covered under this Annex of HS Nos 85012099, 85015299, 85015199, 85015290, 85014099, 85015390, 8504, 8535, 8536, 8537, and 8544 in regard of suppliers from Israel;

- procurement by procuring entities operating in the field of bus services covered under this Annex in regard of suppliers and service providers from Israel;

until such time, the EU has accepted that the Parties concerned provide satisfactory reciprocal access to EU goods, suppliers, services and service providers to their own procurement markets.

7. The provisions of Article XVIII shall not apply to suppliers and service providers of Japan, Korea and the US in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EU law, until such time as the EU accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

The provisions of Article XVIII shall not apply to Japan and Korea in contesting that award of contracts by EU entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

[5] When, because of the date on which an affiliated undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that the turnover referred to in this paragraph is credible, in particular by means of business projections.