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# **Standing Committee on Government Operations and Estimates**

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**EVIDENCE**

**Thursday, November 2, 2017**

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**Chair**

**Mr. Tom Lukiwski**



## Standing Committee on Government Operations and Estimates

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● (1100)

[*English*]

**The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)):** Colleagues, even though we do not have a full complement of committee members, we do have a quorum, and it being 11 o'clock, I'll call the meeting to order.

I want to welcome all of our guests with us here today. They are, from Public Services and Procurement Canada, Matthew Sreter, and from Global Affairs Canada, Ana Renart and Pierre Marier. Also, from the Canadian International Trade Tribunal, we have Peter Burn and Eric Wildhaber.

Thank you all for being here. I think you're all aware of how this committee works and committees that you've appeared at before have worked. We'll start with opening statements from all of our guests. We'll then go into questions from the committee members, starting with a seven-minute round and subsequent questions until the two hours has expired. My understanding is that all of you are available for the full two hours, and we thank you for that.

With no further ado, we will start with Public Services and Procurement Canada.

Mr. Sreter, go ahead, please.

**Mr. Matthew Sreter (Executive Director, Strategic Policy Development and Integration, Department of Public Works and Government Services):** Good morning. Thank you, Mr. Chair and committee members.

My name is Matthew Sreter. I'm the executive director of the strategic policy development and integration directorate for the acquisitions program at Public Services and Procurement Canada, PSPC. Thank you for the opportunity to appear today to discuss public procurement obligations under Canada's trade agreements.

PSPC is committed to fair, open, and transparent procurement that delivers the best value to Canada and, whenever possible, does so in a manner that promotes competition. To maximize benefits for Canada and to provide more opportunities for Canadian suppliers, Canada has negotiated access to foreign government procurement markets through rules-based international trade agreements. These agreements greatly expand the marketplace for Canadian goods and services.

Several of Canada's trade agreements include commitments regarding government procurement. These trade agreements contain obligations for federal procurement activities conducted by PSPC,

making compliance with these trade agreement obligations necessarily complex and technical.

[*Translation*]

Canada and its partners agree to abide by substantive obligations and procedural rules, including obligations to ensure non-discrimination and national treatment, as well as market access commitments. Non-discrimination and national treatment principles essentially require PSPC to treat the goods, services and the suppliers of a party no less favourably than the treatment it provides Canadian goods, services and suppliers. Likewise, other parties must do the same in respect of Canadian suppliers.

[*English*]

The agreements also contain a variety of principles that require a certain level of fairness. Most of our trade agreements contain transparency provisions that call upon governments to make information concerning domestic law, regulations, policies, and administrative procedures readily available to domestic and foreign businesses. These include the requirement for notices and trade documentation regarding individual procurement transactions, the requirement for award information for participating suppliers, with explanations supporting the award, and the obligation that the procurement was conducted fairly, impartially, and in accordance with the agreements.

PSPC ensures that its policies and standard contract clauses, including information related to procurements themselves and procurement awards and statistics, are available and accessible to the public on its website.

While other core obligations do apply, ensuring that regulations and measures taken are transparent and not discriminatory is the simplest way to reduce the risk of trade issues arising.

Other procedural rules designed to enhance transparency and fairness include conditions for participation by suppliers; rules for notices; the content of tender documentation; rules on qualification of suppliers and participation; procedures for treatment of tender documents, contract evaluation, and the awarding of contracts; the circumstances for the use of limited tendering, applicable time periods, and the publication of contract award information, among other things.

[Translation]

For example, under the trade agreements, procuring entities may award a contract without soliciting bids only if one or more of the limited tendering reasons stated in each applicable trade agreement can be applied (e.g. in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive), provided that limited tendering is not used to avoid maximum possible competition or in a manner which would constitute a means of discrimination.

[English]

Technical specifications ensure that procuring entities publish information on their procurement opportunities and provide prospective suppliers with all the information necessary to prepare and submit bids. This includes a description of the good or service, conditions for participation, evaluation criteria, performance requirements, etc. PSPC does this via its Buyandsell website.

PSPC must also notify participating suppliers of contract award decisions and, upon request, provide an explanation to an unsuccessful supplier for the reasons it was not selected. Provisions pertaining to the qualification of suppliers permit parties to maintain supplier registration systems for use during procurement processes in order to reduce time needed to complete the procurement process. There are also provisions requiring us to provide suppliers with sufficient time to prepare and submit requests for participation and responsive tenders. Usually this is no less than 40 days, with some exceptions provided in the agreements.

• (1105)

[Translation]

While these obligations are rigorous, they also ensure procedural fairness by providing a clear set of rules to which parties need to comply, and reinforce PSPC's core values of openness, fairness and transparency.

However, the rules do not automatically apply to all procurement activities of each party. Rather, coverage schedules play a critical role in determining whether a procurement activity is covered by an agreement or not. Coverage schedules vary by agreement.

[English]

For all trade agreements, PSPC is required to comply with the specific procedures of each applicable trade agreement when completing certain procurements. Therefore, a decision must be made as to whether or not the procurement is subject to a particular agreement or to a combination of agreements.

To determine whether a particular agreement is applicable, the agreement must be consulted. When the procurement is covered by more than one agreement, all agreements must be complied with. Compliance with these obligations is ensured by provisions for recourse and dispute settlement between parties and domestically. At the federal level, the Canadian International Trade Tribunal acts as the main bid challenge authority for Canada. Canadian suppliers can also take any of their challenges to federal or superior courts.

As you can see, the rules and market access commitments of trade agreements place limitations on how government procurement can be used. For instance, international trade agreements limit the ability

to use government procurement to promote Canadian industries and also prohibit domestic content requirements to procurements when the trade agreements apply.

However, trade agreements do provide opportunities for parties to leverage procurement spending to pursue government priorities and encourage social and economic development opportunities. As long as procurement requirements comply with non-discrimination and national treatment as well as other obligations of the agreements, procurement spending can be leveraged for social and economic development opportunities.

[Translation]

For procurements covered by trade agreements, it is possible, under certain circumstances, to remove them from coverage, such as use of the National Security Exception, and set-asides. As well, there are many procurements under threshold or relating to goods or services not covered by the agreements, which would therefore also not be subject to the procedural obligations.

[English]

I will briefly explain how PSPC uses these provisions.

The national security exception, which I understand this committee has previously reviewed, allows Canada to exclude a procurement from some or all of the obligations of the applicable trade agreements. The invocation of an NSE, or national security exception, is not intended to restrict competition—quite the opposite. For PSPC, over the past three fiscal years, 65% of contracts awarded under a national security exception were competitive. This represents 86% of the total value of all contracts awarded under the national security exception.

Another provision of trade agreements is the set-asides. Currently all trade agreements, with the exception of Canada-European Union Comprehensive Economic and Trade Agreement, allow set-asides for small or minority businesses, including indigenous businesses. However, the Canada-European Union Comprehensive Economic and Trade Agreement, or CETA, allows for set-asides for indigenous businesses. If a set-aside provision is invoked, the procurement is removed, i.e. set aside, and therefore is not subject to the obligations of the trade agreement.

With the introduction of the Canadian Free Trade Agreement, which entered into force this summer on July 1, 2017, small business set-asides are now permitted, provided that they are part of a small business set-aside program and that they are fair, open, and transparent. All Canada's trade agreements allow set-asides for aboriginal businesses. Therefore, procurements that are set aside for aboriginal businesses under the procurement strategy for aboriginal business, PSAB, are excluded from trade agreements, making the obligations non-applicable.

Canada can also leverage procurement spending to pursue government priorities and encourage economic development opportunities when goods and services are not covered by trade agreements or when procurements fall under the monetary applicable thresholds. In these instances, Canada is able to apply criteria that would not be allowed under the trade agreements, such as domestic preference criteria.

• (1110)

[Translation]

Some initiatives that give preference to Canadian businesses include the Canadian Content Policy and the Build in Canada Innovation Program. The Canadian Content Policy encourages industrial development by requiring domestic content in procurements not covered by trade agreements, for example, defence-related procurement or procurements under threshold.

[English]

PSPC's Build in Canada innovation program helps Canadian businesses bring their innovative products and services to market. As BCIP relates to research and development services, it is not subject to the obligations of trade agreements.

**The Chair:** Mr. Sreter, I'm sorry to interrupt, but we're considerably over the time now. Could I get you to wrap it up as quickly as possible, please?

**Mr. Matthew Sreter:** It's fortuitous, Mr. Chair.

In closing, I hope—

**Voices:** Oh, oh!

**Mr. Matthew Sreter:** —I've been able to clearly outline PSPC's obligations vis-à-vis the complex web of international trade rules.

Thank you for the opportunity to speak to this matter. I look forward to your questions.

**The Chair:** It's all about timing.

**Mr. Matthew Sreter:** It is. Well said.

**The Chair:** Thank you very much.

Go ahead, Madam Renart, please.

**Ms. Ana Renart (Director General, Market Access, Department of Foreign Affairs, Trade and Development):** Good morning.

My name is Ana Renart. I'm the director general of the market access bureau in the trade policy and negotiations branch of Global Affairs Canada. I am joined today by Pierre Marier, who is the director of the government procurement, trade, and environment division of Global Affairs Canada.

The trade policy and negotiations branch is responsible for negotiating international trade agreements both in a multilateral context, such as at the World Trade Organization, the WTO, and in a bilateral or regional context, such as NAFTA or the Canada-European Union Comprehensive Economic and Trade Agreement, the CETA. We do this with the help of experts in other government departments.

As part of Canada's international trade agreements, we seek to secure new market access opportunities for Canadian businesses in a broad range of areas, one of which is government procurement.

As mentioned, we work very closely with other departments when negotiating trade agreements. With regard to GP—government procurement—we work closely with our colleagues at Public Services and Procurement Canada, for example, as well as the Treasury Board Secretariat.

[Translation]

Today, I will provide an overview of Canada's government procurement commitments in its international trade agreements highlighting in particular those obligations of relevance to small and minority-owned businesses.

Canada is a founding party to the WTO agreement on government procurement, the GPA, which first entered into force in 1981 and was revised several times since. The most recent revision took effect in 2014. Today, the GPA includes 47 WTO members, including major economies such as the United States, the European Union, Japan and Korea. The rules set forth in the GPA serve as the basis of Canada's government procurement obligations in regional and bilateral free trade agreements.

Most of Canada's regional and bilateral trade agreements include commitments on government procurement. Such commitments are included in Canada's agreements with the United States and Mexico, Chile, Peru, Colombia, Panama, Honduras, Korea, Ukraine and the European Union.

[English]

The primary objective of negotiating free trade agreements, including government procurement commitments, is to provide Canadian businesses, including small and medium-sized enterprises, with increased opportunities, including access to government procurement in foreign markets.

Canada's approach to government procurement in trade agreements is based on four key principles: non-discrimination, transparency, impartiality, and accountability. These principles are reflected in the procedural rules in all of Canada's international trade agreements with government procurement obligations.

Provisions on non-discrimination ensure that the treatment granted by a procuring entity towards foreign suppliers is no less favourable than the treatment granted towards domestic suppliers. Transparency provisions require the publication of certain laws, regulations, and policies, as well as information on contracting notices, tender documentation, and award notices. Impartiality-related requirements stipulate that all participants in the procurement process must be treated fairly, and accountability provisions ensure that participants have access to bid challenge mechanisms in the event of a dispute.

The opportunities created by government procurement commitments in FTAs are significant. Under the WTO's Agreement on Government Procurement, for example, Canadian suppliers have preferential access to procurement activities worth an estimated \$2.2 trillion annually. Under CETA, Canada has secured access to over \$450 billion worth of procurement activities. Under Canada's agreements with the U.S., Canada has preferential access to an estimated \$1.1 trillion worth of procurement activity. In other words, FTAs with GP commitments, general procurement commitments, allow Canadian companies the ability to compete for many more opportunities than just those available in Canada, and they allow this in a fair and predictable way.

While seeking increased market access for Canadian suppliers into foreign government procurement markets, these trade agreements are also subject to a number of exceptions that provide flexibility for Canada to carry out certain domestic policies or achieve socio-economic objectives. For example, Canada is not prevented from undertaking procurement policies that it considers necessary for the protection of its essential security interests, even if these would otherwise contravene the trade agreements. Also, Canada's international procurement obligations do not prevent Canada from applying specifications related to the good or service being procured that promote the conservation of natural resources or the protection of the environment, or socio-economic development opportunities for socially or economically disadvantaged people, so long as this is not done in a discriminatory fashion or as a disguised restriction on international trade.

In addition, certain sectors are excluded from Canada's international government procurement obligations, including health and other public services, research and development, shipbuilding, and culture. Furthermore, essentially all of Canada's international trade agreements include provisions that allow procurements to be set aside, as described by my friend Matthew, for small and minority-owned businesses.

Without exception, all of Canada's international trade agreements with procurement obligations include provisions that would allow domestic procurements to be set aside for aboriginal businesses. These provisions allow Canada the flexibility to carry out the procurement strategy for aboriginal business, which was launched in 1996 and aims to foster aboriginal business development through the use of federal procurement contracts, while remaining consistent with international trade obligations.

With respect to exceptions that are specific to SMEs, only the Canada-EU CETA does not include an exception for set-asides for Canadian SMEs. However, at over \$200,000, the CETA thresholds for goods and services are the highest that Canada has in any of its international trade agreements.

• (1115)

Contracts that fall below this threshold are not subject to CETA procurement obligations, so procuring entities have full flexibility to carry out procurements in a manner that helps to achieve domestic policy objectives, including facilitating SME participation in procurement, should they desire.

[*Translation*]

In the context of current trade negotiations, Canada is pursuing progressive provisions that recognize the importance of international trade's contribution to broader economic, social and environmental policy priorities. This includes progressive provisions in the area of government procurement.

Thank you for your time, and we would be happy to answer any questions you may have regarding Canada's government procurement obligations in its international free trade agreements.

**The Chair:** Thank you very much.

[*English*]

Mr. Burn, go ahead.

• (1120)

**Mr. Peter Burn (Member, Canadian International Trade Tribunal):** Thank you, Mr. Chairman.

I have prepared remarks, but I will attempt to avoid repetition as I go through, so I will go a bit more slowly.

Thank you for this opportunity to appear before the committee today.

My name is Peter Burn. I am one of the seven members of the Canadian International Trade Tribunal. We are supported by a secretariat of approximately 50 professionals: lawyers, economists, financial analysts, registry and editing officials, and the like. One of them is here with me today. Joining me from the CITT secretariat is Mr. Eric Wildhaber. That's Swiss French, not Swiss German, I believe. If you're from the north, it would be pronounced differently. Eric is senior counsel in the administrative tribunals support service of Canada. He is one of Canada's foremost experts in the field of procurement review law.

We are available to answer questions in both languages, but I will ask Eric to be the lead in French, because he is fluently bilingual.

I am pleased to provide the committee with some context for its deliberations on small and indigenous business set-asides.

First, let me describe who we are and describe our mandate. The CITT is an independent, quasi-judicial body with the powers of a superior court, which reports to Parliament through the Minister of Finance. We are mandated to act in five areas.

First, we are mandated to inquire into and decide whether dumped and/or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry. The CITT conducts the injury inquiry, and the CBSA—the Canada Border Services Agency—determines the existence and level of dumping and/or subsidization. Our American counterpart for this mandate is the International Trade Commission, the ITC.

The second concerns safeguard inquiries, which is, again, an ITC function in the States. Here, we inquire to determine if goods are being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat to the domestic producers of like goods.

The third mandate concerns inquiries into economic and tariff matters as referred to us by the GIC or the Minister of Finance.

The fourth involves customs and excise appeals. We hear and decide appeals of decisions of the CBSA made under the Customs Act and SIMA, the Special Import Measures Act, and of the Minister of National Revenue made under the Excise Tax Act. Here, our American counterpart is the Court of International Trade in New York City.

Finally, we come to our fifth mandate, which is why we are here today—our role as the designated reviewing authority for certain federal procurements pursuant to the various trade agreements that were named earlier. For this mandate, our U.S. counterpart is the Government Accountability Office, or GAO.

You'll note I said "certain procurements". That's because our review power covers only those federal government contracts that qualify as "designated contracts"—that is, contracts above a certain value, issued by a listed entity of the federal government, and involving a listed good or service. In other words, there are many lower-value federal contracts outside of CITT's jurisdiction and beyond the disciplines of trade agreements. The Office of the Procurement Ombudsman has certain responsibilities for those under the CFTA, formerly known as the AIT, the Agreement on Internal Trade.

Beyond our jurisdiction as well are procurements by subnational governments. You will know that the provinces have taken on procurement obligations in both CETA and the CFTA. As a party to CETA, Canada has committed to ensuring that our subnational governments respect their CETA commitments and has agreed to create one or more procurement review authorities. We'll have to see how that develops, whether we have one or 11, or how that goes.

Under CITT's procurement mandate, we receive complaints from companies and individuals dealing with the federal government who feel that they have been improperly or unfairly treated during the course of a procurement process. We receive about 70 procurement complaints annually, and we endeavour to provide a fast, cost-effective, fair, and transparent review. It's a file hearing; nobody has to come to Ottawa. Those are reviewed for both domestic and foreign suppliers, many of whom are small and medium-sized businesses.

● (1125)

When we determine that a complaint is valid, we recommend to the government one of a range of remedies as we consider appropriate, and we can also provide the deputy head with comments and observations on the process. By legislation, recommendations are to be implemented to the greatest extent possible.

On the issue today, small and indigenous businesses, an annex in NAFTA explicitly states that the procurement chapter does not apply to procurements in respect of "set-asides for small and minority businesses". Those are practices that began in the United States well before NAFTA, the small business set-aside back in the 1950s and the minority program for businesses owned by African Americans and Native Americans in the amended statute in the 1970s.

The Small Business Act in the U.S. states that small businesses should receive a "fair proportion" of federal contracts, and that small

businesses and small minority-owned businesses should have the "maximum practicable opportunity", so there is lots of scope. The small business set-aside provides that opportunity by requiring most contracts with an estimated value of more than \$25,000 and less than \$150,000 to be awarded to small businesses, with "small" defined in relative terms within each sector. I don't know what a small oil company is.

**Mr. Kelly McCauley (Edmonton West, CPC):** It's what used to be a big oil company.

**Voices:** Oh, oh!

**Mr. Peter Burn:** Exactly. Well put.

In addition, contracts of larger size can be set aside if the contract officer thinks there are at least two small businesses that can do the job, so the discussion is down at the contracting authority, and I don't know how that happens. Furthermore, larger contracts awarded to larger businesses must have small business subcontracting plans.

Those are the three ways in which the small businesses are scaled up in the U.S.

In Canada, there is no sweeping federal procurement program in place that's similar to that. I cannot speak for today and I don't want to, but I was involved way back in the Canada-U.S. Free Trade Agreement days. I think it's safe to say that our objective was to help more firms develop competitive scale and capacity. We were looking to blow open markets in the United States, and we weren't looking to show the Americans in any way that we were undermining Canadian firms' access at the time. We were never really looking to actually implement the small business set-aside; we were trying to get into their market. However, we're a much bigger economy today, so things could be different.

We also realized way back that a large Canadian business was actually equal to a small American business, so we didn't know what a small Canadian business was for purposes of procurement. That was back then.

To date, successive governments have chosen to implement a wide range of other measures and not a small business set-aside. In the NAFTA procurement chapter, there was the creation of a committee on small business with the United States, which was intended to promote government procurement opportunities for small businesses in a variety of ways. I would recommend reading that.

Small business set-asides have been attempted at the provincial level. As was noted earlier, article 504.13 of the CFTA allows for small business set-aside programs, provided the program is fair, open, transparent, and does not discriminate on the basis of the origin or location within Canada from where the goods or services are supplied. In other words, small versus large is okay, but not local versus others.

There is also a very interesting CETA annex that I recommend to the committee. It lays out the acceptable limits on local preferences supporting development in the non-urban areas of certain have-not provinces. It essentially says that—not Ontario, because I think Ontario has left that category again—the normal, the other have-not provinces, are allowed 10 procurements a year to develop outside the urban areas—that is, outside Halifax, Moncton, etc.—of less than \$1 million. This is one to watch. I don't understand how that works in to the others. We'll have to wait and see.

We have much more explicit indigenous set-asides. In all, it's moved from “minority” set-asides, when we said that's what “minority” meant for Canada. Now there are quite clear, quite broad indigenous set-asides. Suffice it to say that because of those, the tribunal has ruled that when such provisions are invoked, the tribunal does not have jurisdiction and will not conduct an inquiry. Instead, as stated in the Government of Canada's supply manual, “Bid challenges [by suppliers for the procurement strategy for aboriginal businesses] should be dealt with according to established internal supplier complaint response procedures for procurements not subject to trade agreements”, so on the indigenous side, it's quite clear.

That concludes my remarks. I hope I caught everything without being too duplicative.

● (1130)

**The Chair:** Thank you very much to all of you.

We'll start with our seven-minute round of questioning, with Mr. Whalen first.

**Mr. Nick Whalen (St. John's East, Lib.):** Thank you very much, Mr. Chair, and thank you all for coming in to educate us on the implications of the trade agreements that Canada has and how they affect its domestic supply arrangements with small and medium-sized enterprises and aboriginal groups.

I have many questions, and so I imagine we'll have a long and interesting conversation here today.

In terms of the transparency piece, Canada presumably reports not only on the thresholds but also on what percentage of federal government contracts are earned by foreign companies. Then, do foreign countries provide the same in terms of transparency on how often Canada is able to access foreign procurements so that we can compare and see whether or not we've been successful?

Ms. Renart, is that the case? Is this information publicly available? How are we doing with foreign purchases in our government procurement opportunities versus Canadian supply to foreign purchases?

**Ms. Ana Renart:** I think I'll let the first part of the question be answered by Matthew, my colleague from PSPC, about domestic procurement.

With respect to tracking foreign procurement, it is a very good question. Unfortunately, most governments don't necessarily report on that, and we don't track our exports. We can tell you anecdotally about a number of types of procurement that we compete with abroad. With regard to anything to do with engineering services, environmental services, clean tech, or public transit companies, we compete very well in the U.S., the EU, and in Asia, but it is anecdotal. It's not something that we can track easily. Again, it's not something that other companies widely report on.

**Mr. Nick Whalen:** I guess we're looking at the global trade balance, and somewhere in the mix is government procurement. At least that aspect is not transparent. I guess if it was, it might drive protectionism a little bit. It would be nice to know, just so you can make good decisions.

Mr. Sreter or Mr. Marier, I'm not sure who's going to answer the other question, the internal Canadian part that we report internally for our own purposes.

**Mr. Matthew Sreter:** We do have a number of means by which we report. The first is on our public-facing website. We do have some statistics available under the PSPC public-facing website. We also have statistics available through Treasury Board Secretariat as part of their open data initiative.

In terms of the reporting requirements internationally, we're reporting value, but we don't identify origin within that reporting framework.

Within domestic reporting mechanisms, you would be able to see and do some analysis on who was awarded what contract and try to look at the country of origin. However, those are not required internationally at this point in time.

**Mr. Nick Whalen:** I just think it would be helpful to understand the scope, the ability, and the success of this. I guess there might be political reasons, but it would be nice to know what the answers are.

**Mr. Peter Burn:** Could I just add something from a quasi-judicial point of view?

The word “transparency” more relates to a due process question than to information afterwards. It's to the parties in the contracting dispute. They know there's procurement that is fair and open to all parties, so I think transparency mainly relates more to the question of the fairness of the actual procurement process.

● (1135)

**Mr. Nick Whalen:** Okay. You're saying it's not after reporting.



In terms of the different programs we have, it's pretty clear from Mr. Burn's comments that there's a real difference, of course, in what "small" means in Canada versus the U.S. You see it on the patent file side. They have a micro that would be our small, and a small that would be our medium, and the large, and up to 500. They've got some very good metrics there to determine those things. It's very open and transparent, but it's also nine times the size of our market.

When we're looking at programs that drive innovation purchasing, particularly on BCIP, how does the American program...? My understanding is that each federal government department in the U.S. is required to do a certain amount of innovation purchasing, as opposed to BCIP, which is a dollar value set aside for government to engage. Do we have a comparison on those two programs? This is open to all of you. Which one works better? Is one more or less trade compliant than the other? How does the American version of BCIP, their innovation purchasing program, compare to ours? Can ours can be expanded within the scope of our trade arrangements? Is it already as broad as it can be?

I want to get a sense of where the scope is for us to improve or grow programs that Canadian businesses feel are working.

**Mr. Matthew Sreter:** Perhaps I'll take the lead.

Up until July of this year, we were restricted as government from exploring the use of set-asides for small and medium-sized enterprises to further Canadian programs, because the agreement on internal trade simply did not allow for set-asides for small and medium enterprises. Now that we have in place the CFTA—the Canadian Free Trade Agreement—you have government looking at the options to utilize a small business set-aside, including BCIP and Innovative Solutions Canada under ISED. We're looking at what options exist that allow us to more fully explore the use of that set-aside to promote Canadian business, not only for R and D—research and development—but also for the follow-on sales you are alluding to.

In terms of what the U.S. does versus what we do, the U.S. does not have that type of internal restriction, so they employ small and medium-sized enterprise set-asides in two general ways. One is under their simplified acquisition thresholds. Federal department procurements that are under \$150,000 are set aside to small businesses at large. Another mechanism they employ is the SBIR program, their small business innovation program. Under that program, they have identified that innovation for purposes of small business set-asides is not only the research and development but also the follow-on sales—the first sales, if you will, or the commercial sales, that are then given to U.S. government departments and agencies.

You referred to quotas. I understand that there are quotas in existence that also vary by department and agency. I understand that those quotas are not always attained, however, but the small business set-aside is being used by the U.S. quite frequently.

**The Chair:** Thank you very much.

Mr. McCauley, you have seven minutes, please.

**Mr. Kelly McCauley:** I agree with Mr. Whalen. It would be interesting to find trade balances or imbalances on some of the procurement we're talking about.

I have a couple of quick questions for you.

We talked about our trade agreements and how we have to make sure that they don't favour local companies. How are we ensuring that Canadian companies are getting fair access down in the States? Is it all complaint-driven, or do we proactively check on fairness? That's for anyone.

Is this like a secret...?

**Voices:** Oh, oh!

**Ms. Ana Renart:** No, it's absolutely not a secret. I'm making sure we're getting it right.

It is complaint-driven. We don't proactively check to see whether they're following their obligations. We do have a wonderful trade commissioner service, which will help companies access by explaining rules—

**Mr. Kelly McCauley:** Sorry, but if it's complaint-driven, what market are most of the complaints in? I don't mean geographic market, but business market. I assume that most of it is based around the U.S., seeing as they are our largest partner.

● (1140)

**Mr. Pierre Marier (Director, Procurement, Trade and Environment, Department of Foreign Affairs, Trade and Development):** Yes. That's exactly right. To the extent that we're getting complaints from Canadian stakeholders in terms of accessing foreign government procurement markets, it's mostly in the United States, and that's because the United States has—

**Mr. Kelly McCauley:** What business market is it? Is it construction or engineering services?

**Mr. Pierre Marier:** It's mostly construction-related, and around infrastructure developments in particular, so that's construction services. Often associated with that is the procurement of construction materials, particularly steel. Also, in the public transit sector, the United States does maintain some discriminatory policies. The Buy America program is discriminatory in nature. We do not have access to Buy America measures in the United States, so of course we do have some Canadian companies that do not have preferential treatment for the U.S. market. We work with them on a regular basis in terms of—

**Mr. Kelly McCauley:** How are we protecting Canadian companies from dumping through bidding in our infrastructure procurement? Again, is it complaint-driven? The reason I'm asking is that in Edmonton we have cement companies that produce a lot of jobs, but they're commenting that they believe there is foreign dumping of cement sales.

Again, is that all complaint-driven? Are we proactive in looking at that? I know that Mr. Weir is probably going to follow up on the steel issue, but...

**Ms. Ana Renart:** Do you want to address dumping?

**Mr. Peter Burn:** Well—

**Mr. Kelly McCauley:** Again, it's a pretty simple question—

**Mr. Peter Burn:** It's complaint-driven.

**Mr. Kelly McCauley:** It's complaint-driven.

**Mr. Peter Burn:** It's totally complaint-driven, to us. It will have to go through CBSA for the determination of whether there actually was dumping and whether that complaint is valid. They have to prepare a comprehensive complaint. It comes to us, and then we will look for injury. That's the kind of process that happened, for example, in gypsum earlier this year, after the fire.

**Mr. Kelly McCauley:** Walk me through the timing, though. If in a major procurement in Edmonton, for example, a local company, says, "Wait a moment; they're dumping", the city can't just sit and wait for a year. Well, actually, our city does sit and wait a couple of years before they build stuff, but they can't normally sit and wait a couple of years until it works its way through the process. Is it that the city just goes ahead, or the province goes ahead, or the feds go ahead with the procurement, and we deal with the fallout or penalties later?

**Mr. Peter Burn:** Eric, give it a go on our side.

**Mr. Eric Wildhaber (Senior Counsel, Secretariat to the Canadian International Trade Tribunal, Administrative Tribunals Support Service of Canada, Canadian International Trade Tribunal):** We don't follow, really, the interplay between procurement and dumping, but for sure a dumping complaint will first go to the CBSA, and the CBSA does have a very extensive program for aiding small and medium-sized businesses and other complainants to bring their complaint together. They will gather varied information, and some of that information, indeed, in some instances, I would imagine, would be evidence of lost tenders. That may very well be public tendering. That may very well be private tendering as well.

**Mr. Kelly McCauley:** Ms. Renart or Mr. Marier, it's been announced in the economic update, I think it was, that we're investing several hundred million dollars in the Asian Infrastructure Investment Bank. Is that going to open up opportunities for Canadian companies?

In Edmonton, we have Stantec. Of course we have SNC-Lavalin and a couple of other very large and well-known international engineering firms. Is that going to open up procurement opportunities for Canadian companies, and if so, will that be protected by our trade agreements for fairness?

**Ms. Ana Renart:** Whenever we negotiate FTAs, we'll normally include provisions on GP, government procurement, so—

**Mr. Kelly McCauley:** I'm asking specifically. Do you know about the Asian Infrastructure Investment Bank?

**Ms. Ana Renart:** The Asian Infrastructure Investment Bank is not our lead at trade, but normally they would be included in FTAs.

**Mr. Kelly McCauley:** Very quickly—and this is for anyone—what qualifies as an aboriginal business? Is it ownership? Is it a percentage of workers?

**Mr. Matthew Sreter:** Within the procurement strategy for aboriginal business, PSAB, there are qualifiers and definitions for what constitutes an aboriginal business. It could relate to ownership, participation, number of employees, and so on and so forth. During the session on PSAB that I understand you'll be examining, we can delve into that further.

● (1145)

**Mr. Kelly McCauley:** I was hoping you'd just tell me, but that's fine.

Do we get complaints about—

**Mr. Matthew Sreter:** I don't have it with me.

**Mr. Kelly McCauley:** Do we get complaints about procurement or opportunities given to aboriginal companies for procurement? Do we get complaints from outside?

**Mr. Matthew Sreter:** That would be a question that probably would be best answered by our folks over at Indigenous and Northern Affairs Canada. The reason I say that is that an aboriginal business under PSAB must be registered with our colleagues in INAC—

**Mr. Kelly McCauley:** Right: they get an exemption, but do they get—

**Mr. Matthew Sreter:** —and then those types of complaints would go more to them.

**Mr. Kelly McCauley:** It's a set-aside. Do we get complaints from other countries saying we're doing this unfairly with such set-asides?

**Mr. Matthew Sreter:** In my experience, no. It's a recognized derogation from the general rules. In my experience, the answer to the question is no.

**Mr. Kelly McCauley:** Thank you very much.

**The Chair:** Thank you very much.

**Mr. Peter Burn:** I would refer you, Mr. Chair, to the case of Avaya back in 2011. We had a complaint from a foreign company as to the scope of that, and that was the issue.

**Mr. Kelly McCauley:** I just want to make sure other countries are not using that to try to delay stuff or interfere with our internal procedures.

**Mr. Peter Burn:** That was dealt with in 2011, and it was shut down.

**Mr. Kelly McCauley:** Perfect.

**The Chair:** Thank you.

Mr. Weir, you have seven minutes, please.

**Mr. Erin Weir (Regina—Lewvan, NDP):** Thank you.

Thanks to our witnesses. As someone who also has a small amount of Swiss-German heritage, I'd particularly like to welcome Mr. Wildhaber.

I want to ask the panel about environmental policy and procurement. It emits about five times as much carbon to produce a tonne of steel in China and ship it here than it does to produce it at the steel mill in Regina. Similarly, more carbon is emitted in producing cement in China and transporting it here than in producing it in Canada.

I'm wondering if federal procurement policy can take account of the differing carbon content of goods as a legitimate environmental policy that is exempt from trade agreements, or would that be considered some sort of discriminatory local preference?

Perhaps I'll start with the tribunal.

**Mr. Peter Burn:** I think you have to take it. I don't think it's in our

**Mr. Pierre Marier:** As Ana mentioned earlier, our trade agreements allow for provisions for the conservation of natural resources and the protection of the environments to be built into the tendering process. These would be in the form of technical specifications whereby whoever is carrying out the procurement would include technical specifications around the good or service being procured. The specifications could include environmental criteria in terms of the environmental performance of the good or service being procured.

The trade agreements allow for that, provided we're applying it in a non-discriminatory way. We cannot say you cannot procure steel from, say, this country that's a trade partner because we think that their steel is not produced in an environmentally sustainable way. The specifications must be very much tailored to the good or service specifically.

**Mr. Erin Weir:** Okay, so the Government of Canada could specify that it wants to procure the cleanest steel, or that it will only buy steel with carbon content below a certain limit. If China managed to produce steel within that limit, we would have to accept it, but we could enforce those environmental standards on federal procurement.

**Mr. Pierre Marier:** Yes. I was going to say nothing in our trade agreements would prevent that. Whether we have domestic regulations or policies that would conflict with that approach is not for us to say, but there's nothing in our trade agreements.

**Mr. Matthew Sreter:** Perhaps I will supplement the response by saying it's very early on. The principles are engage early, engage meaningfully, and engage often. It's very early on in the stage of setting procurement requirements that the requirements for steel, for example, are set, as well as the nature of the steel: what it is, what type of content it has, and so on and so forth.

In terms of environmental considerations, I'm sure PSPC, for example, would be looking at setting targets relating to GHG emissions. We currently have 40% reduction of GHG emissions. We're looking at cutting emissions from our buildings and fleets. Using 100% clean power is our target for the year 2025. We're scaling up clean procurement, for example, looking not only at

ourselves at the federal government level but also at provinces and territories.

There are various ways we can accomplish this, as long as, as Mr. Marier said, it's in accordance with our trade agreement obligations and we're not going to run afoul of those obligations.

● (1150)

**Mr. Erin Weir:** Right. Exactly.

Two months from now, the federal government is going to enforce a carbon price across Canada, which of course will somewhat increase the cost of steel, cement, and other products manufactured in Canada. It won't increase the cost of imported steel and cement.

Would it be possible for the government in its procurement policy to either be willing to pay a bit more for Canadian products to take account of that carbon price, or to add some notional amount to bids from outside of Canada to try to create a level playing field?

**Mr. Pierre Marier:** It sounds like that would provide some preferential treatment to Canadian suppliers, and that is what the agreements do not allow.

**Mr. Erin Weir:** If it's applying the same price to imported goods as is being paid by Canadian suppliers, how would that be considered discriminatory?

**Mr. Pierre Marier:** Those situations would have to be considered by those who are carrying out the procurements. If there are technical specifications that are configured around the good or service being procured that are done in a way that is consistent with our trade obligations, then we have a lot of scope to do things, provided we're not discriminating on the basis of the origin of the good or service.

It all comes down to where the good was produced. If there's something in the bid process that gives some kind of preferential treatment to goods from a certain part of the world versus others, then we start getting into conflicts with the trade agreements.

**Mr. Matthew Sreter:** I'll echo my colleague's comments—it comes down to the procurement requirement itself, what benefits you're trying to achieve under the requirement, and making sure those are consistent with your treaty agreement obligations. To the extent that you can allow for that, then yes. To the extent that it's not allowed, then no.

**Mr. Erin Weir:** I appreciate this is getting a little bit beyond procurement, but since I have all these international trade experts before me, I am wondering about the feasibility of generally applying Canada's carbon price to the carbon content of imports and rebating it on Canadian exports. Right now, we apply the goods and services tax in our own economy. We also apply it to the value of imports coming in, and we rebate it on the value of exports going out. Would it be possible under international trade agreements to do the same thing with carbon pricing?

**The Chair:** That will have to be a question left unanswered as we move along to Mr. Drouin.

**Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.):** Sorry, Erin, we're cutting you off.

**Mr. Erin Weir:** Maybe they can answer the question on your time.

**Mr. Francis Drouin:** You'll get another chance.

Thanks a million for being here. I want to touch on a point, Matthew, that you raised. It has to do with the Canadian Free Trade Agreement, the small business set-aside of \$150,000 in the U.S., and how we are limited here in Canada. We weren't able to do that. I recall that the late Dr. Adam Chowanec was working on a project, and he kept citing the U.S. example and how Canada was limited in that regard.

Is there an amount we are limited to? How is NAFTA impacting that particular set-aside? Does NAFTA say you can't put \$150,000 in Canada? Is there an amount that's limited to Canada?

**Mr. Matthew Sreter:** To answer your question a little more holistically, when I said that now we're allowed to look into the use of set-asides because of the CFTA, don't forget that there's a domestic framework as well. We have to abide by the Financial Administration Act. In the government contracting regulations, there are specific exemptions. To date, they do not necessarily provide for the use of set-asides within the Canadian system, so we'd also have to look at the domestic legislative framework and see what would need to be adapted.

Within the context of international trade agreements, it's my understanding that there are no set thresholds. It's left to the discretion of the party to decide what those thresholds are and how they define small and medium-sized enterprises. By and large, for example, for the SBIR, the small business innovation research program in the States, it's 500 employees. For other areas, depending on the sector being looked at—*aerospace*, for example—that threshold could be different.

In Canada, so far we're looking at how we define SMEs in order to move forward with the possible development of a set-aside program, but the direct answer to your question is that there's no formal requirement within the trade agreements.

• (1155)

**Mr. Francis Drouin:** In the States, the small business set-aside limit is \$150,000. Does that allow them to sole-source a contract under \$150,000, or do they still have to go through a procurement process?

**Mr. Matthew Sreter:** I'm not going to speak for the system in the States. I will say, however, that being set aside from the agreements allows the U.S. to employ any mechanism, including open competition and non-open competition. As a matter of clarity, I'll also specify that the simplified acquisition threshold is the \$150,000 threshold. Under the SBIR program, there is no threshold, as far as I'm aware. Once a company has gone through research and development and is looking at the follow-on sale, the government departments and agencies, like any other commercial entities, can purchase those particular goods and services. In that case, it was goods.

**Mr. Francis Drouin:** I recognize the system's not perfect. We often hear from those who are not successful, but we also hear from those who report getting a sale with the U.S. government as opposed to the Canadian government. I think the Canadian Free Trade Agreement is a step in the right direction, and I'm assuming you guys are working on something to define that set-aside. That should be good news for SMEs.

Going back to the set-aside through CETA, has there been an amount set for SMEs, or is it just that the framework's in place and we have to work towards a set-aside through CETA for SMEs?

**Ms. Ana Renart:** There is no set-aside in CETA for the SMEs.

**Mr. Francis Drouin:** Okay, I misheard.

**Ms. Ana Renart:** There is one for aboriginal businesses, but not for SMEs. The threshold for coverage of procurements in CETA is much higher than in other FTAs. The threshold for CETA is \$221,000, which is significantly higher than in our other free trade agreements.

**Mr. Francis Drouin:** That amount is \$221,000, let's say, for aboriginal businesses.

**Ms. Ana Renart:** No, sorry; that's the threshold for coverage of procurement.

**Mr. Francis Drouin:** It's for coverage. Okay.

**Ms. Ana Renart:** There's no limit on the aboriginal set-aside, so it could be for anything. You can just take any procurement at any value and set it aside for aboriginal businesses.

**Mr. Francis Drouin:** Okay, got it.

The other aspect I want to touch on is the vendor performance.

From previous witnesses we've heard that the U.S. does take into account previous vendor performance. If company A was supposed to deliver *a*, *b*, and *c* and only delivered *a*, then they would take that into account for the next procurement cycle.

I'm wondering; I know we don't do this here, but would any trade agreement or our internal policies stop us from doing that right now? We don't do this here right now, but is analysis being done to implement that?

**Mr. Matthew Sreter:** To clarify, in terms of monetary thresholds for coverage, the CFTA provides \$25,000 as a threshold, NAFTA provides \$28,900 as a threshold for goods, and the WTO and CETA, \$221,400.

In what is currently the state of play on vendor performance, yes, Canada does not employ a regime similar to that in the States. It's covered under their ineligibility and debarment policy. However, Canada can debar a vendor for the most egregious poor performance.

However, through our procurement modernization efforts, we are looking at a supplier relationship and performance management scheme whereby we would be looking at strategic intelligence on future source selection by using past performance information to incentivize and inform future source selection for government procurement. That initiative is currently under way. We're consulting around 30 departments and agencies interdepartmentally, as well as our national supplier advisory committee members.

**Mr. Francis Drouin:** I'm not sure if you're aware of the U.S. experience, but how do they analyze that? Do they use a scoring system or a pass/fail system?

**The Chair:** Let's have a very quick answer if you could, Mr. Sreter.

**Mr. Matthew Sreter:** I am aware they're using a scoring system to a certain extent. It's based like KPI, key performance indicators. We would be examining a similar type of system. Without confining myself to what we're up to, we are examining that type of system as well.

• (1200)

**Mr. Francis Drouin:** Okay, great. Thank you.

**The Chair:** Thank you very much.

We'll now go to our five-minute rounds of questions. We'll start with Mr. Shipley, please.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Chair.

Thank you to our witnesses for coming.

One thing we realized that comes out of this is the complexity involved around procurement, particularly procurement through our trade agreements, not only because we have one but we have multitudes of them. They can't just be a template.

I'm not sure who's going to answer this. How does the federal government know and ensure that the procurements that go out comply with all our trade agreements? There has to be a compliance factor with it. There's a procurement part.

Also, I have six first nations in my riding, and land claims will impact the compliance.

I'm wondering if somebody can help me with those two aspects.

**Mr. Matthew Sreter:** Compliance is understanding the agreements and the obligations contained therein. Then, of course, there's implementation of those agreements. We've implemented two this summer: the CETA and the CFTA. We need to update our contract clauses through our standard acquisitions clauses over at PSPC, and then we make sure other government departments and agencies are also aware of the update to those clauses to ensure our clauses are consistent with the agreement.

We update our guidance manual for procurement staff, which is our supply manual. Within that we also include comprehensive land claim agreement obligations and what contracting officers are supposed to do to ensure they're on the right side of the law with respect to those obligations.

We ensure that our staff are trained. Training sessions take place to make sure they fully understand the obligations. We make sure that our infrastructure and systems in place are also updated to ensure trade agreements are complied with.

Furthermore, we have within PSPC a centre of expertise for trade agreements; that is there to provide guidance on trade agreements, as necessary, for individual procurements as well as for policy in, for example, supporting any negotiations that may be under way.

Furthermore, we have fairness monitors. We have the like in looking at it internally within PSPC. Then, of course, we have the bid arbiter, the Canadian International Trade Tribunal.

**Mr. Bev Shipley:** That's you, Mr. Burn, so listen—

**Mr. Peter Burn:** That's me. Can I add something for your land claim issue? Since way back, the language was about small business

and minority rights, “minority” being aboriginal. The latest language really clarifies things. Procurement rules of the CFTA do

not apply to any measure adopted or maintained by a Party with respect to Aboriginal peoples. It does not affect existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

2. For greater certainty, nothing in this Agreement shall prevent a Party from fulfilling its obligations under its treaties with Aboriginal peoples, including land claims agreements.

We have expanded to very, very clear language. It used to just say “minority rights”, so we have really spelled it out from the point of view of indigenous people in the latest agreements.

**Mr. Bev Shipley:** Those were all discussions that happened prior to and during those negotiations of agreement, so that they actually know that it's in compliance—

**Mr. Peter Burn:** That's the agreement on internal trade, CFTA. With CETA, my colleagues here have essentially made it very similar, very spelled out. It's expanded, so it's no longer this, “What is in the minority rights?”

**Mr. Bev Shipley:** Okay.

**Mr. Peter Burn:** It's a much better situation in terms of clarity.

**Mr. Bev Shipley:** There are cases of what they would call contract splitting that can appear before your tribunal. Knowing that this is a risk that can happen, and knowing that small and medium-sized businesses would take this as a risk that maybe they can't deal with, how do they manage those in terms of the posting? Does that curtail them in terms of their postings for procurement?

**The Chair:** It would have to be a fairly short answer, as well. I know it's a difficult question, perhaps, but we need a very brief answer.

• (1205)

**Mr. Eric Wildhaber:** That would be before us. That's more in their realm as well. Contract splitting is not permissible according to the trade agreements.

**Mr. Bev Shipley:** Thank you very much.

**The Chair:** We will go now to Mr. Peterson for five minutes, please.

**Mr. Kyle Peterson (Newmarket—Aurora, Lib.):** Thank you, Mr. Chair.

Thank you, everyone, for being with us this afternoon.

This is a very rich topic with many avenues of questioning that we can go down. It's a pretty thick set of subjects we can discuss here.

I wanted to start with my friends on the trade tribunal.

I was a commercial litigator, myself, before I had the honour of serving the great people of Newmarket and Aurora in the House of Commons. I have, on behalf of my clients, participated in some contract dispute cases—not with the trade tribunal, but in the Superior Court of Justice in Ontario. I'm wondering what the case load is like, what types of people avail themselves of the trade tribunal, and what sort of disputes tend to be the most common.

**Mr. Peter Burn:** I'll let Eric start, and then I'll fill in.

I've been doing this for three years. Eric's had many more years than three, so he might have a better history.

**Mr. Eric Wildhaber:** I've had a few.

The CITT, on the procurement side, you have to remember, is really a domestic tribunal. The word "international" is a bit of a misnomer. Actually, at one point, when NAFTA came on board, the procurement review board was the body that was doing the procurement review, and that was absorbed by the CITT. There was an amendment to the NAFTA implementation bill, which didn't get through at the last moment, that would have had the name of the CITT changed to the "Canadian international trade and procurement review board". That would have been a better descriptor of what we're doing.

What we do, in effect, is provide another forum for dispute settlement in the procurement field. A supplier can always go to the Federal Court or to the superior courts of the provinces to make essentially the same claim against the federal government, but just using the contract A/contract B paradigm of the Ron Engineering decision.

That law that was developed by the Supreme Court is essentially embodied inside the trade agreements as well. What the CITT provides is an easier, quicker forum for those types of settlements.

We track a lot of things. My executive director and general counsel is a former management consultant, so he's very big on metrics, and so am I. I almost became an accountant instead of a lawyer.

**Mr. Kyle Peterson:** Luckily, cooler heads prevailed.

**Mr. Eric Wildhaber:** Well, there you go.

We track a lot of things, but surprisingly, we don't track the activity before us by small and medium-sized enterprises, and I think it's simply because we never have been asked. However, in preparation for today and in going on, I'm going to recommend that the secretariat keep numbers on that, only so that we would be able to answer the question the next time we come here.

I had a look. Yesterday I asked my articling student to go through the caseload that we had last year. We had 70 cases last year. It was the highest volume of procurement review ever to come to us; it was in the order of \$5 billion. There were a couple of big-ticket items there, but usually it's about \$1 billion to \$3 billion.

We did realize yesterday, from using the Industry Canada definition of what a small business is and for those businesses that we could confirm just by looking at them—a quick web search—to see that they were indeed small businesses, that we can safely say anecdotally, from last year at least, that more than half—up to 45 of the 70 complaints—came from what looks like small and medium-sized enterprises. They come to us a lot.

The last part of your question asked what the usual things are that come to us. Well, there are a variety, but one regular one would be an undisclosed criterion. According to the system, you're supposed to disclose your criteria in your solicitation documents. Essentially, the suppliers have to know what the rules of the game are before they invest the time and money to put together these bids and to answer these calls for tenders, but sometimes things are not well defined, or things can creep in, and at the evaluation stage you'll have an undisclosed criterion that seeps its way in. Then you'll have a bidder

who says, "Hold on; I didn't get this, and what's the reason?" They're told what the reason is, and they don't like it, because they realize that they didn't read that in the solicitation documents. They'll try to resolve it, and if not, then go to the tribunal, or they can go to the tribunal directly.

That's a big source of activity, I would say.

•(1210)

**The Chair:** I'll have to cut it off there. Thank you.

Mr. McCauley is next. You have five minutes, please.

**Mr. Kelly McCauley:** I wanted to get back to what Mr. Weir was saying about bidding with the environmental protections.

I'll give you an example. I want to go back to the cement industry in Edmonton. They're running into an issue of being priced out of the market against foreign bidders because of our carbon levy in the province.

What would the workaround be to protect local companies who are working within the rules, protecting—ostensibly—the environment? In the example Mr. Weir uses, it's about the steel from a foreign country, China, at five times the greenhouse gas emissions. Cement is the same. What would be the legal way, not to skirt it but to accommodate Canadian businesses to protect them, protect jobs, and protect the environment? How would we work that in our bidding process?

**Mr. Peter Burn:** I'll try it first. This is going back to a previous life, not at the tribunal, but as a lawyer. I would certainly be looking to have a cap and trade system with a lot of allowances that basically free the cement—

**Mr. Kelly McCauley:** Well, we don't have cap and trade in Alberta.

**Mr. Peter Burn:** —or one would have to look to see whether you could move a government to a territorial-based—

**Mr. Kelly McCauley:** Sorry?

**Mr. Peter Burn:** It could be a territorial principle system of levy, much as we have with the GST, whereby you would have to tax domestically generated emissions and argue.... You would need to put it on at the border.

**Mr. Kelly McCauley:** Could that be written into the procurements spec?

**Mr. Peter Burn:** Well, yes. You would have to have a tremendous amount of knowledge, which I don't believe anybody has, as to what the level of the emission would be, or else you would be running afoul of international trade agreements, probably article 20 of the WTO.

You would have to be very tight on the levy that you were applying at the border. I don't believe anybody has that information, so it would be very, very tricky to do that and not be challenged.

**Mr. Kelly McCauley:** Right. One of the panel said you could identify items environmentally within the procurement process. How would you do that, then?

**Mr. Peter Burn:** I'm sorry...?

**Ms. Ana Renart:** Sorry, how would you do...? Can you repeat the question?

**Mr. Kelly McCauley:** You talked about doing the procurement process and identifying that a bidder would have to meet this environment issue, this social issue. How would you do that, then, for—

**Mr. Peter Burn:** If it were emissions, you'd have to have a standard, which would be referred to in the procurement, but we don't have that standard because we don't have the knowledge—I don't believe anybody actually has the knowledge—to be able to say that steel from there is generating  $x$  compared to somewhere else. I don't believe that information has been nailed down by anybody.

I would bring you back to—

**Mr. Kelly McCauley:** It sounds like something in Alberta. We have a carbon tax that is just causing carbon leakage to other—

**Mr. Peter Burn:** The theoretical question is whether the carbon tax should be on all emissions or just on domestically generated emissions, with a tax on foreign, as the HST is.

I would suggest going back to see how they attempted to handle air emissions in a treaty that caused about four years of international turmoil. The Europeans attempted to do it on a territorial basis and got the Chinese and the Americans very upset.

**Mr. Kelly McCauley:** I want to go to the NSEs, the national security exemptions. How big an issue is it complaint-wise with us? Do other countries—I assume, like the United States—use that as well, blocking Canadian businesses from bidding on items?

**Mr. Peter Burn:** I can't talk about that. That issue is before the courts right now, so....

**Mr. Kelly McCauley:** How many complaints a year, then, are we getting on the NSEs?

**Mr. Peter Burn:** Eric, you figure out how we can stay onside.

• (1215)

**Mr. Eric Wildhaber:** I think that question is more for my colleagues from Global Affairs.

I think what Mr. Burn was referring to is that in the area of the national security exemption, there is a case currently under review by the Federal Court of Appeal of a decision of the tribunal. I think he was pre-emptively trying to say that it's difficult for him or me to

**Mr. Kelly McCauley:** The reason I ask is that when we were looking at it, we saw that it's very clear that departments are using NSEs when they're not required. We heard CSIS is using NSEs for 100% of their purchases, including paperclips and photocopy paper. I'm wondering how much the use of NSEs by the government is causing trade issues.

**The Chair:** You'll have to keep wondering, I'm afraid, Mr. McCauley, because we're going over now to Mr. Poissant.

**Mr. Kelly McCauley:** I don't think I was getting an answer anyway, so I'm going to keep wondering.

[Translation]

**The Chair:** Mr. Poissant, you have five minutes.

**Mr. Jean-Claude Poissant (La Prairie, Lib.):** Thank you, Mr. Chair.

I thank the witnesses for their presentations.

My question is for all of you. I would like to talk about the process through which bids are assessed. Earlier this week, we heard our public servants tell us that bids are evaluated in light of technical and financial components.

Under our trade agreements, would the government be able to add a third component in evaluating bids that are outside the set-aside programs? For instance, could it add a criterion to assess how many jobs will be created, or could it add a criterion taking the performance of enterprises into account?

[English]

**Mr. Matthew Sreter:** Perhaps I'll take a stab at this, and then we can look over to my colleagues.

We are already witness to something very similar to what you've described, in the context of defence procurement under the industrial and technical benefits policy. It's the use of the value proposition.

Within that policy and the use of the value proposition, you have there technical, as well as financial, and then you have the use of the value proposition. One of the benchmarks that they're using is a 10% weighting for value proposition elements. There they're looking at, for example, sustainment of defence industry, bolstering the supplier base, proliferation of export potential, and so on and so forth, as part of their criteria.

Therefore, you have an example already, outside of the context of trade agreements. It is a good example. It is working very well. We currently have in the tens of billions of dollars under that particular policy, and 100% of those dollars is going to Canadian businesses.

In the frame of what is covered under trade agreements, then, if you're looking at what is covered under trade agreements, part of our procurement modernization efforts over at PSPC is to do just that: to look at exactly how we can operate under trade agreement obligations to employ socio-economic criteria, whatever those may be. We have to make sure they're objective, we have to make sure they're quantifiable, and we also have to make sure they're agnostic to local development—domestic content, for example—and that they adhere to our trade agreement obligations.

This is what we're looking at presently and where hoping to move forward in the coming months.

[Translation]

**Mr. Jean-Claude Poissant:** Thank you.

I would have a second question, for Mr. Burn.

I would like to know how the World Trade Organization could get involved with these small businesses.

**Mr. Eric Wildhaber:** You would like to know how the tribunal would react?

**Mr. Jean-Claude Poissant:** No, I am referring to the World Trade Organization.

**Mr. Eric Wildhaber:** This question is more suited for my colleagues from Global Affairs Canada.

As an internal tribunal, the Canadian International Trade Tribunal receives complaints that originate mostly from small and medium businesses in this country.

In fact, I would like to say a word or two about this. The system was originally created to allow our businesses to go abroad and compete for external government procurement contracts, and conversely to allow foreign businesses to settle here.

However, 98% of the complaints that come before the Canadian International Trade Tribunal come from potential Canadian suppliers, either from Quebec or elsewhere. That is why we are an internal tribunal.

With regard to external trade policy, I have a good idea of what the WTO is going to do, but that is not part of my mandate. It concerns my colleagues from Global Affairs Canada.

• (1220)

[*English*]

**Mr. Pierre Marier:** If I understand the question correctly, you are asking what types of discussions are happening at the WTO in terms of small and medium-sized enterprises. I can tell you that in terms of Canada's participation as a member to the WTO GPA, we have an exclusion for small and minority-owned businesses. It gives us a lot of flexibility.

In the context of the GPA committee, which meets at least three times a year, there is a work program that looks at policies for small and medium-sized enterprises. That work program is just getting started in terms of some of the issues that it's looking at, but among them are the various set-aside programs that other WTO parties have in this space. There has been a lot of discussion around the U.S. system, which has a fairly robust set-aside program for SMEs.

**The Chair:** We'll now go to Mr. Weir for a three-minute intervention, please.

**Mr. Erin Weir:** Thanks very much.

I left off on the question of border adjustments to carbon pricing. I was pleased that Mr. McCauley took it up. It's great to see some evidence of bipartisan interest in the idea. Mr. Burn offered some thoughts. I'm wondering if, given all this time to mull it over, other panellists had anything to offer on that front. If not, it would be entirely reasonable to come back with something in writing.

**Ms. Ana Renart:** I think that border adjustments on carbon are just outside the scope of what we do on procurement. It's not a procurement-related question.

**Mr. Erin Weir:** That's no problem. I just thought I would try to tap into the international trade expertise here, but thanks very much.

I did want to follow up with Mr. Burn, though, on one point.

I think you quite reasonably noted that one of the challenges in enacting border adjustments to carbon pricing would be having really solid data on the carbon content of imports. In the absence of that data, would it be feasible to simply apply the same price to a ton of imported steel as a ton of Canadian steel and at least level the playing field to that extent?

**Mr. Peter Burn:** I'm not going to venture there.

**Voices:** Oh, oh!

**Mr. Peter Burn:** That's a very tricky question. I would have to do a legal opinion and think long and hard about the answer.

I would note that if you're going to pick steel, you should be cautious. For example, in Alberta, if you were going to be looking at upstream emissions in certain other products, you might find they're higher on the domestic level than on the foreign level. I would be very careful in entering the realm of emissions.

To the extent that you picked a lower emission, you would have a better chance of getting it through than you would by picking one that looks highly discriminatory, such as the European Union attempted to do on Alberta oil sands bitumen through its field standard. That caused it to be defeated, because the number was discriminatory and inaccurate.

**Mr. Erin Weir:** Of course, that makes sense. What we are trying to avoid is creating this perverse incentive to use dirtier products because they are not subject to our carbon pricing regime.

I also want to ask about the whole notion of Buy American. A comment was made that it's a discriminatory policy, yet I note that the United States is party to most of the same trade agreements as Canada. My understanding of how Buy American is allowed is that the state and local governments that are actually making the purchases are, for the most part, not covered by trade agreements. I wonder to what extent Canada has the same flexibility at the provincial and local level. I know that the comprehensive agreement with Europe does apply at the subnational level.

I wonder if panellists could elaborate on how much flexibility we have in our federal system.

**The Chair:** I'm afraid they will have to elaborate during a subsequent round of questioning, because we are out of time on this one.

We will start now with another seven-minute intervention. Go ahead, Mr. Peterson.

**Mr. Kyle Peterson:** Thank you, Mr. Chair.

I'm sorry, Mr. Weir. You have a habit today of asking questions just at the buzzer.

• (1225)

**Mr. Erin Weir:** I'm giving people lots of time to think about their answers.

**Mr. Kyle Peterson:** That's good.

I think it's fair to say that when you are dealing with many policies, directives, legislations, and regulations, federal procurement is a complex landscape.

Walk us through a bit of the process. When a purchaser of goods decides to put out a bid for a contract, how does that work? Is there a shelf bid that they use and they tweak? Is there analysis that has to be done on what trade agreements might be caught by this and what sort of set-asides need to be considered? It seems to be very complex. I wonder how the actual process practically works.

**Mr. Matthew Sreter:** Maybe I'll field that one.



In terms of how it works for PSPC, PSPC is a common service provider. A client department comes to us with its requirement. That's the first stage. That requirement, though, can be clear as mud, or it can be clear. PSPC works with that department to clarify what the requirement is. There may have to be, and it is encouraged that there be, industry engagement to look at capacity within the industry. It's also encouraged to look, early on, at whether trade agreements apply and, if so, what trade agreements would apply.

The first question we ask ourselves is about coverage. We look at the requirement and we look at the good or service. We ask ourselves whether that good or service is covered by any of the applicable trade agreements or multiple trade agreements. Then we look at contract value. We look at the threshold and whether the thresholds apply or not. Then we look at the entity that's actually purchasing the goods, and whether they are covered under the schedules or not. Then we look at whether one of the exceptions applies. Is it under the procurement strategy for aboriginal business? Is it a national security exception, depending on the requirement? That attends to the coverage elements.

From there, in terms of the boilerplate you mentioned, I wouldn't call them "boilerplate". They are customized within PSPC for each and every single procurement with the client department. We do have standard acquisition clauses and templates that we employ, depending on low-, medium-, or high-risk complexity, that will govern what standard contract clauses are first incorporated, and then they are further tweaked. Those standard clauses basically ensure that government is on the right side of the trade agreement obligations procedurally, from a fairness perspective and from a transparency perspective.

**Mr. Kyle Peterson:** I don't know if any of the other panellists want to add to that. It was a pretty broad question, but it paints a big picture.

Okay, so there is the process, and it goes out there.

I think it's fascinating too that we have the international trade angle here. We have the International Trade Tribunal, which is not wearing a national hat when it comes to procurement. That's always interesting.

Obviously, there are dispute resolution provisions in every trade agreement we have, or nearly every trade agreement we have. Are we tracking the complaints by our international partners, or even companies within the nations that we have trade agreements with? Obviously they wouldn't avail themselves of the trade tribunal. Do we track that as well? Do we tweak the process based on that?

**Mr. Matthew Sreter:** In general, I covered off coverage, but there are all those procedural rules that I had in my opening statement, a plethora of procedural rules. Each of them has to be adhered to—timelines, so on and so forth.

In terms of the CITT, I did bring stats with me just to show you PSPC's robust system. In terms of results, 0.3% of PSPC's contracts go before the CITT, and 0.03% result in determinations of valid or valid in part. Over an average of three years, 130 complaints based on PSPC contracts actually go to the CITT. Of those, then, as I indicated to you in part, 0.03% are found to be valid.

I don't know what the stats are, but it's a very rare occurrence that Canada will be taken to the WTO for a dispute settlement resolution. What that means is, one, through PSPC's robust mechanisms, we're basically avoiding them; we're making sure that we're attending to all the procedural fairness elements before they even get there. Two, the CITT, as well as our Office of the Procurement Ombudsman, takes care of the complaints and makes sure that they're tended to well before they get to the WTO.

What I'm missing in my response is that there's also an opportunity to avail themselves of the federal court system. There are a number of appeals before the Federal Court.

**Mr. Peter Burn:** I'll add a couple of things about CITT. Foreign companies will come to us before a dispute settlement to see if it can be resolved. Alluding to the Public Works situation, if we say an inquiry should go forward, they have very good people who are very serious about the reputation of the Government of Canada. If they smell anything early in that process, they'll shut it down. That has been my experience.

Secondly, they then investigate very rigorously what's going on, and we get to hear the other side. Do you remember, Eric, we had that one? If, on occasion they say, "Whoa", they just shut it down and re-tender it. They do it themselves. They do not want to risk the reputation of the Government of Canada. Those are a couple of things about it.

• (1230)

**Mr. Kyle Peterson:** Go ahead, Eric, if you want to add something.

**Mr. Eric Wildhaber:** To add a bit more context, just to paint the picture a bit more, there are two processes: the process of the company against the Canadian government, and the state-to-state litigation. In the company against the Canadian government process, the companies can be foreign or domestic, and they'll come to the Federal Court, the superior court of the province, or to the CITT.

With the CITT, to put the numbers in context, the tribunal members like to believe it's not the amount of casework that comes to them that's important, although it's heavy and it's high-dollar-value money; it's that there can be a very small case that will bring out a huge development. For example, years ago, there was a very small case that led to the advance contract award notice mechanism. Before that case, a government department could say it was sole-sourcing and there would be no mechanism to let the supplier community know that they could challenge that. That was a CITT development.

On the state-to-state litigation, if a foreign company is not happy with a procurement practice in Canada, it can seize its government to bring Canada to the World Trade Organization. Likewise, if Canada is not happy with something, a procurement practice with one of our partners in the WTO AGP, they can seize our government to do a state-to-state mechanism. At the WTO, I think there has been only one dispute settlement matter under the AGP, the agreement on government procurement, since the inception of the agreement. It's a rare occurrence.

**The Chair:** Thank you very much.

Mr. McCauley, you have seven minutes.

**Mr. Kelly McCauley:** Before I start, Mr. Burn, I hope you weren't referring to Alberta oil when you said we should be careful about emissions, because it has lower emissions than Venezuelan oil and Nigerian oil, as well as U.S. oil that is brought in.

**Mr. Peter Burn:** In a previous life, I advised certain governments on this subject. Frankly, I know too much about it.

**Mr. Kelly McCauley:** I'd just thought I'd correct the record in case you were disparaging our oil.

When we were studying procurement on Tuesday, we chatted about Bill C-344, a private member's bill that was going to introduce community benefits into government procurement.

How might that affect the procurement process with regard to our trade relations in terms of fairness, and so on? Have you looked at that, or has that been considered yet?

Part of the issue is that it's a well-meaning bill, but it's quite obscure and gives great latitude to the minister, with very undefined powers. When there are undefined powers and uncertainty in a procurement contract, we've seen that we can put out a 30,000-page RFP and still get sued on it and have companies misinterpret to a point where they misbid by \$1 billion.

I'm curious about whether you've looked at that yet and how it will affect procurement trade if this uncertainty gets added. Are we opening ourselves up to having the same issue in the States and maybe block Canadian business down in the States?

**Mr. Pierre Marier:** I'll take a stab at this. I'm not familiar with the specifics of the bill, so I can't comment on whether or not it would be consistent with our trade obligations. I would just say that when you speak of community benefits as you've described them, it's not clear to me what exactly that would mean, but it sounds as though it is what we would call an "offset".

We have a prohibition on offsets. Offsets are any conditions that would provide preferential treatment for local content or conditions. For example, an arrangement to hire local people would be an offset. These are carved out of our trade agreements, but there's a lot of scope to do things within the context of our trade agreements. It really depends on the specifics of the procurement.

• (1235)

**Mr. Kelly McCauley:** On that same topic, it has been in the mandate letters of a couple of the ministers for a couple of years now to introduce fair wage policies. At one of the committee meetings, the minister commented that this was going to apply to every single government purchase, so it would apply to federal procurement as well. If a U.S. company wanted to bid on something, would they be considered discriminated against if they were not following our internal fair wage policy? This would of course leave us open to retaliation.

**Mr. Matthew Sreter:** As to the fair wages policy itself, I understand that the Department of Employment and Social Development Canada is developing a modernized fair wages policy. It's currently in development. PSPC is supporting ESDC in that regard.

They're looking at what would constitute a modernized fair wages policy. Right now they're looking at options. I believe there will be a written response provided to the committee. One of PSPC's options in the procurement modernization effort is to look at ethical sourcing. We are looking at revisiting our code of conduct for procurement and how we can incorporate a fair wages policy within that code, which would then be applicable to all PSPC procurements at that stage. It is, however, a consideration still in early development.

**Mr. Kelly McCauley:** It's a fair ways off, and I assume there'll be enough time for input from the experts so that we won't face retaliation for blocking foreign investment or foreign bidders.

**Mr. Matthew Sreter:** For anything we would be putting in place at PSPC, we would be consulting with our colleagues at Global Affairs and at Justice Canada to ensure that we are on the right side of our obligations under the trade agreements.

**Mr. Kelly McCauley:** What else would be in the set-asides? You said the community benefit might be in a set-aside. What else is in the set-asides? We know about the aboriginal contracts. What else would be put in there?

**Ms. Ana Renart:** We only have set-asides for small businesses and minority-owned businesses. These are in all of our FTAs, except for CETA. The aboriginal set-aside is in all of our FTAs. There are only the two.

**Mr. Kelly McCauley:** Only the two?

**Ms. Ana Renart:** Yes, that's correct.

**Mr. Kelly McCauley:** Wonderful.

Mr. Chair, I'd like to reintroduce my motion from Tuesday:

That the Committee invite the Chair of the Working Group of Ministers on Achieving Steady State for the Pay System to provide a briefing to the Committee on the working group's progress;

That the meeting be held outside of the Committee's regular schedule if necessary;

**The Chair:** I will have a quick consultation with my clerk. I believe that calls for an immediate vote.

Yes, as suspected, that is a non-debatable motion that goes to an immediate vote.

**Mr. Kelly McCauley:** I would like to have a recorded division.

**The Chair:** Certainly.

**Mr. Steven MacKinnon (Gatineau, Lib.):** Am I entitled to make a point of order?

**The Chair:** Yes, Mr. MacKinnon.

**Mr. Steven MacKinnon:** I say this in the spirit of co-operation: if the member opposite would deem it to be a friendly amendment, I have every expectation that within the time frame envisaged, the minister will be making an appearance at the committee and addressing that very topic.

If the member considers that a friendly amendment, I offer it up. If not, then I leave it in your hands, Mr. Chair.

**Mr. Kelly McCauley:** If you would provide a friendly amendment with a confirmed date from someone in the working group, we'll discuss it.

**Mr. Steven MacKinnon:** Your motion refers to December 1, I believe.

**Mr. Kelly McCauley:** That's my motion for Tuesday.

**The Chair:** This was the original motion made at Tuesday's meeting, which was October 31. I think what you're referring to, Steve, is a motion that may be forthcoming.

**Mr. Steven MacKinnon:** Okay.

**The Chair:** Let's just deal with this, but thank you for your intervention.

All in favour of Mr. McCauley's motion as read, please indicate in the affirmative.

(Motion negatived: nays 6; yeas 3)

**The Chair:** The motion is then defeated.

Having said that, we'll go on to our next intervention. Go ahead, Mr. Weir, for seven minutes, please.

• (1240)

**Mr. Erin Weir:** Thanks very much, Mr. Chair.

I would like to begin by noting that the fair wages policy applied to the hiring of workers within Canada. We don't know what a modernized fair wages policy would look like, but I don't see any reason to assume that it would violate international trade agreements.

With the panel, I do want to return to the question I left off on about the latitude that we have with provincial or local procurement.

**Ms. Ana Renart:** If I recall correctly, it was a two-part question.

First you asked about Buy American in the U.S. and if they can do that because the sub-federal is not included. Then you asked about local procurement in Canada.

**Mr. Erin Weir:** It was whether we have the same latitude here in Canada. Yes.

**Ms. Ana Renart:** For the first part of your question, that's correct. It is at the sub-federal level, and that's why they can do that and exclude us from those procurements.

Under the Canada-E.U. trade agreement, CETA, we did cover the sub-federal level. As long as it is a covered procurement—if the type of goods or service is covered and it is within the threshold—then it is covered, and we would not be able to have a buy Canadian policy. However, there are a number of sectors, so if you are, again, under the threshold that I mentioned earlier, the \$220,000 threshold, or in any of the excluded areas that I mentioned earlier—health and other public services, research development, shipbuilding, culture, finan-

cial services, sporting services, recreational services, etc.—then we could have a buy Canadian policy if we so desired at the sub-federal level.

I don't know if any of my colleagues would add to that.

**Mr. Matthew Sreter:** I would simply add to what my colleague has stated that it's not only the CETA. The WTO agreement on government procurement also provides sub-federal entity coverage as well. We would have to be mindful of both trade agreements and obligations therein. Similar types of rules would apply.

**Mr. Erin Weir:** Okay, but the United States is party to the agreement on government procurement, so how is it able to continue with Buy American?

**Mr. Matthew Sreter:** The United States has not included sub-federal coverage in any of its trade agreements, as far as I'm concerned.

**Mr. Erin Weir:** Okay, so we have—

**Mr. Pierre Marier:** The United States has covered some of their states in the WTO GPA, 37 states; however, there are a lot of exclusions that apply to those states. They are able to administer the Buy American program, which is a federally instituted policy that applies to transfer payments from the federal government to state or municipal governments. As a condition of receiving those federal funds, they must do Buy America in terms of buying American things. It depends on the types of procurements that are being carried out. If they are infrastructure projects, it has to be American steel, for example.

They are able to do this within their trade agreements because even the GPA includes a lot of exceptions, including for construction-grade steel. These are exceptions that would have been taken by the various states. Not every state has an exception for construction grade steel, but many do. Most do.

**Mr. Erin Weir:** Am I correct in remembering that Canada covered our subnational governments under the GPA as part of a bilateral deal with the United States?

**Mr. Pierre Marier:** We did include our provinces and territories in a bilateral agreement with the United States. That dates back to 2012, I believe.

**Mr. Erin Weir:** I think that's right. Yes.

**Mr. Pierre Marier:** Yes, as part of that, we also included provinces and territories under the revised GPA that entered into force in 2014.

**Mr. Erin Weir:** Might it have been a mistake to include our subnational governments under the GPA when it seems that the United States didn't do so, or did so in way that they are still able to pursue Buy American policies?

**Mr. Pierre Marier:** Well, I won't weigh in on whether it was a mistake or not, but in the United States we got access to those 37 states.

**Mr. Erin Weir:** That's temporarily, right—not permanently?

**Mr. Pierre Marier:** No, we have access to them today, and that's very important access, given the number of measures that are being introduced at the state level in the United States currently.

• (1245)

**Ms. Ana Renart:** I would only add one thing. The GPA covers 47 countries, right? It's not just the United States; there are a number of others. It's an overall balance of concessions, so we got some access in the U.S., as mentioned by my colleague Pierre, but we also got access to a number of other countries.

**Mr. Erin Weir:** Because of its “most favoured nation” status, does the United States effectively have access to all the commitments that Canada made under CETA?

**Ms. Ana Renart:** There's no MFN on government procurement in FTAs in that sense.

**Mr. Erin Weir:** Okay, so when you make the point that Canada couldn't have a “buy Canadian” policy at the subnational level because of CETA, are you saying Canada could have procurement preferences as long as it included European suppliers in them?

**Ms. Ana Renart:** That's right, so it wouldn't be “buy Canadian”; it would be “buy Canadian and European”. You could also have “buy Canadian” as long as it's not covered procurements, so again it would be in areas not covered or under thresholds.

**Mr. Erin Weir:** To the extent that it would be allowed, are you saying that our federal government could do what the U.S. federal government does, which is essentially attach those “buy Canadian” or “buy Canadian plus European” conditions to transfers to provincial and local governments?

**Mr. Peter Burn:** Read the annex on regional development.

**Ms. Ana Renart:** Regional economic development is a little different. Does the trade agreement prevent it? The easy answer is it won't prevent it as long as it's not covered procurement. Other than that, it really.... I would have to ask my colleagues to answer.

**Mr. Pierre Marier:** Yes, and as Matthew pointed out, we included our provinces and territories in the GPA, so we're bound. The U.S. is a party to the GPA—as are 46 other countries—so we would have to respect those obligations.

You're talking about conditions associated with transfers of federal funding to provinces or territories. The GPA puts some limits around what is allowable, but it also includes several exceptions that would allow us to have such policies in place for certain types of procurement, certain types of goods, if those federal departments had any inclination to do so, which is outside the scope of Global Affairs.

**The Chair:** Thank you very much.

Before we go to our final seven-minute intervention with M. Drouin, just so I don't forget to tell our witnesses, should any of you after your appearance here today have any additional information you think would be of benefit to our committee, I would suggest that you please send that information in to our clerk. Subsequent to that, should any committee members have additional questions they would like to ask of you, I would expect that you would welcome their questions and respond in a timely manner to our clerk to those questions.

Go ahead, Mr. Drouin, for seven minutes, please.

**Mr. Francis Drouin:** Thank you.

I want to touch on some of the barriers for SMEs that I've heard about over my short life as an MP and how we ensure the promotion of the procurement strategy for aboriginal businesses.

I know it's an INAC thing, but does PSPC work with INAC to ensure that other suppliers are aware of this particular partnership with aboriginal businesses?

I want to touch on the IT side. In PSPC—it's SSC now—corporate references was one of the barriers we mentioned. We know that in the past few years aboriginal businesses have been on the rise, especially on the IT side. We find limits in terms of experience in some of the RFPs, which state that you have to have a minimum of 10 or 15 years of experience. That puts a limit on young businesses, on millennials such as me. I'm just wondering how we mash this all up together. Is an analysis done with PSPC, and how do we promote PSAB, the procurement strategy for aboriginal business, better with other suppliers?

**Mr. Matthew Sreter:** It's a loaded question. The questions are very good.

First of all, yes, of course Public Services Procurement Canada does work with Indigenous and Northern Affairs Canada. We do work closely on a number of fronts, not to mention the outreach efforts that we have, not only regionally through our OSME offices, the office of the Office of Small and Medium Enterprises, but also through our counterparts over at INAC, who do outreach efforts into the aboriginal communities themselves. Part of that is ensuring that government procurement is part of those outreach efforts, that they understand what government procurement opportunities there are, how PSAB could apply, and so forth.

We do have to be a little bit careful, though, in some of those outreach efforts, because we also have comprehensive land claim agreements in place in respect of certain geographic locations. I believe there are 20-something land claim agreements in place, so we do have to make sure our interactions are measured, but of course we do conduct those outreach activities.

Could we do more? I think we could always do more in terms of trying to make sure that we understand government business and how it works, and to promote indigenous businesses. We're working with INAC to develop a plan on how to move forward in that regard.

In terms of the reference levels that you've stated, it comes down to your technical specifications for qualifying suppliers and ensuring that those suppliers are eligible to perform the work you're asking of them. The more complex the work, the more risk there is to the work. It's an interaction between PSPC as the contracting authority, the common service provider, and the client department to identify what those procurement requirements truly are and what that client department needs in terms of eligibility for a qualified supplier. Yes, inherent within that there could be possible barriers to SMEs, so part of our effort is to look at reducing those barriers and at how we can reduce them as part of our procurement modernization efforts.

• (1250)

**Mr. Francis Drouin:** At the last meeting—and you weren't here, obviously—we talked about more of an outcome-based procurement model and the procurement process that you've explained to Mr. Peterson before this. How would an outcome-based procurement—and it's probably too early to ask you this question—change the procurement process? How would identifying the need rather than identifying technical requirements change the mindset in terms of that client department to move toward an outcome-based procurement?

**Mr. Matthew Sreter:** I think the use of outcome-based procurement, agile procurement methodologies, and so on and so forth, is fairly new to federal government procurement. It's not new necessarily to the marketplace, but fairly new in terms of how we can go about incorporating it as part of our day-to-day business. Our effort is ensuring that we understand, first of all, what it means, and second, how it can be deployed in our day-to-day business and how we work with our client departments so that they understand that you're not looking for a pencil to that *n*th-degree size, with that lead in it: you're looking for something that writes, and you're looking for something that writes and doesn't leave ink, as an example. Then ensure that those are reflected within the procurement requirements and technical requirements such that bidders can have a fuller landscape in order to bid and tender against those processes.

It is a culture change. It is something that we are going to have to institute across PSPC and across our client departments, and we are going to have to educate both ourselves and our client departments on how to move forward in that regard.

We're moving forward with pilots as baby steps and we're trying to see where those pilots lead us and how we can more fully employ that in our day-to-day activities.

**Mr. Francis Drouin:** For my friends at CITT, have you guys done an analysis in other jurisdictions where outcome-based procurements may be used? It's not clear in my mind. When you have technical requirements, it's easy to argue in a tribunal in some respects, but....

**Mr. Eric Wildhaber:** That's not something we study. We're very aware of the needs of small and medium-sized businesses. This goes beyond your question a little bit, but we recognize that the whole system is there for the Government of Canada to get the best value for its money for taxpayers, and that small and medium-sized enterprises play a very important role in maintaining the integrity of the competitive procurement system. We try to make sure that it's as easy as possible for SMEs to come before us. We have a form on our website. We have a three-minute webinar on how to bring a complaint to the tribunal.

I used to be the secretary of the tribunals, and my colleague now, who is the registrar, will take calls on a daily basis from companies asking how to access the tribunal. "I have a complaint. This is how I feel aggrieved. I want to access the tribunal." My colleague will walk these people through the complaint process and offer assistance in that area. The process is then very quick. It's a 90-day process for us, up to 135 days if it's a little bit more lengthy, but there is even a provision for these complaints to be heard in 45 days. We offer, we think, a remarkable and unparalleled access to justice. We know of no other counterpart elsewhere in the world or in Canada, so we're very proud of that.

• (1255)

**The Chair:** Thank you very much.

**Mr. Francis Drouin:** Thanks very much.

**The Chair:** Colleagues, we'll finish there.

I want to thank all of our witnesses for being here today. You've been both very informative and very helpful to this committee and its deliberations as we move forward on this study.

Colleagues, I will suspend just for a few moments while we excuse our witnesses and clear the room. We will go in camera for only about two or three minutes. I have some very brief committee business items for you to deal with before we leave for the day.

Once again to our panellists, thank you very much.

We are suspended.

*[Proceedings continue in camera]*





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