

Buy American Provisions in Federally-Funded Sub-Federal Procurement

Buy American provisions are attached by the U.S. federal government to federally-funded sub-federal procurement, i.e. by making such provisions a condition of funding to state and municipal organizations. Canada continues to seek improvements to the limited access available to this important U.S. procurement market, which includes transit, highway and aviation projects.

Almost all large transportation contracts in the United States are federally funded but administered by state and local government or private-sector organizations. The Transportation Equity Act for the 21 Century (known popularly as TEA-21) provides funding for these projects through fiscal year 2003. The Federal Transit Administration and Federal Highway Administration (FHWA) grant TEA-21 funds to state and local governments and transportation authorities for transportation projects on the condition that U.S. material and equipment is used. Projects funded by the FHWA require all iron and steel products and their coatings to be 100 percent U.S. manufactured. Projects funded by the Federal Transit Administration require all steel and manufactured products to be 100 percent U.S. content and 100 percent U.S. manufactured. Rolling stock (trains, buses, ferries, trolley cars, etc.) components must be 60 percent U.S. content, with final assembly occurring in the United States. The codification, in 1998, of a definition of "final assembly", formerly left to the discretion of the procuring organization, has resulted in a further narrowing of the opportunities for Canadian suppliers to participate in such projects.

Similar conditions prevail for airport projects that receive funds from the Federal Aviation Administration as authorized by the Airport and Airways Facilities Improvement Act. Such projects require that all steel and manufactured products be of 60 percent U.S. content and that final assembly occur in the United States. Canada will continue to press for improved access to procurement markets in these areas.

State and Local Government Preferences

A wide variety of procurement preferences exist at the state and local level. In 2000, the State of New York amended legislation, resulting in the addition

of Ontario and Quebec suppliers to a list of several U.S. states whose suppliers are excluded from New York State procurement. In addition, many U.S. federal government Buy American provisions are included in state and local procurement when federal funding is provided. Canada remains concerned that access for Canadian suppliers is constrained and unpredictable as a result of these preferences. Canada will continue to press for elimination of U.S. state and local level preferences.

Legislative and Regulatory Changes

Although the United States has largely completed implementing changes made to its acquisition procedures arising from legislation passed in 1994 and 1995, regulations in civilian and defence procurement, which can affect market access for Canadian suppliers, change constantly. Canada continues to press the United States to clarify and resolve potential inconsistencies between its NAFTA obligations and the new procedures, which appear to limit Canadian participation. These include subcontracting requirements and simplified acquisition procedures for all procurement under \$100,000 and for commercial items to a value of US\$5 million. Canada is also concerned about the propensity for U.S. legislators to incorporate restrictive procurement provisions into unrelated legislation, such as appropriations acts, on an ad hoc basis. Often relating to specific products, such action appears to be taken without full consideration of the potential for inconsistency with international trade obligations.

IMPROVING ACCESS FOR TRADE IN SERVICES

Financial Services

The Gramm-Leach-Bliley Act, passed in 1999, was the most important piece of financial services legislation enacted in the United States in decades. The Act allows foreign financial institutions to become financial holding companies (FHCs) and to engage in activities they could not before. With respect to the cross-border provision of services, Canada continues to seek a level playing field in securities, and it continues bilateral discussions with the United States on this. Further, as required under the NAFTA, Canada, the United States and Mexico meet annually to address financial services issues.