

CETA and Public Procurement

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Public Procurement overview

- ▶ PP: when public authorities purchase goods or services from companies
- ▶ Significant component of public spending (OECD 2015 figures):
 - Canada: 13.3% of GDP
 - EU average: 18% of total GDP
- ▶ Significant area of free-trade agreements (FTAs)
 - WTO agreement on Government Procurement (2014)
 - EU is a strong advocate for the opening up of international procurement markets
 - Big area of contention, as public procurement has traditionally been linked to public *support*

Why is procurement significant with CETA?

- ▶ First FTA for Canada that allows access to procurement bids at provincial, municipal, and quasi-governmental levels
- ▶ Size of procurement market in the EU creates significant opportunities for Canadian providers, whereas sheer size/strength of EU capabilities creates insecurity for local providers
- ▶ Procurement within CETA is EU's first successful negotiation with a large, industrialized country
- ▶ Procurement within CETA is Canada's first FTA that *includes non-federal levels of government*

Public procurement, pre-CETA

- ▶ Canada
 - Agreement on Internal Trade (AIT, 1995) governs procurement rules and bids between provinces and territories
 - Under NAFTA, only federal procurement projects over designated thresholds are open to NAFTA members
- ▶ EU
 - EU Single Market (Treaty on European Union, 1992) governs free movement of goods, services, capital & labour between all EU members
 - All public procurement over designated thresholds has been liberalized between EU members; below threshold, national rules apply (thresholds are notably lower than WTO guidelines)
 - Directives 2004/17/EC and 2004/18/EC helped open up utilities and public works, and standardize contracting process across entire EU
- ▶ Both parties members of WTO's GPA (17 voluntary parties comprising 45 WTO members)
 - Mutual agreement to open government procurement markets

Negotiations over PP

- ▶ EU emphatic from the beginning:
 - Key ‘ask’ was access to full Canadian procurement market (MASH)
 - Results of CETA important for leverage in other FTAs, and for furthering WTO/GPA aims
- ▶ Canadian resistance and protest from *municipal* levels
 - Perception of PP clouded perception of CETA as a whole
 - Significant concerns arising from possibility of losing abilities to stimulate local economy, achieve other local societal goals, and protect public utilities and works.
 - Heavy negotiations over thresholds, offsets, and dispute resolution
- ▶ Heavy leverage on EU side: economically, and with example of EU single market integration

Resulting agreement (2014)

- ▶ Open public procurement; preferential access to each other's markets
- ▶ Numerous exemptions and offsets:
- ▶ Reporting and monitoring, and parties beholden to initiate systematic electronic system within 5 years
- ▶ PP reflects key concerns in different markets:
 - EU concern with transparency, controlling fraud and corruption
 - Canadian concern with ability to enact local preference as needed

Thresholds and Offsets

- ▶ Parties maintained ability to give preferences to domestic companies:
 - When using grants, loans, or fiscal incentives
 - *For procurements below thresholds value*
 - For excluded procurement
 - Health-care, public services, set-asides for Aboriginal business, regional economic development, major ports and airports, etc.
- ▶ Parties maintained some broad exemptions, and ability to specify social and environmental criteria in contract requirements

Implications for BC

- ▶ BC well positioned to gain access to vast EU market opportunities
- ▶ Offsets do not exclude the ability to consider local prerogatives into qualities of bids
- ▶ *Reduction* in ability to prefer local priorities qua ‘locality’ alone; ability to prefer will have to be factored transparently into long-term cost implications
- ▶ Probabilities:
 - Bids will be very carefully maneuvered under thresholds
 - Short-term administrative burden for municipalities
 - Dispute resolution in this area will be important in setting key precedents