

FINANCE AND CIVIC DEVELOPMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

**SUBJECT: CANADA AND THE UNITED STATES AGREEMENT ON THE BUY
AMERICAN PROVISIONS OF THE AMERICAN RECOVERY AND
REINVESTMENT ACT**

RECOMMENDATION:

1. THAT Council receive this report for information.

REPORT

The Finance and Civic Development Committee, at its meeting held on 2010 March 25, received and adopted the *attached* report providing a summary of Canada's Recent Trade Agreement with the United States. Under the new agreement, Canadian companies have the ability to participate in a number of infrastructure projects funded under the American Recovery and Reinvestment Act, within amendments to the framework provided by the World Trade Organization Agreement (WTO). However the agreement is significantly one sided, of little or no value in the short term due to the time frame for bidding opportunities, and the future value is questionable since it relies almost exclusively on the symbolic precedent set by the current agreement.

Respectfully submitted,

Councillor Dan Johnston
Chair

Councillor Nick Volkow
Vice Chair

Councillor Colleen Jordan
Member

Copied to:	City Manager Director Finance
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TO: CHAIR AND MEMBERS
FINANCE AND CIVIC DEVELOPMENT
COMMITTEE

DATE: 2010 March 24

FROM: DIRECTOR FINANCE

FILE: Trade Agreements
Reference: WTO

SUBJECT: CANADA AND THE UNITED STATES AGREEMENT ON THE BUY
AMERICAN PROVISIONS OF THE AMERICAN RECOVERY AND
REINVESTMENT ACT

PURPOSE: To provide Council with a Summary of Canada's Recent Trade Agreement with
the United States.

RECOMMENDATION:

1. **THAT** this report be received for the information of the Committee.

REPORT

At its meeting of 2010 February 15 Council requested information regarding the recent agreement between Canada and the United States that would exempt Canada from the Buy American terms of the American Recovery and Reinvestment Act.

Background

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provides funding for U.S. public works under the provision that all iron, steel and manufactured goods used in the construction, maintenance or repair of the public building or work be produced in the United States (referred to as the "Buy American provision").

While Canada and the United States have procurement obligations in relation to each other at the federal level, no such obligations exist at the state, provincial or local level. As a result, Buy American provisions in the Recovery Act have blocked Canadian access to U.S. state and local procurement markets, some of which have previously been relatively open to Canadian suppliers for years.

The initial Canadian proposal to address this issue was developed with the provinces and territories and delivered to the United States on August 20, 2009. Negotiations and technical discussions continued until February 3, 2010, when lead negotiators concluded an agreement-in-principle, pending final approval, for processes in both countries.

Canada and the United States signed the Agreement on February 12, 2010. On the same date, Canada and the U.S. each provided a notification to the World Trade Organization to give effect to the agreement through the Canada-US Agreement on Government Procurement.

To: Finance & Civic Development Committee
From: Director Finance
Re: Canada and the United States Agreement on Buy American

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The Agreement

Under the new agreement Canadian companies have the ability to participate in a number of infrastructure projects funded under the American Recovery and Reinvestment Act, within amendments to the framework provided by the World Trade Organization Agreement (WTO). The WTO Agreement on Government Procurement (GPA), as amended, now specifies that Canada and the United States have agreed to offer each other permanent market access at the sub-federal level. This means that Canadian suppliers have guaranteed access to U.S. sub-federal procurement and U.S. suppliers have guaranteed access to provincial procurement in accordance with undertakings under the GPA.

Canadian local governments are covered by the amended agreement until 2011 September 30, but Canada and the U.S. have agreed to begin discussions, within the year, to explore the possibility of additional reciprocal access to procurement markets on a permanent basis.

In spirit, both countries have also agreed to establish a fast-track consultation process should similar Buy American provisions apply to future funding programs in the United States

John Boscarriol, international trade lawyer at McCarthy Tetrault, feels the agreement establishes a key “symbolic” precedent, in that: “When the U.S. does take measures that are protectionist, there is recognition that because of the integration of our economies, Canada should be exempt.” It is speculated that this will be useful in dealing with the upcoming “jobs bill” that President Barack Obama is sponsoring to encourage job creation.

Although the agreement is being promoted as a breakthrough in the debate on the “Buy American” provisions of the American Recovery and Reinvestment Act, and access to the \$275 billion in funding under the Recovery Act; the Canadian Centre for Policy Alternatives points out that Canada is restricted to competing on a defined package consisting of seven specific federally funded programs valued at about \$4 – 5 billion, that most of the funding has already been allocated and the deadline for allocation of the remaining funding was February 17th 2010 (although there may be opportunities for sub-contracts after the February 17th date). In return the American companies have access to an estimated \$25 billion in Canadian municipal and provincial work over the next 1½ years. It should also be noted that unlike Canadian municipalities, U.S. municipalities are still not covered by the commitments under the WTO Government Procurement Agreement.

Foreign Affairs and International Trade Canada has stated that: “Canada’s embassy and consulates throughout the United States are informing local governments and companies in the contracting and distribution businesses that Canadian companies are now eligible to bid on contracts covered by this agreement.”

Given the extremely short time frame and limited access to bidding opportunities, the amount of notification by the Canadian embassy and consulates could only be minimal, at best.

In summary, the agreement is significantly one sided, of little or no value in the short term due to the time frame for bidding opportunities and the future value is questionable since it relies almost exclusively on the symbolic precedent set by the current agreement.



Rick Earle
DIRECTOR FINANCE