

<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING OF DECEMBER 16, 2014</b>
<b>FROM:</b>	<b>GRANT HOPCROFT, DIRECTOR OF INTERGOVERNMENTAL AND COMMUNITY LIAISON</b>
<b>SUBJECT:</b>	<b>UPDATE ON CANADIAN TRADE AGREEMENTS AND CANADA-CHINA FOREIGN INVESTMENT PROMOTION AND PROTECTION AGREEMENT</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Director of Intergovernmental and Community Liaison, this report on the Update on Canadian Trade Agreements and Canada-China Foreign Investment Promotion and Protection Agreement BE RECEIVED for information.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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Board of Control: The Canada-European Union Trade Agreement, the Trade Investment and Labour Mobility Agreement (TILMA), the Agreement on Internal Trade (AIT) and the Québec-Ontario Economic Partnership Agreement, April 29, 2009; Update on Canadian Trade Agreements, August 26, 2009; April 14, 2010; September 29, 2010.

Finance and Administration: Update on Trade Agreements, September 28, 2011.

Finance and Administrative Services: October 3, 2011; Comprehensive Economic and Trade Agreement with the European Union, April 16, 2012; November 12, 2013.

Corporate Services: Comprehensive Economic and Trade Agreement with the European Union, August, 26, 2014

<b>BACKGROUND</b>
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Civic Administration is continuing to monitor a variety of trade agreements and trade related measures including the Canada-European Union Trade Agreement (CETA) which has been reported on extensively for its implications for the City of London. The focus of this report is the Canada-Korea Free Trade Agreement (CKFTA), the Trans-Pacific Partnership, the Ontario-Quebec Trade and Cooperation Agreement, the Agreement on Internal Trade, the FCM-DFATD Joint Working Group, and the impact of the Buy American Act and of the China-Canada Foreign Investment Promotion and Protection Agreement for the City of London. It will also provide a brief update on CETA and other negotiations in progress or recently concluded.

The Federation of Canadian Municipalities (FCM) has noted that future trade agreements are likely to include subnational procurement which refers to such municipal activities as the purchasing of supplies, the contracting of infrastructure projects and the delivery of municipal services like solid waste and water distribution. Up until the signing of the CETA, free trade agreements have not applied to municipal governments. This is changing, which according to FCM, suggests that municipalities must become more active participants in these negotiations. In response to this, FCM has developed and articulated seven guiding municipal principles for free and fair international trade.

The recent Annex to the World Trade Organization (WTO) Protocol Amending the Government Procurement Agreement (GPA) is an exception in which procurement obligations apply to provincial government ministries and agencies and not subnational or municipal entities.

#### **Canada-Korea Free Trade Agreement**

The Canada-Korea Free Trade Agreement came into force in September 2014 as Canada's first trade agreement in the Asia-Pacific region. South Korea is the 15<sup>th</sup> largest economy and the 4<sup>th</sup> largest in the region. According to the federal government, the Canada-Korea Free Trade Agreement is projected to create thousands of jobs for Canadians by boosting Canada's economy by \$1.7 billion and increase Canadian exports to South Korea by 32 per cent.

Subnational (i.e. municipal) government procurement is not included in the CKFTA.

When the Agreement is fully implemented, South Korea will remove duties on 98.2 per cent of tariff lines and Canada will remove duties on 97.8 per cent of tariff lines. Average South Korean tariffs have been, until now, three times higher than Canadian tariffs. Canadian agricultural exports faced tariff rates which have averaged 52 per cent. The agreement will also allow Canadian beef and pork products to compete on a level playing field with products from the European Union and the United States which concluded agreements with South Korea in 2011 and 2012 respectively.

The government of Ontario has highlighted the opening of new markets in a variety of industries, particularly the agriculture and food processing sectors. It also raised concerns throughout negotiations regarding the potential for serious negative impacts the agreement could have on Ontario's auto sector. Ontario was calling for the longest possible phase-out period for Canada's tariff on imports of South Korean passenger vehicles and was disappointed with the two year period negotiated.

The federal Minister of International Trade, Ed Fast, will be leading a trade mission to Seoul and Busan, February 9-13, 2015. This mission to South Korea, a priority country under the federal Global Markets Action Plan (GMAP), will highlight business opportunities in the market.

### **Trans-Pacific Partnership (TPP)**

Initiated in 2005, and first known as the Trans-Pacific Strategic Partnership Agreement, the TPP is an initiative to create a free trade agreement involving twelve countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. Negotiations are focusing on tariff and non-tariff barriers to trade and investment and facilitating the development of production and supply chains among TPP members. It is also seeking to address the challenges of small and medium-sized enterprises and seeks to maximize supply chain efficiencies in Asia and the Americas. Canada joined the negotiations in 2012.

The TPP market represents more than 792 million people and a combined GDP of CAD \$28 billion per year. The federal government has said that the agreement is expected to generate "significant broad-based benefits across all industry sectors and regions of Canada". It represents \$1 trillion—nearly 40 percent of the world's economy. Canada has bilateral trade and investment treaties with four of the members -- U.S., Chile, Peru, and Mexico and is in discussions with Japan while its trading relationships with the other countries in the TPP are much more limited.

As with the Canada European Union Comprehensive Agreement on (CETA), the Trans-Pacific Partnership agreement is expected to include a government procurement chapter that would apply to subnational (i.e. municipal) entities. The negotiating text has not been publically released.

Canada has been openly criticized by a group of U.S. members of Congress which says the White House should cut Canada out of the TPP deal unless Canada opens up its protected dairy and poultry markets. New Zealand is also likely to pressure Canada on its protected dairy market.

One of the controversies surrounding the TPP is the American push for stringent intellectual property protections for drugs which could inhibit the flow of generic medication.

Progress on the TPP has been slow and the addition of Japan in 2013 has delayed progress. American President Barack Obama has made it a priority of his administration however he has not been granted congressional fast track authority which gives the US administration the ability to negotiate a deal subject with a single yes or no vote by Congress opening the possibility that this could become a bargaining chip in Presidential-Congressional politics.

### **Ontario-Quebec Trade and Cooperation Agreement**

The Ontario-Quebec Trade and Cooperation Agreement was signed in September 2009. Its implementation, according to the two governments, will reduce trade barriers, improve labour mobility for professionals and workers, and help to make the two provinces more competitive in the global economy.

In a November 2014 meeting, the provinces agreed to align the Ontario-Quebec Trade and Cooperation Agreement with CETA in regard to government procurement. This would put suppliers in Ontario and Quebec on the same level as EU suppliers when dealing with government contracts. They also agreed to explore opportunities to conduct joint trade missions for industries of mutual interest, and/or to countries or regions of mutual interest and they will partner on an international marketing proposal, which would include an agreement to co-promote the provinces in China and France.

## **Buy American Act**

For many years, the US has had legislative requirements that require its government agencies to purchase goods manufactured in the United States. The *Buy American Act of 1933* applies to all US federal government agency goods valued over a certain level. All goods procured for public use must be produced in the US and manufactured using American materials. Canadian suppliers are largely exempt from these provisions as a result of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) Government Procurement Act (GPA).

In addition, *Buy America* (as opposed to Buy American) legislation of the *Recovery and Reinvestment Act* (commonly known as the stimulus bill) imposes requirements to purchase American iron, steel, and manufactured goods for transportation projects. These requirements include projects involving the provision of grants to sub-federal governments or airport authorities; these grants are not covered by NAFTA or the WTO GPA limiting the ability of Canadian suppliers to participate.

Canadian manufacturers are concerned about further protectionist moves introduced this year by the American administration. The *Grow America Act* is a transportation bill that contains protectionist language that would raise US content for manufacturing rolling stock components and subcomponents to almost 100 per cent from the current 60 per cent. Both Houses of the US Congress have passed the *Water Resources Reform and Development Act* which contains *Buy America* restrictions on iron and steel. In addition, the states of New York, New Jersey, and Massachusetts have introduced *Buy America* legislation.

The Canadian Manufacturers and Exporters (CME) has expressed concern to the Federation of Canadian Municipalities (FCM) that the negative impact on Canadian companies will be particularly noticeable in the sectors of transportation, water, and wastewater infrastructure.

FCM plans to hold discussions with federal Trade Minister Fast on how the municipal sector can support a coordinated response to these provisions.

## **FCM- DFATD Joint Working Group**

In addition, FCM and the Department of Foreign Affairs, Trade and Development (DFATD) are in the process of forming a renewed Joint Working Group to promote greater collaboration in areas of trade promotion, trade policy, two-way investment, and international activities. London will participate in the working group through staff representation of Cathy Dziedzic, of Corporate Investments and Partnerships.

## **Canada-China Foreign Investment Promotion and Protection Agreement (FIPA)**

This treaty came into force, October 2014. It is a bilateral agreement intended to "protect and promote" foreign investment through legally-binding rights and obligations. The purpose of a FIPA is to ensure greater protection to foreign investors against discriminatory practices, to provide adequate compensation in the event of expropriation and to enhance predictability of the policy framework.

Canada and China began negotiations of a FIPA in 1994. Talks were put aside until the completion of China's accession to the World Trade Organization and resumed in 2004 with the last formal round in January 2012 in Beijing. The agreement includes most-favoured-nation treatment, minimum standards of treatment, transparency, performance requirements, transfers and expropriation. It will grant investors access to an investor-state dispute settlement.

The Canada-China FIPA has no impact on municipal procurement.

In 2013, total Chinese foreign direct investment in Canada was CAD \$16.6 billion.

Critics of FIPA argue that Chinese companies who invest in Canadian energy will be able to seek billions of dollars in compensation if their projects are hampered by provincial laws on issues such as environmental concerns or First Nations rights.

Canada has been active in China recently, with a Prime Minister's trip in October, and Ontario Premier Wynne's trade mission in October. An agreement to establish a Chinese currency-trading hub is expected to encourage Canadian exports to China and will give Canadian investors earlier access into emerging Chinese capital markets. Prime Minister Harper announced the opening of four new Canadian trade offices in Hangzhou, Xi'an, Xiamen, and Tianjin, bringing the total of 15 Canadian trade offices in China. Premier Wynne's mission led to nearly CAD \$1 billion in trade deals.

## **Agreement on Internal Trade**

The Agreement on Internal Trade, signed in 1995, addresses internal trade barriers between the provinces and territories. Amendments continue in an effort to bring down barriers but the provinces, including Ontario, still practise restrictive trade practices, and progress has been limited. It has received attention of late as some policy watchers have complained that internal barriers will remain higher than the projected reduced barriers under the CETA agreement.

The Canada, Ontario, and London Chambers of Commerce have all pushed for further harmonization and liberalization arguing that the overall effect continues to cost the Canadian economy billions of dollars a year. According to the London Chamber, the AIT lacks a strong dispute-resolution system and should look at the CETA model.

## **Canada European Comprehensive Economic and Trade Agreement (CETA)**

After five years of negotiations, Canada and the European Union signed the Comprehensive Economic and Trade Agreement on September 26, 2014. This is the largest trade agreement that Canada has ever signed and it is expected to give Canada access to a 28 country market which generates \$17 trillion in economic activity annually.

The Agreement will provide Canada with preferential market access to the EU's more than 500 million consumers. The EU is the world's largest economy and the world's largest importing market for goods, with EU's annual imports alone exceeding Canada's GDP. Prime Minister Harper has said that on the first day when the Agreement comes into force, approximately 98 per cent of all EU tariff lines will be eliminated.

The agreement includes explicit commitments from provincial and territorial governments and measures will apply to all orders of government. For Canadian municipalities, the key issue is government procurement. The City of London abides by the Agreement on Internal Trade in Canada which promotes competitive procurement within Canada.

FCM worked with Minister Fast throughout the period of negotiations to ensure that the final agreement would be consistent with FCM's seven principles (see below), and is satisfied that the principles are reflected in the agreement in a manner that responds to local needs. FCM has provided its members with an analysis of the text. The municipal procurement thresholds in CETA are higher than those in the AIT and other interprovincial agreements and are consistent with those for the sub-national entities in the World Trade Organization Agreement on Government Procurement. The thresholds in CETA are set at 200,000 (currently CAD \$309,100) Special Drawing Rights (SDRs) for goods and services, and 5 million SDRs for construction services (currently CAD \$7.7 million). A higher threshold of 400,000 SDRs (CAD \$618,000) applies to procurement of goods and services by municipally-owned utilities covered. Any municipal procurement below the thresholds is fully exempt from CETA. The thresholds are reciprocal for the European Union.

According to FCM, CETA will not limit the ability of municipalities to give preferences to local companies through the use of non-contractual agreements (grants or loans) and they will maintain their ability to use selection criteria to meet local needs. CETA will not apply to Public-Private-Partnerships for construction related to airports, public transit, water and wastewater, electricity and gas but does apply to transportation projects – i.e. highways. Procuring entities in Ontario and Quebec may require that the successful bidder for the purchase of mass transit vehicles contracts up to 25 per cent of the contract value in Canada.

FCM does not expect that CETA will result in significant changes for municipal procurement practices, however municipalities will need to review their tendering procedures to ensure compliance. FCM staff will work with the federal government to ensure that the implementation process is as smooth as possible. The federal government has committed to working closely with FCM on the need for progressive enforcement so that municipalities are not penalized for inadvertent non-compliance.

CETA will not force municipalities to privatize water or otherwise deregulate the provision of water or wastewater services, according to FCM's analysis. There is an exception for the procurement of school nutrition programs, institutional food purchase and food assistance for vulnerable populations. Each province and territory is responsible for developing the domestic review procedure. FCM will seek clarification on the Investor-State Dispute Settlement provisions and their potential impact on local governments.

Now that the final agreement has been concluded and signed, the document must be translated and ratified by respective parliaments. The two jurisdictions will then begin a process of enacting legislation to implement specific trade rules. In Canada, this means that provincial and territorial government would need to adopt legislation in order to be in compliance with any new federal rules. Municipal procurement practices will continue to be subject to provincial and territorial statutes. The ratification process involving all of the Canadian provinces and territories and the EU countries could take 18-24 months.

At its May 1 and 2, 2012 session, Municipal Council resolved that the City of London wished to “opt out” of the Comprehensive Economic and Trade Agreement with the European Union (CETA) in order to determine whether or not to support the Agreement in future, based upon an assessment of how it would affect this municipality which would take into consideration a sector-by-sector analysis of the procurement regime, an assessment of the costs and benefits of the Agreement to municipalities, and details of which sectors are most likely to be the principal beneficiaries of CETA.

Civic Administration is in the process of a detailed analysis of the text of the agreement and will review in particular, the concerns expressed in the May, 2012 resolution.

The full agreement report and appendices are available at <http://actionplan.gc.ca/en/content/ceta-aecg/canada-eu-trade-agreement>.

### FCM principles

The Federation of Canadian Municipalities (FCM) has provided a set of guiding municipal principles that it is using in its discussions with federal officials for free and fair international trade. The Association of Municipalities of Ontario (AMO) and Municipal Council have also endorsed these principles.

- **Reasonable procurement thresholds:** Inappropriately high or broad procurement thresholds may force municipalities to tender projects when tendering is neither practical nor financially justified.
- **Streamlined administration:** Ensuring that municipal procurement policies are free-trade compliant will likely create new costs and may require specialized expertise. The administrative design of these rules must be as streamlined as possible and developed in close cooperation with municipal procurement practitioners.
- **Progressive enforcement:** Enforcing provisions of any deal should be progressive, starting with verbal or public warnings before moving to financial penalties, and should recognize and not penalize inadvertent non-compliance, particularly in cases where municipalities do not have the expertise to appropriately apply the rules.
- **Canadian content for strategic industries or sensitive projects:** A trade deal must recognize strategic and public interest considerations before barring all preferential treatment based on country of origin. There may be industries of strategic significance to a particular region, such as transit, or projects where considerations of quality, public benefit, environmental protection or business ethics means that a local government may wish to implement minimum Canadian-content levels. This should be allowed, within reason.
- **Dispute resolution:** A dispute-resolution process, like the one in NAFTA, may require a careful review of the municipal role in that process so they can appropriately defend their policies and by-laws as an order of government.
- **Consultation and communications:** Consultation and communications during negotiations are required to ensure any resulting agreement responds to municipal concerns.
- **Reciprocity:** Canada negotiating position must support reciprocity in Canadian and foreign municipal procurement practices.

Free Trade Agreements with Honduras (Oct. 1, 2014), Panama (Apr. 1, 2013) and Jordan (Oct. 1, 2012) have recently taken effect while FTA negotiations with India, Japan and Singapore – among others – are ongoing. Recently FIPAs with Kuwait (Feb. 19, 2014) and Tanzania (Dec. 9, 2013) have come into effect, and an agreement with Nigeria (May 6, 2014) has been signed but is not yet in effect. FIPA negotiations with numerous countries, including Indonesia, Pakistan, the United Arab Emirates and Vietnam, are currently being conducted.

This report was prepared with the assistance of Ben Fraser, Intern, Intergovernmental and Community Liaison.

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