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Canada-European Union Trade Negotiations

6. Government Procurement

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Canada–European Union Trade Negotiations:
6. Government Procurement
(In Brief)

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CANADA–EUROPEAN UNION TRADE NEGOTIATIONS:

6. GOVERNMENT PROCUREMENT

1 INTRODUCTION

While negotiations for a Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) cover more than 20 subject areas, there are nine of particular interest to Canadians and their EU counterparts. These nine topics are the most sensitive or difficult negotiating issues, or the source of the greatest estimated impacts should CETA negotiations succeed, or the areas of the more controversial elements. This paper discusses government procurement.¹

2 NEGOTIATION ISSUES

The present CETA negotiations are unique, as Canada and the EU have both expressed their desire to address issues such as intellectual property, regulatory cooperation and labour mobility; these topics are not generally covered in trade agreements. That being said, the success of the current negotiations with the EU may rest primarily on commitments that Canada is willing to make on government procurement, particularly contracts awarded by Crown corporations and by provincial governments and municipalities.

The scope of trade agreements negotiated by the Canadian federal government in the past has not extended to provincial and municipal governments or to Crown corporations. That situation changed with the 2010 Canada–United States Agreement on Government Procurement (AGP), in which provinces, territories and certain Canadian municipalities agreed, for the first time, to temporary commitments allowing US corporations to bid on Canadian government contracts. Since European negotiators are insisting that government procurement be included in the CETA, it seems that a similar concession by Canadian provinces, territories and municipalities will be required for negotiations to succeed.

The EU is reportedly asking that all central government entities, all other central public entities, as well as all *sub-central* government entities (i.e., at the local, regional or municipal level), be open to European goods and services. In addition, the EU is requesting an opportunity to bid on contracts awarded by the *MASH* sector (municipalities, municipal organizations, school boards and publicly funded academic, health and social service entities) as well as by airports, public transit systems, ports, municipal water services, and power and energy authorities such as BC Hydro and Hydro-Québec.

These contracts represent significant potential benefits for European firms. Moreover, access to Canadian government procurement was one of the main reasons, if not the main reason, that the EU agreed to negotiate a trade agreement with Canada.

Currently, European firms (and other foreign firms) can bid on a large proportion of public tenders from Canadian governments and government entities. Furthermore, it is uncommon for tender calls to stipulate that some or all of the goods and services involved must be acquired locally or even in Canada. Nonetheless, there are exceptions to open tendering when the governments, municipalities or institutions feel these are warranted.²

Including the procurement of Canadian provincial and territorial governments and major municipalities in the CETA will diminish these governments' flexibility to decide the circumstances under which they will contract with foreign companies. It may also adversely affect the number of government contracts awarded to some Canadian companies. Such an agreement may compromise local content requirements for specific equipment or services aimed at creating local employment (e.g., Ontario's *Green Energy Act*).

For European firms to gain access to the aforementioned procurement contracts, the Canadian federal government will be expected to pursue similar access for Canadian firms bidding on European contracts or an equivalent concession from the EU in another area. Although the EU has included contracts issued by central and sub-central government entities of its 27 member states in its commitments under the WTO Government Procurement Agreement, Canada is excluded from the list of beneficiary countries because it does not allow European firms to bid on provincial, territorial and municipal procurement.

One issue likely to be debated is the level of government in the EU that is equivalent to provinces and territories in Canada. While the EU considers its member states, such as Germany, to be equivalent to Canadian provinces and territories, the Government of Canada insists that sub-central governments (e.g., Länder in Germany or Catalonia in Spain) should be covered.

Finally, since European suppliers represent a significant proportion of global suppliers, greater access to the Canadian government procurement market could lead to greater competition among bidders and, as a consequence, lower prices for the various levels of government in Canada.

NOTES

1. Other subjects covered in this series are market access in agriculture, non-agricultural market access, trade in services, investment protection, technical barriers to trade and regulatory cooperation, intellectual property protection, labour mobility and dispute settlement.
2. For example, for the procurement of arms, for procurement indispensable for national security, or for national defence procurement.