

TO:	CHAIR AND MEMBERS FINANCE AND ADMINISTRATION COMMITTEE MEETING OF SEPTEMBER 28, 2011
FROM:	GRANT HOPCROFT, DIRECTOR OF INTERGOVERNMENTAL AND COMMUNITY LIAISON
SUBJECT:	UPDATE ON TRADE AGREEMENTS

RECOMMENDATION

That, on the recommendation of the Director of Intergovernmental and Community Liaison, this report on Trade Agreements **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Board of Control: The Trade Investment and Labour Mobility Agreement (TILMA) and the Ontario-Quebec Economic Partnership Agreement, June 18, 2008.

Board of Control: Ontario-Quebec Trade and Economic Partnership and Canada-European Union Trade Agreement, October 29, 2008.

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.

Board of Control: Update on Canadian Trade Agreements, August 26, 2009

Board of Control: Update on Trade Agreements, April 14, 2010

Board of Control: Update on Trade Agreements, September 29, 2010

BACKGROUND

Buy American Act

In 2010, the Canadian government fought and won an exemption from Buy American restrictions imposed by the 2009 stimulus act. Canada-US talks continued with the launch the *Beyond the Border* negotiations in February 2011 to further integrate continental security, harmonize regulations and ease trade obstacles. On September 13th, 2011, the US administration unveiled the *American Jobs Act*, designed to add US \$450 billion into the American economy by combating high unemployment and recession. Approximately one-quarter of the money is dedicated to government-funded building projects. The White House has inserted a clause that prohibits foreign companies, including Canadian ones from being chosen for government procurement contracts. Contracts may be awarded to foreign suppliers if US bids are 25% higher. International Trade Minister Ed Fast has reportedly said that he was disappointed when he learned of the Buy American clause and the Canadian government has protested and is seeking an exemption for Canada.

Agreement on Internal Trade

The AIT is an interprovincial trade treaty that aims to reduce barriers to trade, investment and labour mobility. In November 2010, the Minister of State for Small Business introduced the *Improving Trade Within Canada Act* (ITCA) to implement enhancements to the resolution process for government-to-government disputes under the Agreement on Internal Trade (AIT). The enhancements allow for monetary penalties to be levied against governments for non-compliance with the AIT. Business groups are also lobbying trade ministers to include an investor-to-state dispute process that would allow Canadian firms to sue the provinces and territories directly for what they perceive to be barriers to profits. The Bill received first reading before the federal election and has not yet been brought forward to the House of Commons in the current parliamentary session.

Canada-European Union Trade Agreement (CETA)

Negotiations for the Canada-EU Trade Agreement (CETA) were launched in May 6, 2009 in Prague. In all, eight rounds have taken place, and the parties are working towards a conclusion of the negotiations by 2012. The European Union (EU) market represents the largest trading bloc in the world with annual GDP of almost \$19 trillion in 2009. The EU procurement market is estimated at

CAD \$ 2.4 trillion or 17 percent of gross domestic product.

The issue that remains of most relevance to municipalities is the question of public procurement. In a letter to then International Trade Minister Peter Van Loan last fall, the Federation of Canadian Municipalities (FCM) attached a resolution which was adopted by the FCM National Board of Directors entitled *Municipal Impact of Canada and European Economic Partnership Trade Agreement*. The resolution resolved that FCM encourage the Government of Canada to “protect the right of municipalities to specify local priorities in purchasing decisions”.

FCM has provided a set of guiding principles that it is using in its discussions with federal officials. The Association of Municipalities of Ontario (AMO) has also endorsed these principles and has requested the opportunity to meet with the Province to have a better understanding of the potential impacts for municipalities before a final agreement is reached.

- **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.

In response to these principles, the Honourable Ed Fast, Minister of International Trade, wrote to Mr. Berry Vrbancovic, President of FCM, in August to share additional information on the CETA negotiations and the benefits it would provide Canadians. Minister Fast has a municipal background and is well-briefed on municipal issues. He indicated that the dollar-value thresholds for municipalities under CETA are likely to be consistent with those that exist for sub-central government entities in the World Trade Organization (WTO) Agreement on Government Procurement, at approximately CAD \$340,000 for both goods and services and approximately CAD \$8.5 million for construction. The Minister, who attended the FCM September board meeting, assured FCM that under CETA municipalities would retain the ability to use various instruments to promote local economic development such as non-contractual agreements which are not subject to CETA (e.g. grants, loans or fiscal incentives), or the procurement of goods and services that are not subject to the CETA procurement obligations (below threshold or excluded goods and services). Furthermore, Minister Fast said that “CETA will not affect the ability of municipalities to use selection criteria such as quality, prices, technical requirements or relevant experience, or to consider social and environmental factors in the procurement process, so long as these are applied in a non-discriminatory manner.” Minister Fast also reassured FCM that CETA will not affect the ability of the municipalities to regulate and to introduce and amend regulations to meet policy objectives. He further informed FCM that reciprocity is a key priority for Canadian negotiators.

The parties are aiming to put a rigorous dispute settlement process in place. Minister Fast committed to keep key Canadian stakeholders informed of the negotiations. A full text of Minister Fast’s letter is attached to this report.

Other Trade Negotiations

Since the last report to Council there have been a number of developments in free trade negotiations.

Canada and India announced the commencement of free trade negotiations in November 2010. A Canada-India joint study estimated that an agreement could increase GDP in each country by approximately \$6 billion and increase our two-way bilateral trade by 50 per cent.

Also last fall, Israel and Canada began exploratory talks to expand the Canada-Israel Free Trade Agreement (CIFTA) which was signed in 1997.

Canada and the Ukraine met in Kyiv in May for their second round of free trade negotiations. Canadian companies are steadily building a presence in Ukraine in areas such as aerospace and agriculture.

In January 2011, Canada launched free trade negotiations with Morocco. A free trade agreement with Morocco would be Canada's first such agreement with an African country. The federal government has positioned this as a gateway to a new Canadian commercial presence in the Mediterranean region and in North Africa.

The Canada-Colombia Free Trade Agreement came into force on August 15. Through the agreement, Canada's producers and exporters will benefit from reduced or eliminated tariffs on nearly all of Canada's current exports to Colombia. In 2010, Canada's bilateral merchandise trade with Colombia totalled over \$1.3 billion, making Colombia Canada's fourth largest export market in South America.

Prime Minister Harper conducted a trade mission in Brazil in August, and signed a number of economic agreements to facilitate trade, tourism and investment. Brazil is Canada's tenth largest trading partner. On the same mission to South America, the Prime Minister travelled to Costa Rica and the two countries agreed to work on modernizing their goods and services trade agreement to include provisions in areas such as cross-border trade in services, investment and government procurement.

Canada is the target of a complaint launched by Japan, the US, and the European Union at the World Trade Organization (WTO) who have protested that Ontario is violating WTO rules through its "Buy Ontario" clauses under the Green Energy Plan. Provincial Minister Brad Duguid has defended the program. The next step is the establishment of a dispute panel.

In 2010, the New West Partnership of Alberta, Saskatchewan and British Columbia established an office in Shanghai and signed an Energy Memorandum of Understanding in December 2010 with a view to targeting opportunities in Asia.

Civic Administration and policy staff at AMO and FCM continue to monitor developments and further reports will be provided as new developments occur.

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Attachment: Letter from Minister Fast to FCM President