

OTHER ISSUES

Government Procurement

Canada will continue to press the United States to further open its procurement markets to Canadian suppliers. Currently, U.S. government exceptions under NAFTA Chapter 10 and the WTO Agreement on Government Procurement prevent Canadian suppliers from bidding on a broad range of government contracts in sectors of key importance. Especially onerous are the set-aside programs for small and minority-owned businesses and the Buy American provisions. In addition, both longstanding and *ad hoc* legislative provisions, such as the fiscal year 2004 Defence Authorization, as well as conditions attached to funding programs, impede access for Canadian suppliers. The need for progress in both assuring and improving access for Canadian suppliers at the U.S. federal, state and local levels remains a key issue for provincial governments as they consider whether to offer to open Canadian provincial procurement markets.

Small Business Set-asides

The Government of Canada remains concerned about the extensive and unpredictable use of exceptions under NAFTA Chapter 10 and the WTO Agreement on Government Procurement for small business set-asides. Canadian suppliers face the ever-present possibility that government markets that they have successfully developed and supplied may be closed through application of the set-aside exception. The definition of a U.S. small business varies by industry, but it is typically an entity with fewer than 500 employees in a manufacturing firm (up to 1,500 employees in certain sectors) or annual revenues of up to US\$17 million for services firms (as determined by the North American Industry Classification System or NAICS) code. Data for fiscal years 2000 and 2001 demonstrated that U.S. federal departments and agencies were not meeting their target of awarding 23% of contract dollars to small business. This resulted in new directives on enforcement of the existing programs and increased pressure on federal agencies by the Small Business Administration to meet small business procurement goals. In addition, the U.S. government requires contractors and major subcontractors on projects worth more than US\$500,000 to include plans to

subcontract work to U.S. small business. Canada is concerned that the use of such subcontracting plans impedes Canadian access to the U.S. market, and it will continue to press the U.S. Administration on this matter. In 2001, 39% of subcontracting procurement dollars were awarded to small business. The goal for 2004 is 40%. This represents a significant restriction of market access for Canadian business.

Buy America

Buy America provisions are applied extensively to U.S. federal government procurement that is not covered by NAFTA or the WTO Agreement on Government Procurement, as well as to procurement that has been excluded from these agreements through the Small Business Set-Aside exceptions. Buy America provisions, such as price preferences for U.S. domestic source materials, put Canadian goods and services at a serious disadvantage when they form all or part of a bid by any supplier, whether U.S. or Canadian.

Buy America Provisions in Federally Funded Sub-federal Procurement

Buy America provisions are attached by the U.S. federal government to federally funded sub-federal procurement, by making such provisions a condition of U.S. federal government grants to state and municipal organizations. Canada continues to seek improvements to the important U.S. state and municipal procurement markets, including transit, highway and aviation projects.

Almost all large transportation contracts in the United States are federally funded, but they are administered by state and local government or private sector organizations. The Transportation Equity Act for the 21st Century (known as TEA-21) provides funding for these projects through fiscal year 2003. The Federal Highway Administration (FHWA) and Federal Transit Administration grant TEA-21 funds to state and local governments and transportation authorities for transportation projects on condition that U.S. material and equipment are used. Projects funded by the FHWA require all iron and steel products and their coatings to be 100% U.S.-manufactured. Projects funded by the Federal Transit Administration require all steel and manufactured products to have 100% U.S. content