

Intelligence MEMOS



As NAFTA renegotiations proceed through the summer and fall C.D. Howe Institute Intelligence Memos will be looking at what to expect and provide analysis on the latest developments at the table. This post is part of that series.

From: Jon Johnson
To: The US House Ways and Means Committee and the Senate Finance Committee.
Cc: Chrystia Freeland
Date: October 11, 2017
Re: **ACCESS TO MEXICAN GOVERNMENT PROCUREMENT MARKET – NAFTA BEST TRADE DEAL EVER**

US negotiators achieved a major win in the original NAFTA negotiations in securing Mexican obligations respecting procurement by a wide range of Mexican federal government ministries and enterprises. These obligations cover a wide range of goods and services, including construction services.

Procurement by governments of goods and services comprises an important component of the economy of many countries, including Mexico. Governments have strong incentives for political reasons to favour local suppliers over foreign suppliers, even though foreign suppliers may be able to supply goods and services of better quality at lower prices.

Despite its discriminatory Buy America rules, US negotiating objectives for trade agreements place considerable importance in securing non-discriminatory access to the procurement markets of its trading partners. For example, the US was a driving force behind the Uruguay Round and the resulting WTO agreements include an Agreement on Government Procurement that established disciplines to ensure non-discrimination, transparency and administrative fairness in the procurement practices of specified government departments and enterprises of goods and services of bound WTO members.

Unlike most other WTO agreements that bind all WTO members, the WTO Agreement on Government Procurement binds only those WTO members who have chosen to be bound. Canada and the US have made this choice and both have acceded to a revised and expanded version of this agreement.

But Mexico is not bound by the WTO Agreement on Government Procurement. Nonetheless, it agreed in the NAFTA to assume obligations vis-à-vis Canada and the United States regarding government procurement. These include non-discrimination obligations and requirements respecting tendering, the qualification of suppliers, the publication of invitations to participate for procurements, and the conduct of negotiations respecting tenders. They also prohibit practices such as demanding offsets or skewing technical specifications for discriminatory purposes.

Because the US has no WTO fallback respecting Mexican government procurement practices, NAFTA has been the best trade deal ever for US suppliers of goods and services to Mexican government ministries and enterprises. If the US withdraws from NAFTA, Mexico will no longer have any obligations to US suppliers and can limit access to the Mexican government procurement market in any manner that it chooses. If the US withdraws from NAFTA, Mexico will no longer have any obligations to US suppliers and can limit access to the Mexican government procurement market, which amounts overall to roughly \$52 billion a year, in any manner that it chooses.

US businesses stand to lose a great deal if the US withdraws from NAFTA and loss of non-discriminatory access to the Mexican government procurement market is yet another example. Congress has the exclusive power to regulate commerce with foreign nations and the constitutional authority to prevent the US from withdrawing from NAFTA. Your committees can protect US interests by ensuring that Congress adopts the “do no harm” approach strongly advocated by many in the US business community and asserts its constitutional authority to prevent the US from withdrawing from NAFTA.

Jon Johnson is a former advisor to the Canadian Government during NAFTA negotiations and is a Senior Fellow at the C.D. Howe Institute.

To send a comment or leave feedback, email us at blog@cdhowe.org.