

Summary of Recent Developments in Domestic Procurement Policies: Navigating the New Era of Economic Sovereignty

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by SOVRA

Overview

- Shifts in Global Trade Policy
- Survey of Domestic Procurement Policies Across Canada
 - “Buy Ontario”
 - “Buy Canadian”
- Implementation and Treaty Implications



Shifts in Global Trade Policy

The “Good Old Days”

- For decades, trade liberalization was a dominant force in international commerce and a driver of globalization.
- Bilateral, multilateral and domestic trade treaties limited tariffs and guaranteed access to foreign markets for domestic suppliers through government-to-government procurement obligations.
- Procurement chapters included reciprocal non-discrimination for procurement opportunities and “rules” for open and fair transparent processes.

Major Trade Treaties Applicable in Canada

- World Trade Organization – Government Procurement Agreement (WTO GPA)
- NAFTA – 1994 to 2020; replaced by CUSMA
 - Only binding on federal government entities
 - Enforceable through the Canadian International Trade Tribunal (CITT)
- Agreement on Internal Trade replaced with Canadian Free Trade Agreement (CFTA) – currently in force with federal and provincial governments
- Comprehensive Economic Trade Agreement (CETA) – International trade treaty with Canada and the EU that applies to sub-federal (i.e., provincial) entities

Where are we now?

- Trade and supply chain disruption during and post-COVID
- Geopolitical challenges – US, Russia, China; shifting global power
- Tariffs and international trade as economic warfare – The Trump Administration
- Domestic and international responses to the chaos have been a realignment of trade priorities towards domestic protectionism.

“Canadians know that our old comfortable assumptions that our geography and alliance memberships automatically conferred prosperity and security – that assumption is no longer valid.”

“Nostalgia is not a strategy.”

Mark Carney
World Economic Forum
Davos, Switzerland
January 20, 2026

“Buy Ontario”

The *Buy Ontario Act, 2025* empowers Management Board of Cabinet to pass directives requiring public sector entities to comply with specified procurement policies that promote, protect and build Ontario's economy, including:

- that public entities give preference first to Ontario, then to Canadian, goods and services in public sector procurements;
- that support Ontario businesses, promote Ontario-made goods or services and protect Ontario businesses by limiting eligibility of foreign businesses to participate in public sector procurements; and
- that require public sector entities to use specified compliance and enforcement measures and impose those measures on suppliers..

Buy Ontario Act

Who does it
apply to?



Entities covered under
the *Supply Chain
Management Act* or as
otherwise delegated
by regulations.



Includes:

- Ministries and agencies
- Hospitals, school boards, colleges, and universities
- Designated broader public sector organizations
- Third-party supply chain managers working for these bodies

Buy Ontario Act

How is it
enforced?



- Public sector entities can face compliance reviews.
- The province can order corrective action. Provincial funding may be withheld for non-compliance.
- Obligations flow down to third-party supply chain managers through contracts.

New Procurement Directives Issued under BOA

On March 30, 2026, the Ontario Government issued two new directives under the *Buy Ontario Act*:

- *Buy Ontario Procurement Directive*
 - Ministries, government agencies, broader public sector entities
- *Municipal Buy Ontario Procurement Directive*
 - Municipalities, municipal boards, municipal service corporations

	Building Ontario Business Initiative	Procurement Restriction Policy (US Businesses)	Strategic Category – Fleet	Strategic Category – Capital Infrastructure
<i>Buy Ontario Procurement Directive</i>	Yes	Yes	Yes	Yes
<i>Municipal Buy Ontario Procurement Directive</i>	No	No	Yes	Yes

Capital Infrastructure Procurement Directive

Summary of Direction Requirement	Vendors bidding on capital infrastructure procurements must prioritize using Ontario Made and Canadian Made goods for major goods and Ontario and Canadian Services in delivering the project where feasible.
Applicable Definitions	<ul style="list-style-type: none">• Construction• Ontario-made and Ontario service• Canadian-made and Canadian service• Major goods
Submission of Domestic Supply Chain Plan	Covered entities must require bidders to submit a Domestic Supply Chain Plan that outlines the source of each major good or service proposed to be used to deliver the project, including those supplied by subcontractors.

Fleet Vehicle Procurement Directive

What's Covered?	New light-duty passenger vehicles
Procurement Direction	<ul style="list-style-type: none">• Purchase or lease Made-in-Ontario Vehicles• If Made-in-Ontario Vehicles are not operationally feasible or available, purchase from Ontario Vehicle Producer
Key Definitions	<ul style="list-style-type: none">• Made-in-Ontario Vehicle• Ontario Vehicle Producer

Building Ontario Business Initiative

What's Covered?

All goods and services*

* Except for capital procurement, fleet vehicles and certain other exceptions.

Procurement Direction

Tiered preferences based on procurement values that align with CFTA thresholds. Preference starts with Ontario businesses for lower-value procurements and expands outward as values increase to Canadian businesses and then Ontario's trading partners. For large procurements, additional domestic weighting and benefit requirements apply.

Procurement Restriction Policy (US Businesses)

Definition of US Business	A supplier, manufacturer or distributor in any business structure that has its headquarters in the US and has fewer than 250 full-time employees in Canada at the time of the procurement.
Procurement Direction	Restricts US businesses from participating in procurements unless that business is the only viable source and the procurement cannot be delayed OR for services, the US business commits to having 90% of the required staff deliver the services be in Canada.
Approvals	Approval to award to a US business is deputy minister or CEO level, regardless of value.

“Buy Canadian”: The Federal Policy

The objective of the federal Buy Canadian framework is to encourage resilience in the Canadian economy and support key energy and defence procurement initiatives.

The initiative is supported by two policies:

- Policy on Prioritizing Canadian Suppliers and Canadian Content in Strategic Federal Procurement
- Policy on Prioritizing Canadian Materials in Federal Procurement

Policy on Prioritizing Canadian Suppliers and Canadian Content in Strategic Federal Procurement

- Came into effect on December 16, 2025, and applies to procurement projects over \$25M. The threshold decreases to \$5M on June 15, 2026.
- Applies to “*Strategic Procurements*” which include defence and security, health and pharmaceuticals, infrastructure, transportation and information and communications technology.
- Encourages participation by Canadian suppliers by allocating a 10% reduction in financial proposals for eligible bidders.
- US business = a company with headquarters in the US and employing less than 250 employees in Canada.

What Evaluation Methodologies are Prescribed?

	Evaluation Methodology
Canadian suppliers	Allocation of a 10% reduction in financial proposals for the purpose of financial evaluation.
Canadian content – Points allocation	<p>25% of the evaluation must be allocated to a solicitation's Canadian Value-Added points, which is calculated using a formula that divides the CVA value of the bid by the total value of the Bid. For example:</p> <ul style="list-style-type: none">- 25% price- 50% technical- 25% CVA ($\text{\\$value of CVA in Bid} / \text{\\$value of Bid}$) X 25%

What Evaluation Methodologies are Prescribed?

	Evaluation Methodology
Canadian content – Price Allocation	<p>If the point-rated methodology is not used, solicitations are evaluated based on their price.</p> <p>A reduction equivalent to 25% of the proportion of Canadian Value-Added is applied to the bid price for the purposes of its evaluation. For instance, if a solicitation price is 40% Canadian Value-Added, the price used in its evaluation will be reduced by 10%.</p>

What is a “Canadian Supplier”?

A “Canadian supplier” must have a legitimate presence in the Canadian economy and is defined as a supplier that:

- maintains a place of business in Canada where it conducts activities on a permanent basis;
- is registered and files taxes in Canada;
- maintains a registered address in Canada and employs personnel and/or conducts day-to-day business activities in Canada; and
- does not subcontract work to non-Canadian suppliers or individuals located outside Canada in a manner that results in minimal value-added activities being performed within Canada.

What is “Canadian Value-Added”?

Canadian Value-Added means:

- in relation to services, a Canadian Service or the proportion of the service contract performed by natural persons based in Canada; and
- in relation to goods, a Canadian Good or the value of the portion of the good produced in Canada or the difference between the dutiable value of the imported goods and the selling price, considering any value added by manufacturers and distributors, and including any costs incurred in Canada related to research and development, sales and marketing, communications and manuals, customization, modifications, installation, and support, warehousing, distribution, and logistics, training and after-sales services.

Policy on Prioritizing Canadian Materials in Federal Procurement

- Came into effect on December 16, 2025, and applies to federal construction and defence procurements valued at \$25M where at least \$250K of materials are required and a Canadian supply is available.
- Requires the use of Canadian-produced steel, aluminum and wood products.
- Steel must be melted and poured in Canada, wood products must be solid wood produced in Canada (including finished goods from those inputs) and aluminum must be smelted and cast in Canada.
- Bidders must certify at the time of their bid that they will use materials produced in Canada and entities must monitor compliance during the term of the contract.

Domestic Procurement Policies Across Canada

Trade Related Procurement Policies Across Canada

Province	Summary of Policy or Legislation
British Columbia	Under the <i>Economic Stabilization (Tariff Response Act)</i> the B.C. government issued a directive prohibiting certain government agencies from awarding contracts to US businesses.
Quebec	The Quebec government issued a “ <i>Regulation to impose conditions for the awarding of certain supply contracts by municipal bodies</i> ” which requires municipal bodies to impose a 10-25% financial “penalty” on bids from US companies for certain supply contracts.

Other Trade Related Procurement Policies Across Canada

Province	Summary of Policy or Legislation
Manitoba	The <i>Buy Canadian Act</i> amending the <i>Government Purchases Act</i> received royal assent and requires the government to source from Canadian businesses wherever possible and to issue a buy Canada policy.
New Brunswick	Issued the “ <i>New Brunswick First Procurement Policy</i> ” that outlines a trade-treaty aligned regime for organizations to support and give preference to New Brunswick suppliers.

In response to the “trade war” with the United States, other provincial and local governments issued responses and statements aiming to restrict or limit procurement from US businesses.

Implementation and Trade Treaties

Implementing Domestic Procurement Directives

- Review internal procurement policies and update as necessary to reflect new requirements.
- Train internal users and clients on the new requirements to ensure that specifications and business parameters align at the enterprise level.
- Liaise with other public sector entities to coordinate and share information and tools.
- Build process for documenting compliance.

The Legal Framework for Trade Treaty Compliance

- Federal
 - An alleged breach of a trade treaty can be brought to the CITT, an administrative tribunal set up to adjudicate trade-related disputes, including procurement challenges.
- Provincial
 - An alleged breach of a trade treaty can be challenged through the entity's bid dispute mechanism or through an application for judicial review.
- Party to party
 - Trade treaties have dispute mechanisms for party to party challenges – provincially in the case of CETA, federally in the case of CETA (i.e., not available to suppliers, but to the governments themselves).

Judicial Review of Trade Treaty Compliance

Thales DIS Canada Inc. v. Ontario, ON Divisional Court (2022)

- Thales, a French company, challenged an Ontario government procurement for paper material used in identity cards that required that the entire production process take place in a secure production facility in Canada.
- Thales challenged the requirement through the Ontario government's bid protest mechanism and the internal determination was that the domestic production requirement was inconsistent with the CETA, but it was justifiable as “necessary to protect public morals, order or safety”.
- Thales challenged that determination at the Ontario Divisional Court.

Judicial Review of Trade Treaty Compliance

There were two main issues before the ON Divisional Court:

1. Was the determination made at the provincial bid dispute challenge level that the domestic manufacturing requirement was consistent with the CETA “reasonable”?
2. Did Ontario’s bid protest mechanism itself comply with the obligations under the CETA?

The ON Divisional Court found that the bid dispute determination was in error because it failed to properly apply the “necessity” test under trade agreements and that the Ontario bid protest mechanism was inconsistent with the CETA.

The Ontario Court of Appeal reversed the Divisional Court ruling finding that:

- The Divisional Court applied the wrong standard of review and that, under the correct approach, the bid dispute decision was “reasonable”; and
- Questions whether Ontario’s bid protest mechanism was compliant with CETA obligations were for a government-to-government panel to determine.
- Leave to appeal was denied by the Supreme Court of Canada.

Thank you for attending the presentation

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