

The Buy Canada Framework: From Client State to Sovereign Power

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I. The Buy Canada Framework: From Client State to Sovereign Power: Executive Summary

1. THE THREAT: CANADA IS LOSING THE ECONOMIC WAR

China, and now the United States and others, are weaponizing trade and many of our frameworks need urgent updating.

For example, the CHIPS Act mostly excludes Canadian firms. Buy American preferences lock out many of our companies. And whenever China is upset with Canada, it finds ways to slap tariffs on key agricultural exports. Meanwhile, foreign digital infrastructure controls our telecommunications backbone, and our defense systems depend on supply chains controlled by others.

Canada is being hollowed out. Our drone manufacturers export globally while DND buys European systems. Clean tech companies flee to the U.S. for procurement opportunities we won't provide. We're optimizing our procurement for the "lowest bidder" while adversaries build digital empires and allies protect their industrial base.

The cost of inaction is sovereignty itself. When Canadian defense systems depend on foreign semiconductors and U.S. cloud platforms, we don't have sovereignty—we have dependency with extra costs. Every year of delay entrenches foreign control deeper into our critical systems and erodes sovereignty.

A. OUR LEGAL AUTHORITY: THE MYTH OF TIED HANDS

Canada has far greater procurement flexibility than commonly understood. Trade law provides tools, not shackles:

CUSMA Chapter 13 doesn't apply to Canada-U.S. procurement relations—unlike NAFTA, we have no reciprocal procurement obligations with the United States. We reverted to WTO minimums when NAFTA died.

CUSMA Article 32.2 provides blanket national security authority. Canada retains "full discretion" for measures it considers necessary to protect "essential security interests" such as defense, critical infrastructure, critical minerals and strategic technologies are covered. **Indigenous rights (Article 32.5) and cultural industries (Article 32.6)** provide additional carve-outs for domestic preferences, while environmental and health exceptions (Article 32.1) support clean tech and critical mineral procurement.

The United States uses these same exceptions aggressively—the Buy American Act, Berry Amendment, and CHIPS Act all leverage security and industrial policy exceptions. Canada can and must do the same

B. THE FRAMEWORK: FIVE STRATEGIC TOOLS

1. CANADIAN PROCUREMENT ACT (CPA)

- Codifies automatic national security exceptions for defense and critical infrastructure
- Mandates enforceable Canadian content thresholds (starting at 60%, rising to 75%)
- Enables Governor-in-Council emergency procurement orders.

2. CANADIAN SOVEREIGNTY & STRATEGIC CAPABILITY TEST (CSSCT)

- Mandatory screening for foreign control and extraterritorial law exposure (e.g., U.S. CLOUD Act, Chinese National Intelligence Law)
- Transparency requirements for ownership structures and data flows
- Preference system for Canadian-controlled entities and trusted allied partnerships.

3. STRATEGIC PROCUREMENT OFFICE

- Central command within PSPC, modeled on Australia's intelligence procurement arm.
- "Made in Canada Director" to oversee implementation and waiver reviews
- Red team capability for high-risk sector vetting (telecoms, AI, quantum, cyber)

4. ITB PLUS & DUAL-USE MANDATES

- Enhanced Industrial & Technological Benefits with "sovereignty multipliers"
- Mandatory Canadian R&D and IP development requirements
- Civilian commercialization pathways (quantum navigation → forest fire drones)

5. TRUSTED ECOSYSTEM PATHWAYS

- Pre-qualified procurement partnerships with allied jurisdictions (EU PESCO, AUKUS partners, Japan, Korea)
- Fast-track processes for joint development where full sovereignty isn't viable
- Equal partnership requirements—no more "customer state" relationships

This framework is part of the CIGI Sovereign Canada initiative.
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C. IMPLEMENTATION TIMELINE: 12 MONTHS TO SOVEREIGNTY

MONTHS 1-3: FOUNDATION

- Cabinet Directive on Sovereign Procurement Reform
- Legal review and CUSMA exception mapping
- Strategic Procurement Office establishment
- Provincial engagement framework launch
- Canadian Procurement Act drafting

MONTHS 4-6: LEGISLATION

- Stakeholder consultation (industry, provinces, Indigenous governments)
- Canadian Acquisition Regulatory (CAR) Council creation
- CSSCT framework development

MONTHS 7-9: REGULATORY BUILD-OUT

- Canadian content thresholds implementation
- ITB Plus enhancement rollout
- Trusted ecosystem partnership agreements
- Provincial alignment protocol finalization

MONTHS 10-12: DEPLOYMENT

- Pilot programs in defense and critical infrastructure
- Full CSSCT screening implementation
- National Capability Forum launch
- Performance measurement systems activation

D. THE BOTTOM LINE: CANADA'S MOMENT OF CHOICE

Every federal procurement dollar is a vote—for Canadian capability or foreign dependency, for sovereign capacity or client-state status. With \$50+ billion in annual federal purchasing power, Canada has been casting the wrong votes.

The window is closing. While we debate, the U.S. entrenches Buy American preferences and China builds digital control systems. Our allies—Australia, UK, EU—are actively using procurement as industrial policy now. Canada remains the only G7 nation treating government purchasing as mere back-office administration.

The 2025 Speech from the Throne gave us the mandate. Economic self-reliance, climate leadership, reconciliation, and national security in a dangerous world. This framework provides the means. **Canada cannot outsource its way to sovereignty.** The choice is binary: transform procurement into a strategic weapon for Canadian sovereignty or watch our industrial capacity and technological independence disappear into foreign-controlled supply chains.

The legal authority exists. The policy tools are proven. The only question is political will. *Let's start building.*

II. The Mandate for a Sovereign Canada

Canada is under economic siege—and we're funding our own defeat.

China and the United States are weaponizing trade through tariffs. CHIPS Act restrictions and Buy American preferences that systematically exclude Canadian firms. Foreigners control our telecommunications backbone and critical supply chains. Meanwhile, Canada optimizes for the "lowest bidder"—a 20th-century anachronism in a 21st-century economic war.

We are hemorrhaging sovereignty \$50 billion at a time. Every federal procurement dollar is a strategic choice: build Canadian capability or entrench foreign dependency. For decades, we've chosen dependency—and called it efficiency.

The result? **Canadian drone manufacturers export globally while our own Department of National Defence buys European systems.** Our clean tech companies flee to the United States for procurement opportunities we refuse to provide at home. Our defense systems depend on foreign semiconductors and U.S. cloud platforms subject to foreign laws that can shut us down overnight. **This isn't procurement policy—it's national suicide by spreadsheet.**

A. The Moment of Reckoning

The 2025 Speech from the Throne wasn't merely aspirational—it was a strategic imperative born of geopolitical necessity. Economic self-reliance, climate leadership, reconciliation with Indigenous Peoples, and national security in an increasingly dangerous world aren't policy preferences. They're survival requirements.

The global order that allowed Canada to free-ride on others' strategic investments is dead. Supply chains weaponized by adversaries, allies prioritizing their own industrial base, and economic coercion replacing diplomatic engagement—this is the new reality.

Every other G7 nation has awakened to this threat:

- The United States deploys Buy American as economic warfare
- The European Union builds "strategic autonomy" through procurement preferences
- Australia treats procurement as national security policy
- The United Kingdom uses government purchasing to build sovereign capability

Canada remains asleep, clinging to the fiction that "free markets" still exist while competitors build protected ecosystems.

B. From Administrative Function to Strategic Weapon

For too long, procurement has been treated as back-office administration, a compliance exercise focused on process over outcomes. In a world of fractured geopolitics and weaponized trade, this passivity isn't just outdated: it's dangerous.

Federal procurement must be transformed from cost optimization to capability building. With defense spending rising and a generational clean economy transition underway, we have unprecedented opportunity to rebuild Canadian industrial sovereignty.

The framework is clear. Strategic procurement must:

Defend Economic Sovereignty:

- Eliminate dependence on foreign corporate control in critical sectors
- Build Canadian ownership, intellectual property, and innovation capacity
- Reduce dependency on foreign-controlled infrastructure and platforms subject to extraterritorial laws
- Leverage development and commercialization of Canadian dual-use technologies

Advance National Priorities:

- Embed Indigenous economic reconciliation as a sovereignty imperative
- Align defense spending with broader industrial policy goals
- Leverage clean economy transition for domestic capability building
- Protect cultural sovereignty against digital colonization

Enable Allied Cooperation:

- Support joint development with trusted partners where sovereignty is protected
- Build interoperable capabilities without surrendering strategic autonomy.

C. The Dependency Trap

When Canadian defense systems depend on foreign semiconductors subject to adversarial control, we don't have sovereignty—we have dependency with extra paperwork. When our critical infrastructure runs on cloud platforms governed by foreign laws, we're not a sovereign nation. Instead, we're a client state with expensive real estate.

The arithmetic is stark: **every billion dollars spent on foreign-controlled systems is a billion dollars not invested in Canadian capability, Canadian jobs, and Canadian sovereignty.** We're not just buying products—we're buying into permanent strategic dependence.

D. The Legal Authority Exists

Canada has far more legal room to prioritize domestic suppliers than commonly understood.

CUSMA Chapter 13 doesn't apply to Canada-U.S. procurement relations—we have no reciprocal obligations with our largest trading partner. Article 32.2's national security exception provides blanket authority for measures Canada considers necessary to protect

essential security interests. Indigenous rights and cultural industry exemptions create additional policy space.

The United States uses these same exceptions ruthlessly. The Buy American Act, Berry Amendment, and CHIPS Act all leverage security and industrial policy exceptions we're too timid to invoke.

The legal framework for Canadian procurement sovereignty already exists. We have lacked the political courage to use it.

E. The Bottom Line

The 2025 Speech from the Throne gave us our mission: build a sovereign, resilient, innovative Canada capable of thriving in a dangerous world. Strategic procurement isn't just one tool among many—it's the primary mechanism for translating political rhetoric into economic reality.

This paper provides the legal foundation, policy framework, and implementation roadmap to transform \$50+ billion in annual federal purchasing power from a source of strategic vulnerability into an instrument of national sovereignty.

The question isn't whether we can afford to act. It's whether we can afford not to.

Strategic Imperatives

- **Defence Spending Expansion:** Canada's upcoming defence platform overhaul must not merely import capability but develop **dual-use ecosystems** domestically in areas like AI, cyber, quantum, drones, aerospace, and underwater platforms.
- **Geopolitical Context:** Canada will have no choice but to contribute more substantively to NATO, NORAD modernization, and Pacific security, necessitating **trusted partnerships** (e.g., UK, EU, Japan, Korea, Australia) and reduced reliance on adversarial or ambiguous actors.
- **Critical Infrastructure Protection:** Sovereignty over digital infrastructure (e.g., cloud, communications, AI, quantum, cybersecurity) has become as vital as over energy or water.

III. Strategic Procurement as a Sovereign Instrument

Procurement should be treated as industrial policy in action. Every RFP is a choice: Build capacity at home or entrench foreign control.

Canada should codify these rights into a **Canadian Procurement Act** with the following elements:

- Automatic invocation of Article 32.2 for all defense-related procurement.
- Affirmative use of Article 32.6 for cultural production.
- Enforceable Canadian content thresholds in military and clean infrastructure sectors.
- Legal shields against foreign retaliation using Article 32.6(4), including retaliatory trade mechanisms.

A. Key Policy Tools:

- **Canadian Sovereignty and Strategic Capability Test (CSSCT):** Screens bids for foreign control, foreign law exposure (e.g., U.S. CLOUD Act), and domestic innovation value.
- **Trusted Ecosystem Procurement Pathways:** Fast-track procurements with allied jurisdictions and Canadian-led consortia.
- **Dual-Use Innovation Mandates:** Defence contracts must have civilian commercialization and Canadian R&D spillover.
- **ITB Plus:** Elevate Canada's Industrial and Technological Benefits policy to reward Canadian IP, high-value exports, and scale-up capital.

B. Whole-of-Government Activation Plan

This isn't just a PSPC issue. Every department and agency have skin in the game.

- **Cabinet Directive on Sovereign Procurement:** Make strategic procurement a national security and economic imperative.
- **Legislate the Canadian Strategic Capabilities Procurement Act:** Embed policy levers across government.
- **Create a Strategic Procurement Office:** A central hub within PSPC, modeled after Australia's Office of National Intelligence procurement arm.
- **National Capability Forum:** Bring together provinces, Indigenous governments, industry, academia, and allies.

IV. Legal Armor: CUSMA Chapter 32 & WTO GPA as Enablers, Not Shackles

It is a myth that trade law ties Canada's procurement hands. USMCA Chapter 32 and GATT Article XX provides an arsenal of exceptions:

- Art. 32.2(b) – National Security: Full sovereign discretion for defence and infrastructure.
- Art. 32.5 – Indigenous Peoples: Supports procurement policies advancing constitutional obligations.
- Art. 32.6 – Cultural Industries: Protects Canadian stories, content, and digital platforms.
- Art. 32.1 / GATT XX – General Exceptions: Supports health, environmental, and public order objectives.

Canada is not bound to be a client state. It can, and must, act like a principal.

A. Canada's Procurement Obligations and Exceptions

1. 2010 - U.S.-Canada Agreement on Government Procurement

The U.S.-Canada Agreement on Government Procurement marked the first time that Canada entered into an international agreement to open access to Canadian subnational procurement (that is procurement at the provincial, territorial and municipal level). The agreement entered into force on February 16, 2010.

The agreement committed Canada to enhance its commitment under the WTP Government Procurement Agreement (GPA) pending the coming into force of the upcoming GPA reforms.

The Agreement provided for additional, reciprocal guarantees of access on a temporary basis through September 2011 Canada guaranteed American companies access to a broad range of construction projects undertaken by provincial entities (not included in Canada's GPA commitments) and municipal entities.

With the coming into force of the 2014 GPA, there was no longer any effective effect for the U.S.-Canada Agreement on Government Procurement.

2. 2014 WTO Agreement on Government Procurement (GPA).

The 2014 WTO Agreement on Government Procurement (GPA) is a plurilateral agreement of WTO members. As a plurilateral agreement, WTO members selectively agree to the commitments in the GPA, which are not mandatory for WTO member Parties. There are 21 GPA signatory members (the 27 EU member states, which count as one party).¹

The GPA established access for the procurement of goods and services at the national and subnational level within its member states. Thresholds for access to contracts for services

and goods are set at approx. 237,000 US.² Annexes to the GPA limit the scope of the GPA around military defence and policing procurement.³

3. Canada's procurement Obligations and Exceptions

The GPA does not lock Canada into outdated procurement listings. Article XIX of the GPA empowers Canada to initiate unilateral modifications to its coverage commitments—including changes to sectoral scope—provided procedural steps are followed. This flexibility is a sovereign tool.⁴

Strategic revision of Canada's GPA commitments—particularly to exclude or recalibrate coverage in sensitive or emerging sectors—should be pursued **without delay**. While Article XIX introduces a consultative process to notify other Parties and manage objections, Canada retains the right to **proceed with modifications**, subject to potential equivalent coverage withdrawals by objecting Parties.

This mechanism is not a constraint—it is a **lever**. Canada should utilize these procedures to align its procurement regimes with evolving national priorities. This requires careful legal preparation and robust political will, but the reward is the ability to **reset Canada's international procurement obligations to reflect 21st-century realities**—including security, resilience, and national industrial development.

Article VIII of the GPA set out a key exception for the protection of essential security interests related to arms, ammunition, war materials or “procurement indispensable for national security or for national defence purposes”.⁵

Unlike the NAFTA, which had focused procurement rules in Chapter 10, CUSMA Chapter 13 on Government Procurement does not apply between Canada and the United States.⁶ Instead, Canada-U.S. procurement relations reverted to WTO GPA terms after NAFTA was terminated.

Canada has never engaged in Buy Canadian policies on a comprehensive basis. As a result, the existing regulatory framework does not include definitions such as those which identify the nationality of suppliers or identifying the scope of procurement (such as what is the rule of origin threshold to make a supply domestic or foreign). Given the history of complex cross border supply chains and investment, such definitions will require great care.

Canada and the U.S. no longer have reciprocal procurement obligations under USMCA, giving Canada greater flexibility to implement a “Buy Canadian” military or civilian procurement policy vis-à-vis U.S. firms—so long as it complies with WTO GPA minimums.

However, the CUSMA has an investment chapter which does have provisions which require national treatment and MFN treatment for investments owned or controlled by other CUSMA Parties. CUSMA does have a series of exceptions that are relevant in Article 14.12.

CUSMA Article 14.4 specifically excepts procurement obligations from three CUSMA obligations: national treatment, most-favoured nation treatment, and senior management obligations.⁷ However, this obligation does not address claims of regulatory unfairness or denial of due process which could arise under other obligations in CUSMA Chapter 14.⁸

In addition to the investment chapter obligations, there are also general exceptions in the CUSMA in Chapter 32 that are applicable. The principal exceptions are in GATT Article XX and CUSMA Article 32.

4. GATT General Exceptions — Article 32.1 (Incorporating CUSMA GATT Article XX)

CUSMA incorporates the General Exceptions from GATT Article XX, allowing Canada to adopt measures necessary to protect public morals, human health, or conserve natural resources. The key legal text is in CUSMA Article 32.1 which incorporates **GATT Article XX**.

The key provision reads:

“For the purposes of Chapters 2 through 7, 9 through 20, and 22, each Party incorporates the general exceptions set out in Article XX of the GATT 1994.”

GATT Article XX provides important exceptions allowing countries to deviate from standard trade obligations under certain conditions:

- **National Security (Article XXI):**
Allows a nation to adopt measures it deems necessary to protect its essential security interests, particularly related to arms, ammunition, military supplies, or in times of war or international emergencies.
- **Protection of Public Morals (Article XX(a)):**
Permits measures necessary to safeguard public morals, often applicable to cultural industries and content regulations designed to protect national identity and cultural expression.
- **Conservation of Exhaustible Natural Resources (Article XX(g)):**
Supports measures related to conservation and resource management, potentially including critical minerals or strategic resources relevant for national defense and security purposes.

These exceptions empower Canada to enact policies that prioritize national security, cultural integrity, and defense, provided such measures are applied in a transparent, non-arbitrary manner, and not as disguised trade restrictions.

This allows Canada to justify *certain preferential procurement policies* that are environmentally or health-related, such as **local content in clean tech or Indigenous economic development contracts**, if done in a non-discriminatory, justifiable manner under WTO norms.

5. Canada-EU Comprehensive Economic and Trade Agreement (CETA)

The Canada-EU Comprehensive Economic and Trade Agreement (CETA) is a significant trade and procurement agreement between Canada and the European Union. Building upon the GPA, CETA extends market access for procurement, promoting openness, transparency, and non-discrimination in tendering processes. It particularly broadens access to procurement markets at federal, provincial, and municipal levels beyond the GPA commitments, emphasizing mutual benefits in transparency, fairness, and competition.

CETA incorporates and expands upon the foundational rules established by the GPA. By aligning closely with WTO procurement principles, CETA ensures consistent standards and transparency in public procurement practices between Canada and EU member states. It provides a structured approach to competitive procurement, emphasizing equal treatment and non-discrimination.

6. CETA Article 19.3: Security and General Exceptions

CETA Article 19.3 provides Canada with essential exceptions, closely mirroring those established under the WTO framework, granting the flexibility necessary for protecting national interests and enabling strategic policy actions.

Article 19.3(1) – Security Exceptions

Under Article 19.3(1), Canada explicitly retains the right to adopt measures it deems essential for safeguarding critical national security interests. Specifically, Canada can freely take actions, or restrict disclosure of information in procurement concerning:

- **Arms, ammunition, or war materials:** Clearly recognizing defense procurement as vital to national security.
- **Procurement indispensable for national security:** Broadly framed to allow flexibility in identifying essential security-related goods or services.
- **National defence purposes:** Allowing direct alignment of procurement policy with broader national defense strategies.

These clear and robust provisions grant Canada substantial policy latitude, ensuring procurement strategies effectively respond to national security needs without concern for trade repercussions.

Article 19.3(2) – General Exceptions

Article 19.3(2) complements the security exceptions, allowing Canada to pursue procurement policies aligned with broader public policy goals, provided they do not unjustifiably discriminate or act as disguised trade restrictions. Key areas include measures:

- **Protecting public morals, order, or safety:** Allowing policies to uphold social integrity, law enforcement, and public safety standards.

- **Safeguarding human, animal, or plant life or health:** Critical for advancing public health and environmental stewardship.
- **Protecting intellectual property rights:** Ensuring Canada's strategic investments in innovation and domestic intellectual property remain secure.
- **Relating to goods or services from persons with disabilities, philanthropic institutions, or prison labour:** Supporting inclusive procurement strategies and social responsibility initiatives.

These exceptions largely mirror the scope of WTO GATT Article XX, reinforcing Canada's ability to pursue strategic, non-discriminatory procurement policies that serve both economic and societal objectives.

The clear alignment between CETA and WTO exceptions under Article 19.3 substantially bolsters Canada's sovereign capacity to enact and enforce procurement measures that effectively balance openness with strategic domestic content policies. Leveraging these exceptions empowers Canada to strengthen domestic industries, uphold essential security interests, and promote economic resilience without breaching international trade obligations.

7. CUSMA National Security Exception — Article 32.2(b)

The CUSMA contains a broad self-judging national security exception in Article 32.2(b). Canada retains full discretion to take actions it “**considers necessary for the protection of its essential security interests.**” This includes actions relating to procurement of arms, munitions, and military supply contracts, or actions taken during war or emergency in international relations. The key Provision states:

Article 32.2: Essential Security

1. Nothing in this Agreement shall be construed to:

b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

This term “essential security interests” is not defined in the treaty. The wording gives deference to government policy considerations but as it is part of an international treaty, it is subject to the obligations of good faith which are commensurate with Canada's international law obligations.

There has been significant international jurisprudential consideration of the provision.⁹ Assuming that the government policy is taken in good faith, the provision offers explicit legal coverage for Canadian military procurement and policies that would provide a domestic preference in defense contracts or exclusion of foreign firms on national security grounds could reasonably fit within this framework. As a result, the essential security

interest exception can be used to justify strategic procurement policies outside the reach of CUSMA disciplines.

8. Indigenous Peoples Exception

Article 32.5 provides broad scope for *bona fide* government policies which address legal obligations to indigenous peoples.

Article 32.5: Indigenous Peoples Rights

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to indigenous peoples. [Footnote 7](#)

Footnote 7 to Article 32.5 reads:

For greater certainty, for Canada the legal obligations include those recognized and affirmed by section 35 of the Constitution Act 1982 or those set out in self-government agreements between a central or regional level of government and indigenous peoples.

9. Cultural Industries Exception — Article 32.6

Canada preserves broad policy space over *cultural industries*, even if those policies contravene other parts of USMCA. This includes content quotas, subsidies, and procurement for cultural goods and services (e.g., film, broadcasting, publishing). However, the U.S. and Mexico retain the right to impose **equivalent commercial retaliation** if Canada exercises this exemption. The treaty reads:

Article 32.6(2): “[...] nothing in this Agreement shall apply to a measure adopted or maintained by Canada with respect to a cultural industry.”

Article 32.6(4): If Canada adopts a measure under this exception, the U.S. or Mexico “**may take a measure of equivalent commercial effect**” in response.

This exemption protects Canadian autonomy in cultural sector procurement, including preferential contracts for media, publishing, and domestic cultural promotion.

V. Strengthening the Buy Canada Framework: Lessons from the U.S. Buy American Act

A. Summary of the U.S. Approach

The U.S. regulatory framework supporting the Buy American Act (BAA) is built around strong domestic procurement requirements, designed to maximize the use of American-made goods and materials. Central to this framework are:

- **Buy American Act (1933):**¹⁰ Requires federal agencies to give preference to domestic products, particularly emphasizing end products and construction materials. Goods must be substantially manufactured within the U.S. or meet specified domestic component thresholds (currently 60%, rising to 65% by 2024 and 75% by 2029) to qualify as domestic end products.
- **Trade Agreements Act (1979):**¹¹ Allows waivers from domestic content requirements for products from countries with reciprocal procurement agreements, ensuring compatibility with international trade obligations.
- **Berry Amendment:**¹² Specific to the Department of Defense, it mandates complete domestic sourcing of critical items, including textiles, clothing, food, and specialty metals,¹³ with narrowly defined exceptions to maintain national security and defense readiness.
- **Strategic Administrative actions to implement local content.** The U.S. has used an executive order (E.O.) to make the local content program effective. An example can be seen from the January 2021 E.O. 14005 from President Biden to strengthen domestic content restrictions in federal procurement.¹⁴ The E.O. created a number of mechanisms to implement Buy American Programs. These included:
 - a “**Made in America Director**” within the Office of Management and Budget to review federal agencies’ use of waivers *The Buy American Act and Other Federal Procurement Domestic Content Restrictions* from domestic content restrictions.
 - Directing the Federal Acquisition Regulation (FAR) Council to consider strengthening the domestic content requirements for end products and construction materials; and Directs the FAR Council to consider “replac[ing] the ‘component test’ ... that is used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity.”¹⁵

In response to E.O. 14005, the FAR Council issued a final rule that, with some exceptions, **increased the component cost threshold** for determining whether an end product is domestic for purposes of the Buy American Act from 55% to 60% for products delivered on and after October 25, 2022.¹⁶ The rule also established a schedule for **future increases** in the domestic content component threshold to 65% beginning in calendar year 2024 and 75% beginning in calendar year 2029.¹⁷

B. Strategic Opportunities for Canada's Buy Canada Framework

To align with and robustly match the regulatory strength of the U.S. system while respecting WTO obligations and protecting essential security interests, Canada should adopt the following enhancements:

- **Strategic Procurement Legislation:** Introduce a Canadian Sovereign Procurement Act that mandates enforceable Canadian content thresholds, particularly in defense, infrastructure, and strategic sectors, similar to the U.S. model.
- **Enhanced Procurement Infrastructure:** Establish a Strategic Procurement Office within Public Services and Procurement Canada (PSPC), mirroring successful models such as Australia's centralized strategic procurement operations.
- **Creation of a Canadian Acquisition Regulatory (CAR) Council** to clearly codify exceptions consistent with WTO rules, emphasizing conditions of national security, indigenous economic development, cultural sovereignty, and environmental sustainability. Canada's exceptions could leverage existing flexibility in the WTO GPA and CUSMA, such as Article 32.2 (national security) and Article 32.6 (cultural industries).
- **Canadian Sovereignty and Strategic Capability Test (CSSCT):** Implement mandatory screening for foreign control and potential exposure to extraterritorial laws (such as the U.S. CLOUD Act), emphasizing domestic innovation and intellectual property (IP) development.
- **Dual-Use and Commercialization Mandate:** Require major procurement contracts, especially in defense, to include mandatory Canadian R&D investment and commercialization plans to stimulate broader economic innovation and export growth.
- **ITB Enhancement (ITB Plus):** Strengthen the Industrial and Technological Benefits (ITB) policy to reward Canadian IP creation, high-value manufacturing, and strategic domestic investments, using incentives similar to the U.S.'s specialty metals and Berry Amendment protections.
- **Indigenous-led enterprises:** Canada's economic resilience and sovereignty are deeply interconnected with the strength of its partnerships with Indigenous nations. Achieving full economic sovereignty requires integrating Indigenous nations as equal partners in the development of critical infrastructure, resource projects, and technological innovation. To this end, procurement from Indigenous nations and funding from Indigenous Sovereignty Funds investing in critical infrastructure could be granted preferences in procurement ensuring long-term economic returns for Indigenous communities.

C. Legal and WTO Compliance

To ensure alignment with Canada's international obligations under WTO GPA and CUSMA, proposed legislative and regulatory adjustments should be carefully designed to:

- Clearly define the national security, environmental, aboriginal and cultural industry exceptions already recognized by international agreements.
- Be consistent with communications about the national security, environmental, aboriginal and cultural industry objectives involved in the procured supply.
- Careful drafting ensures measures are narrowly tailored, non-discriminatory, and grounded in transparent national interest.
- Implement a robust review mechanism to assess compliance and respond effectively to potential trade disputes.

This approach, drawing from the robust precedent set by U.S. regulatory mechanisms, offers Canada a comprehensive, resilient, and strategically sovereign procurement framework.

VI. Strategic Implication: A Window for Domestic Preference

Canadian Public money should serve public interests and capacity. Canada needs a proactive, coherent federal Buy Canadian strategy. Key measures could include:

- Enact a national Buy Canadian Act, consistent with trade obligations including existing trade treaty exceptions and reservations. Given these exceptions, Canada has significant room to enact sovereign procurement policies, especially in:
 - Defense and military readiness (CUSMA Art 32.2)
 - Cultural industries (CUSMA Art 32.6)
 - Non-U.S. procurement (no CUSMA Chapter 13 obligation on Canada.)
 - Environmental or health-oriented procurement (CUSMA Art 32.1 / GATT XX)

This legal flexibility underpins the **case for a national Buy Canadian Act**, as proposed in recent policy briefs. See public policy recommendations on the CIGI Sovereign Canada website here: <https://www.cigionline.org/sovereigncanada/>

1. Create a Buy Canadian Act

- A national Buy Canadian Act would act as the central legislative foundation for Canadian local content to protect essential national interests, defense, indigenous peoples' economic development, environmental and health-oriented procurement and the promotion and protection of Canadian cultural industries.
- The Buy Canadian Act would permit the Governor-in-Council to issue orders with respect to urgent essential security interest objectives for national procurement.
- Careful drafting ensures measures are narrowly tailored, nondiscriminatory, and grounded in transparent national interest.

2. Create a Sovereignty-Based Procurement Screening Framework

Introduce a “**Canadian Sovereignty and Strategic Capability Test**” (CSSCT) as a formal requirement for all federal procurements in sensitive areas, particularly:

- Defence & dual-use technologies
- Cybersecurity and digital infrastructure
- Critical mineral extraction and processing
- Advanced manufacturing (AI, robotics, quantum, biotech)

This test would:

- Screen for **foreign legal control** or foreign government influence.
- Require transparency of parent company ownership structures.
- Consider whether data, IP, or manufacturing are subject to **extraterritorial laws** (e.g., U.S. CLOUD Act, Chinese National Intelligence Law).
- Prefer **Canadian-controlled entities** or those operating via **trusted jurisdictions** (e.g., EU, UK, Japan, Korea) under vetted partnerships.

3. Establish “Trusted Ecosystem” Procurement Pathways

Rather than open-market procurements, allow for **pre-qualified procurement partnerships** from “trusted ecosystems,” such as:

- EU Permanent Structured Cooperation (PESCO) partners
- UK-Australia-Japan-Canada groupings in sensitive technology co-development
- NATO-aligned industries with joint-venture Canadian firms

This would fast-track joint procurement for subsystems (e.g., submarines, ISR tech, drone swarms) where a full sovereign supply chain is not viable, but sovereign *integration and operation* are preserved.

4. Mandate Dual-Use Development Potential in Defence Contracts

Require that large defence contracts include:

- A Canadian R&D and IP development plan.
- A roadmap for **civilian commercialization** (e.g., quantum navigation from submarine systems, drone swarms for forest fire response).
- Long-term **training and workforce development** tied to Canadian universities and polytechnics.

This would mirror U.S. DARPA and DIU models and build a **Canadian innovation pipeline** with clear national security benefits.

5. Enhance ITB (Industrial and Technological Benefits) Program with Strategic Autonomy Criteria

Canada's existing Industrial and Technological Benefits (ITB) policy should be strengthened to:

- Give higher weight to Canadian IP ownership, manufacturing, and exports from Canada.
- Introduce a “**sovereignty multiplier**” for companies that are Canadian-headquartered or Canadian-controlled.
- Penalize ITB plans based on mere low-value assembly or off-the-shelf resale.

6. Create a Procurement “Red Team” for High-Risk Sectors

An **independent sovereign capability board** or “red team” should be formed to:

- Vet high-risk bids for strategic infrastructure.
- Advise on alternative sourcing strategies.
- Provide periodic updates to Parliament on risk exposure.

This team would be especially relevant for telecoms, cloud platforms, AI infrastructure, and surveillance technologies.

7. Considerations for Joint Development with Allies

Opportunities (examples):

- **Submarine or Naval Platform Development** with Japan or the UK, possibly in line with AUKUS technologies.
- Quantum radar and communications with EU RTOs and labs.
- **AI-enabled logistics or drone fleets** with South Korea and the Netherlands.

Conditions:

- Canada must negotiate **equal or sovereign integration rights**, avoid being only a “customer state”.
- Require co-development hubs or sovereign production for sensitive components.

VII. Implementation Pathways

A. Timeline and Sequencing

MONTHS 1-3: FOUNDATION

- Cabinet Directive on Sovereign Procurement Reform
- Legal review and CUSMA exception mapping
- Strategic Procurement Office establishment
- Provincial engagement framework launch

MONTHS 4-6: LEGISLATION

- Canadian Sovereign Procurement Act drafting
- Stakeholder consultation (industry, provinces, Indigenous governments)
- Canadian Acquisition Regulatory (CAR) Council creation
- Canadian Sovereignty & Strategic Capability Test (CSSCT) framework development

MONTHS 7-9: REGULATORY BUILD-OUT

- Canadian content thresholds implementation
- ITB Plus enhancement rollout
- Trusted ecosystem partnership agreements
- Provincial alignment protocol finalization

MONTHS 10-12: DEPLOYMENT

- Pilot programs in defense and critical infrastructure
- Full Canadian Sovereignty & Strategic Capability Test screening implementation
- National Capability Forum launch
- Performance measurement systems activation

B. Specific Policies

- **Policy Directive:** Issue a Cabinet Directive on Sovereign Procurement Reform.
- **Legislative Action:** Amend procurement rules under the Financial Administration Act or via a new ***Canadian Strategic Capabilities Procurement Act***.
- **Regulatory Reform:**
 - a “**Made in Canada Director**” within PSPC to review federal departments, agencies and crown corporation use of the Canadian Strategic Capabilities Procurement Act and other domestic content restrictions.
 - Create a Canadian Acquisition Regulatory (CAR) Council to consider strengthening the domestic content requirements for end products, supplies, services and materials; and
- **Institutional Setup:** Expand PSPC’s mandate to include a **Strategic Procurement Office**, akin to Australia's “Office of National Intelligence” procurement arm.
- **Strategic Procurement Office** would be Canada’s central communications porte-parole to address disputes regarding procurement policies.

- **Engagement:** Include provinces, key industries, and academic institutions in a **National Capability Forum**.
- **Provincial Engagement Framework**
- **Provincial Alignment Protocol:** Federal procurement preferences are meaningless if provinces continue unrestricted purchasing. Establish federal-provincial coordination mechanisms with incentives for aligned procurement policies.
- **Provincial Working Groups:** Establish sector-specific working groups (Energy, Digital, Procurement) with provincial representatives to co-develop implementation standards.
 - Differential Provincial Engagement: Tailor bilateral agreements to address specific provincial concerns:
 - Resource-exporting provinces (Alberta, Saskatchewan, Manitoba, Territories): Focus on value-added processing and market access guarantees
 - Manufacturing provinces (Ontario, Quebec): Emphasize supply chain resilience and procurement preferences
 - Coastal provinces (BC, Atlantic, Manitoba, Ontario): Prioritize port infrastructure and trade corridor security.

VIII. A Few Provocations for the Policy Class:

The Cost of Inaction

- "Canadian drone manufacturers export globally while DND buys European systems"
- "Our telecommunications backbone depends on equipment from strategic competitors"
- "Clean tech companies flee to the U.S. for procurement opportunities Canada won't provide."

IX. Risks and Counterarguments

Argument	Counterpoint
Sovereignty conditions may violate trade agreements	Security exceptions can be invoked for defence and critical infrastructure; must be used more proactively.
Reduces competition and may increase costs	Strategic autonomy often involves trade-offs; long-term resilience and control outweigh short-term savings.
May slow procurement processes	Processes can be streamlined via pre-vetted trusted ecosystems and by increasing PSPC technical capacity.

X. Conclusion and Recommendation

Canada must decisively retool its procurement system to serve not just value-for-money goals but also **national security, economic sovereignty, and innovation leadership**. As defence spending grows and global competition intensifies, procurement must be used as a **strategic lever** to protect and promote Canada's sovereign capabilities—especially in digital and dual-use domains. Delaying reform risks leaving Canada vulnerable to foreign control of critical systems and ceding innovation ground in technologies central to its future autonomy.

Canada cannot outsource its way to sovereignty. Every billion spent is a billion we can use to seed national champions, advance reconciliation, secure our future, and build the next economy.

The 2025 Speech from the Throne gave us our mission. This paper gives us the means. Let's start building today.

ENDNOTES

¹ The parties to the GPA include Armenia, Australia, Canada, the European Union (and its 27 Member States), Hong Kong China, Iceland, Israel, Japan, South Korea, Liechtenstein, Moldova, Montenegro, the Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Taiwan, Ukraine, the United Kingdom, and the United States.

² The threshold is SDR 150,000. The SDR (standard drawing rights) is an International Monetary Fund value based on a pool of currencies.

³ For example, Canada's Annex 4 limits the obligations only to positively listed categories with respect to procurement from the Department of National Defence, RCMP, coastguard and provincial police. Canada's Annex 5 excludes services related to these goods, as well as services for the management and operation of government facilities or privately owned facilities used for government purposes.

⁴ Under GPA Article XIX, a Party may notify proposed modifications to its Appendix I coverage, triggering a 45-day period during which other Parties may object. If objections arise, consultations must follow. If not resolved within 150 days, the modifying Party may proceed, and objecting Parties may withdraw substantially equivalent coverage. The procedure ensures mutual accountability while preserving sovereign flexibility to adapt procurement obligations.

⁵ GPA Art. XIII(1) says "Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes."

⁶ While CUSMA Chapter 13 of the USMCA contains obligations between the U.S. and Mexico over government procurement of goods and services in Annex 13-A, Canada did not participate in these obligations. See Articles 13.2(1) and 32.10 which confirms WTO obligations. **Article 13.2(1):** "This Chapter applies to measures adopted or maintained by a Party relating to procurement [...] **only between Mexico and each of the other Parties.**" **Article 32.10** confirms that nothing in USMCA limits a Party's rights and obligations under the WTO GPA. [Emphasis added].

⁷ CUSMA Article 14.4 states "Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), and Article 14.11 (Senior Management and Boards of Directors) do not apply to:

- (a) government procurement; or
- (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

⁸ While such matters are not subject to investor-state arbitration, they are obligations owed to the United States which could form the foundations of state-to-state disputes or retaliatory actions under US Trade Law such as Section 301 actions.

⁹ The 2023 International Court of Justice (ICJ) decision on *Certain Iranian Assets* reaffirmed that the invocation of essential security measures are subject to objective international court review. The ICJ emphasized that determining whether a measure is "necessary" is not a matter for the subjective judgment of the state alone—the court must scrutinize the situation. *Certain Iranian Assets (Iran v. United States)* Merits, March, 30, 2023, ¶106. Also, the ICJ reaffirmed its approach in previous cases, such as *Nicaragua v. United States*, emphasizing that determining whether a measure is "necessary" is not solely a matter for the subjective judgment of the state invoking the Essential Security exception. Instead, this assessment is subject to objective review by the Court. *Military and Paramilitary Activities in and against Nicaragua, (Nicaragua v United States)*, Judgment on Jurisdiction and Admissibility, ICJ GL No 70, [1984] ICJ Rep 392, ICGJ 111 (ICJ 1984), 26th November 1984, International Court of Justice [ICJ] ¶282.

¹⁰ Buy American Act of 1933. (41 U.S.C. §§ 8301-8305),

¹¹ Trade Agreements Act of 1979. (19 U.S.C. §§ 2501-2581)

¹² Department of Defense Appropriations Act, 1994, P.L. 103-139, § 8005, 107 STAT. 1488 (Nov. 11, 1993). The Berry Amendment was initially codified at 10 U.S.C. § 2241

¹³ The Berry Amendment bars DOD from using appropriated or otherwise available funds to purchase a “covered item” unless that item is *entirely* grown, reprocessed, reused, or produced within the United States. See 10 U.S.C. § 4862.

¹⁴ Exec. Order No. 14005, Ensuring the Future Is Made in All of America by All of America’s Workers, (Jan. 25, 2021).

¹⁵ *The Congressional Research Service note that “Federal statutes reference several other executive orders that pertain to domestic content restrictions. See, e.g., Exec. Order No. 13797, Establishment of Office of Trade and Manufacturing Policy (April 29, 2017) (establishing an office to “help improve the performance of the executive branch’s domestic procurement and hiring policies,” among other things); Exec. Order No. 13817, A Federal Strategy To Ensure Secure and Reliable Supplies of Critical Minerals (Dec. 20, 2017) (seeking to reduce the United States’ dependency on foreign sources of critical minerals); Exec. Order No. 13858, Strengthening Buy-American Preferences for Infrastructure Projects (Jan. 31, 2019) (seeking to maximize “the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards”); Exec. Order No. 13944, Combating Public Health Emergencies and Strengthening National Security by Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States (Aug. 6, 2020) (seeking to maximize the procurement and use of essential medicines and “medical countermeasures” made in the United States); Exec. Order No. 14005. President Biden revoked Section 5 of Executive Order 13858, which expanded President Trump’s earlier executive order on federal procurement practices to the provision of federal financial assistance generally (i.e., not only grants), in Biden’s January 25, 2021, executive order on federal procurement. See Exec. Order No. 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (Jan. 25, 2021).” Congressional Research Service, “The Buy American Act and Other Federal Procurement Domestic Content Restrictions” (Nov 28, 2022), Report R46748, <https://crsreports.congress.gov>.*

¹⁶ Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements, 87 Fed. Reg. 12,780 (Mar. 7, 2022).

¹⁷ Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements, 87 Fed. Reg. 12,790 (Mar. 7, 2022).