

**Bye Buy Canada?
Social Procurement under an Inclusive Canadian Trade Policy¹**

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Abstract

Within the last two years, federal and provincial social procurement strategies have been introduced to facilitate economic objectives. This comes while the country commits to stronger binding rules for procurement in the name of the international trade order. What explains this apparent contradiction in objectives? As argued, this tension is the result of a conflation of neoliberal trade with its vehicle, rules-based trade. Canada has not envisioned what rules-based trade could be without its neoliberal character. Moreover, Canada's effort to save the RBIO through comprehensive agreements may have the opposite of the intended effect: these comprehensive agreements may undermine the legitimacy of binding institutions. Procurement rules, the subject of this paper, are one case study of this phenomenon. In the meantime, Canadian efforts to re-engage the state as economic and social driver through procurement are undermined.

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Introduction

The term ‘permacrisis’ has recently been integrated into scholarly vernacular and with good reason (see Turnbull 2022). The Rules-Based International Order (RBIO) is beset by a convergence of crises. The health crisis that is the pandemic revealed deficiencies in social safety nets and inequalities within and among countries. In turn, the economic crisis, which arguably ongoing since the 2008 Recession, is abetted by the mix of high inflation and pending unemployment. The security crisis, prompted by Russian aggression and Sino-American conflict, exacerbates global supply chain challenges. Finally, the ongoing fight against racial hierarchies is met with an unapologetic and violent White nationalism. All of these crises intersect in complex ways with little hope for short-term resolution.

This moment of permacrisis has placed the liberal international order in a precarious position. The order is typified by its use of rules-based institutions (eg. free trade agreements), endorsement of neoliberalism and sponsorship by Western powers, namely the United States. Since the 1980s, this rules-based project has mobilized trade institutions to entrench neoliberal reforms and militate against *unwanted* market-distorting interventions.² The legacy of these institutions is seen in the weaknesses of the state to manage these crises.

A contending international order, however, is challenging both the value of rules-based institutions and wisdom of a restrained state. Though perhaps neomercantilist in its trade policy, this new order is reclaiming *some* state instruments in an effort to retain investment. The United States, formerly the strongest advocate of the neoliberal rules-based international order, has pushed for stronger rules-of-origin, weaker trade panels, and diminished investor protections (see McBride and Fry 2022 for a discussion).

² A good argument can be made that market interventions to the advantage of industry are welcomed (see Harvey 2005; Whiteside 2012).

One aspect of this new posture is social procurement. Social procurement is the recalibration of ‘best-value-for-money’ (BVM) assessment criteria to the desire for local (or domestic) procurement. Conditions for social procurement can include higher wages, local employment, local economic stimulus, environmental action and domestic ownership. In the wake of economic anxiety, the United States in particular has embraced social procurement as a strategy. ‘Buy America’ policies have long existed (see Turi 2011) but they have taken a new level of prominence within the last decade. The United States, though, is not alone in employing social procurement policies.

The Canadian case is more complicated. In the last few years, we have seen new social procurement legislation federally and provincially in Ontario and Quebec. Yet, in this same period, Canada has constrained its capacity for socially-oriented procurement policies through a wave of comprehensive trade agreements, namely CETA, CPTPP and CUSMA. Why has Canada embraced social procurement legislation while undermining its potential through trade agreements?

In this paper, I will argue that Canada has yet to reconcile its trade agenda with its domestic economic objectives. There is an evident contradiction between Canadian governments’ renewed willingness to keep investment locally and their support for neoliberal rules-based institutions. Canadian policymakers rightly recognize their vulnerability to international markets governed by economic power, but fail to distinguish rules-based institutions from their neoliberal bent. This tension is observed in the weaknesses of recent social procurement legislation in Canada.

To make this argument, I mobilize the insights of institutional layering and critical discourse analysis. Institutional layering, as applied here, recognizes how trade rules gradually

expand other time. To document this phenomenon, I use a combination of open-source plagiarism detection software, the Deep Trade Agreement database and documentary analysis. I also critically evaluate public statements and government policy on rules-based institutions. I then evaluate recent social procurement legislation and its relative weakness to international policies.

This paper proceeds as follows. Section I provides the empirical context behind the weakening international order and the rise of social procurement. Section II assesses Canadian trade policy's trajectory and its implications for public procurement. Section III evaluates recent procurement legislation. Section IV observes and discusses the contradictory objectives at play and concludes.

I. Empirical Context: Social Procurement and the Neoliberal RBIO

The research puzzle motivating this paper relies on two observations, both backed by extant scholarship. First, the rules-based international order *we have come to know* is at a crossroads. Countries are recalibrating their trade policy to facilitate domestic growth. Second, social procurement provides an avenue for re-engaging the state as an economic actor. Despite the tension between neoliberalism and socially-driven bidding criteria, many countries are embracing social procurement.

Neoliberal RBIO in Decline?

The Great Depression and WWII taught most Western powers two lessons. First, there is a great deal of risk in a world where markets are governed by economic power. Second, government has a role to play to managing the economy and its risks, particularly during economic downturns. These two lessons were integrated into what Ruggie (1982; 2008) terms *embedded liberalism*. As

he explains, embedded liberalism is “a grand social bargain whereby all sectors of society agreed to open markets [. . .] but also to contain and share the social adjustment costs that open markets inevitably produce. That was the essence of the embedded liberalism compromise: economic liberalization was embedded in social community” (231). It is the conciliation of a rules-based international order with an ideology tentatively willing to see government as an economic agent.³

This was the first form of what we call a ‘rules-based international order,’ referred to as RBIO from here. An RBIO is typified by institutionalization of rules among countries governing trade and foreign policy interactions. These rules serve to depoliticize aspects of domestic policymaking while incorporating juridical fora to manage conflicts (Mullan 2020). This is opposed to an order led by economic power contestation, characterized by rent-seeking, trade blocks and industrial insularity.

Emerging in the 1980s, a new RBIO was formed with stronger rules and adjudicative mechanisms. This neoliberal RBIO largely abandons Keynesian tenets while embracing greater market liberalization. Understood as an ‘answer’ to the stagflation of the 1970s, this new order sought to depoliticize many state policy interventions that may ‘distort’ the markets through more robust rules with equally robust dispute settlement mechanisms. These interventions include state enterprise, tariffs, performance expectations and public procurement – the subject of this paper. Dispute settlement mechanisms have expanded beyond the consensus-based GATT (1947) model to include state-to-state, anti-dumping and, controversially, investor-state dispute settlement. Critical scholars have identified the tandem of neoliberalism and rules-based

³ Naturally, there are limits to this. While some countries took a stronger approach (social democracy), many ‘liberal’ countries – in the Esping-Andersen (1990) sense of the term – did not engage much with welfare development outside industrial supports.

institutions as a type of ‘new constitutionalism’ that cements reforms despite popular democracy (Gill and Cutler 2014; McBride 2003; 2016; Bousfield 2013).

The binding rules of a neoliberal RBIO, however, chafe against the need for state flexibility, particularly during crises. The logic of embedded liberalism was premised on allowing the state to assume risk and mobilize resources to mitigate economic downturns as they come (Skogstad 2015). Neoliberalism as ideology frames government as a cause – rather than an antidote – of economic pitfalls. Where the neoliberal RBIO explicitly limited countries’ use of social procurement and discriminating duties, neoliberalism as ideology further discouraged the use of interventions (eg. welfare supports). There is one important caveat to this: while the neoliberal moment cautioned against the individual’s welfare state, it is more willing to maintain corporate welfare (Whiteside 2012).

Within the last decade, the world has seen a convergence of crises. Health, racial, security and economic crises have state-led responses. The rise of deglobalization movements globally underscore the challenge of addressing these anxieties while maintaining *this* RBIO. The failing RBIO is most evident in the practices of its notional leader, the United States. The United States, acutely facing these crises domestically, has pushed back against the RBIO (McBride and Fry 2022; Noland 2018; Hopewell 2021; Fry 2021). Their actions include the following:

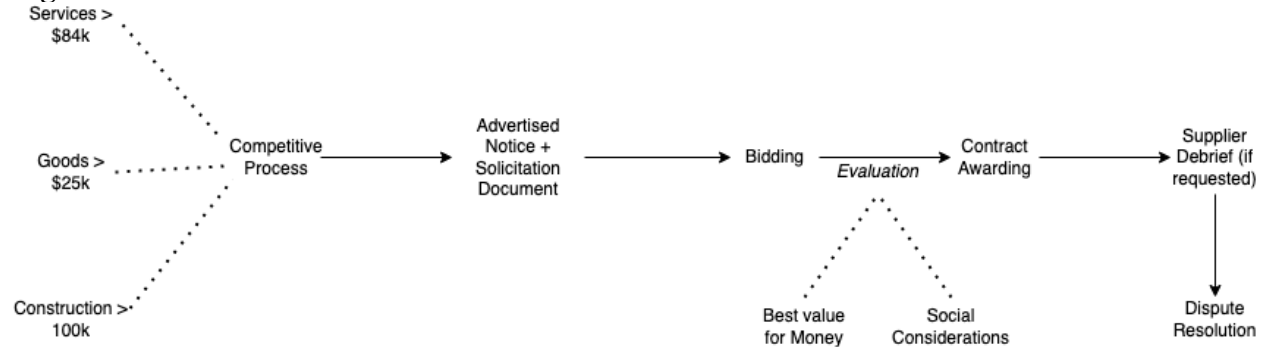
- Denying the appointment of WTO panelists, effectively rendering its dispute settlement useless over time;
- Entering a trade war with China;
- Renegotiating NAFTA and removing some of its neoliberal qualities (ie. ISDS) and embracing stronger rules of origin;
- Imposing steel and aluminum tariffs on Canada;
- Withdrawing from the Paris Accords;
- Embracing American industrial initiatives, including the failed domestic electric vehicle subsidies;
- Withdrawing from the TPP negotiations; and
- Revamping Buy America provisions and creating a Made in America office.

The significance of the United States malaise with the neoliberal RBIO should not be downplayed. Without its guarantor, the incentive to participate in these same institutions is diminished. It should be noted that this partial withdrawal is not isolated to the Trump administration. While the Biden administration rejoined the Paris Accords and toned down its rhetoric, it has expanded in other places. They have since improved upon Buy America, offered new climate subsidies, and embraced ‘friend-shoring.’ For that matter, it is highly unlikely the Biden administration will be signing any new trade agreements. In other words, we are in a moment of transition.

Re-Engaging the State: Social Procurement and its Prospects

As noted, one aspect of this transition involves realigning public procurement with social objectives. Countries are finding new ways to stimulate local economies, raise skills, and address historic inequalities with the same public procurement dollars. Social procurement is one ongoing innovation of countries aiming to stem the defects of globalization (Barraket, Keast, and Furneaux 2015).

Briefly, public procurement is the process of a public body contracting an enterprise or entity to provide a service or good. Generally, these processes are competitive with potential providers (tenders) making offers for a given request. Based upon different criteria, including but not limited to cost effectiveness, a government or government entity will *procure* the services from a tender. Figure 1 outlines a generalized, competitive federal procurement process. The debate is not over whether this process should be open per se, but rather how we should define selection criteria.

Figure 1:

Public procurement is a major component of government expenditure. The World Bank (2023) estimates that public procurement spending represents, on average, between 13-20% of state GDP. Other sources report similar estimates (Bosio and Djankov 2020; Open Contracting Partnership 2020). The OECD (2021) calculates that public procurement represented approximately 30% of total government expenditures in 2019. For Canada, the OECD estimates 32.1% in the same year. Governments are very reliant procurement, and that trend is only increasing (Ortiz-Ospina and Roser 2016).

Over the last few decades, public procurement has risen in prominence over time for different reasons. First, neoliberalism promotes private delivery of public services, which leads to public procurement (Kunzlik 2017). Second, public procurement is relied upon to deliver services in the immediate, as is often necessitated by crises. The pandemic, for instance, is associated with an increase in public procurement expenditure (OECD 2021; Casady and Baxter 2021). This is not to say, however, that public procurement is inherently a neoliberal instrument. It is natural for some services and goods (especially goods) to be supplied by non-governmental actors. For example, most governments are not in the business of manufacturing furniture (nor should they necessarily be), but they certainly buy a lot of furniture. We also cannot forget state

enterprises, which tend to specialize in a production or service, nonetheless fall under the purview of many domestic and international procurement expectations.

Social procurement differs from ‘competitive’ procurement in its engagement with value. In the neoliberal moment, international agreements have encouraged open tendering, national treatment and non-discrimination. These principles aim to limit procurement geared to advantage domestic suppliers. Instead, open tendering favours a ‘Best-Value-for-Money’ (BVM) (Cravero 2017) or ‘Most Economically Advantageous Tender’ (MEAT) (Harland et al. 2021) selection. The criteria favoured under BVM and MEAT are price and efficiency and less so the characteristics of the supplier. This is most consistent with the competitive advantage leaning of neoliberalism.

Social procurement, as Barraket et al. write, “combines the instrumental activity of procurement with the strategic intent of generating social value in response to identified societal needs” (2015, 5). Those in favour of social procurement argue that BVM approaches may untenable assumptions about ‘value.’ Barraket et al distinguish between four different types of social procurement. Social procurement can be third-sector oriented (eg. non-profits), social outcome-driven (ie. redefining value), fixated on social benefit supplier (eg. positive discrimination for domestic bidders), or aimed at ethical goods. Social outcome-driven procurement aims to reconcile BVM with social goals while supplier-oriented procurement encourages positive discrimination and therefore challenges competitive tendering. The United States has embraced supplier social procurement through Buy America but, as discussed later, Canada favours social outcome procurement. Federal examples include the *Procurement Strategy for Aboriginal Business*, *Policy on Green Procurement* and *Policy on Social Procurement*.

There is an evident tension between modern international institutions and social procurement, particularly supplier-oriented social procurement. Trade agreements, for example, establish rules around how tendering can be limited and how the assessment criteria are defined. The principles of non-discrimination and national treatment are interpreted as narrowing the possibilities for state domestic favouritism (Mavroidis and Hoekman 1999). Trade agreements often include minimal thresholds for application, which have lowered over time, and procedures for challenging tendering decisions. In that vein, trade agreements have been moderately successful in discouraging strong social procurement language in tendering as the threat of a trade dispute looms large (Dragicevic and Ditta 2016). That said, it is evident some countries are more willing to undertake risk than others.

Canada has seemingly undertaken contradictory objectives. On the one hand, Canada has embraced stronger and more widely applied procurement expectations through international trade (see, for example, Woolcock 2013; Sheffler 2015; Dawar 2016; Yukins and Schnitzer 2015). The Canadian literature has given CETA a fair amount of attention for this reason (see Collins 2015; D'Erman 2020; Lysenko, Schwartz, and Schwartz 2020) as has the WTO GPA (see D. A. Collins 2008). Likewise, scholars have also noted the mission creep of trade procurement expectations into subnational governments and MASH (Municipalities, Academy, Schools and Hospitals) sectors (McMurtry 2014; Kukucha 2013). On the other hand, Canadian governments have experimented with social procurement policies. Recently, the federal government and the governments of Ontario and Quebec have implemented their own social procurement strategies. *How do we square Canadian governments voluntary procurement commitments to other countries with their experimentation with social procurement?*

II. Canadian Procurement Trade Rules

Canadian Trade Policy and the RBIO

Historically, Canada has been a country reliant on engaging with international markets. As a late developing country, pre-Canadian history took what Senghaas's (1981) refers to as an "associative" approach to globalization. This was borne from a need to compensate for limits to domestic production, particularly due to its northern climate and status as a developing country. It was only after Confederation that Canada earned a reputation as a selective or insular country to international markets. This 'dissociative' posture, as Senghass (1981) and McBride (2020) discuss, or "defensive expansionism," as Eden and Molot (1993) prefer, was typified by high tariffs, national infrastructure strategies and immigration.

But even during the height of Macdonald's (and Laurier's) National Policy, Canadian policymakers explicitly preferred managing trade through formal institutions (Hart 2002; Thompson and Randall 2008). Canadian policymakers have long recognized their status as a middle power and positioned trade policy to match that reality. Following WWII, Canada was a champion of the emerging rules-based international order. This was evident in Canada's involvement in the failed International Trade Organization (ITO), General Agreement on Tariffs and Trade (GATT), and Bretton Woods institutions (IMF and IBRD).

When a new RBIO took shape in the 1980s, Canada was once again a major advocate. The Canada-United States Free Trade Agreement was the capstone of this transition. In addition to its stronger rules (eg. procurement expectations), it introduced a variety of dispute settlement mechanisms that went further than the GATT's consensus-based model. State-to-State and anti-dumping dispute settlement procedures were embraced as a means to manage conflicts between states, which was seen as advantageous to a middle-power. NAFTA, subsequent trade

agreements and foreign investment protection agreements (FIPAs) further added investor-state dispute settlement (ISDS). In effect, these agreements shift decision-making from the public to semi-judicial panels (depoliticization) while explicitly favouring limitations on the state (liberalization).

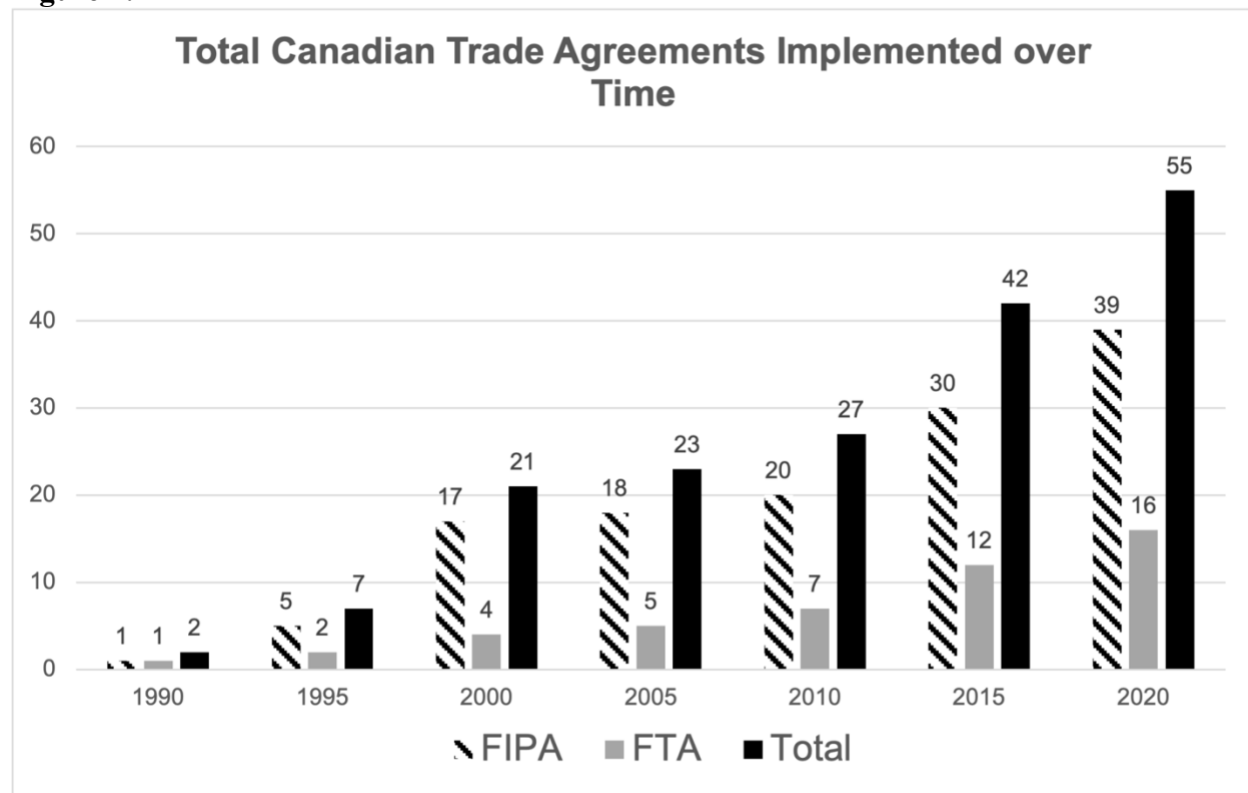
What is important to observe with the neoliberal RBIO is how it has spread so quickly. While seemingly contradictory on the face of it, this order allows the creation of free trade ‘zones’ with specialized tariffs and rules-of-origin. Trade zones, like that of North America (CUSMA), undermine the principle of most-favoured-nation rates in international institutions by effectively punishing non-participants. Gruber (2000) observes how the proliferation of preferential trade agreements *in addition* to multilateral institutions like the WTO pushes otherwise reluctant countries to join.

This ‘race to the bottom’ is function of what we may call ‘institutional layering.’ As Mahoney and Thelen write, institutional layering is “the introduction of new rules on top of or alongside existing ones” (2009, 15). As a form of gradual institutional change, institutional layering is incremental change without necessarily taking apart the institutional arrangement itself. In the neoliberal moment, trade agreements have expanded through layering: new isolated agreements add rules or conditions not specified elsewhere. This is not limited to tariffs; rather, it can include different substantive rules and mechanisms. Layering is effective because it produces subtle change that is difficult to undo. For example, whether one agreement or all agreements specify a rule, a country may yet to be held to its standard.

The diffusion of the neoliberal RBIO is facilitated incrementally through layering, and Canada has done its part. As presented in Figure 2, we can see that Canada has rapidly expanded its agreements over time. This is done through preferential trade agreements, which tallied

sixteen in 2000, and FIPAs, which total 55. FIPAs are generally standardized, though Canada has recently updated its ‘model FIPA.’ PTAs, on the other hand, can vary considerably.

Figure 2:



It is notable that Canada continues to support *this* RBIO in its moment of vulnerability. This much is evident in Canadian trade policy under the *Inclusive Trade Agenda* (ITA, formerly the Progressive Trade Agenda⁴). The ITA aims to address the cleavage around global trade by bringing along traditionally marginalized groups. It is an effort to approach free trade through the lens of those most vulnerable, particularly women, Indigenous peoples and small and medium enterprises. As written in the policy’s brief, “the Government of Canada is aware that criticism of international trade and globalization has led to protectionist movements and a retreat from the international rules-based order, *a system that has provided unparalleled prosperity to Canada*

⁴ The federal government moved away from the Progressive label following a concern it was too ideological (Smith 2019).

and others for decades. [...] Our approach reflects and promotes domestic and international policy priorities that support economic growth that benefits everyone and maintains confidence in an open, rules-based trading system” (Canada 2019). The brief itself makes repeated references to addressing the “perception” of trade institutions as unfair and detrimental.

This sentiment has been widely by government officials. Chrystia Freeland, the current Minister of Finance (formerly International Trade and Intergovernmental Affairs), submits that international trade is not the culprit. Rather, in her words, “the real culprit is domestic policy that fails to appreciate that continued growth, and political stability, depend on domestic measures that share the wealth” (Freeland 2017). Internationally, Freeland (2018) has similarly expressed concern with the rise of deglobalization movements as “the jungle’s invasion of our liberal democratic garden.”

As Fry (2023) observes, provincial governments have been equally supportive of neoliberal rules-based institutions. The Council of the Federation endorses the federal government’s Inclusive Trade Agreement and encourages “the federal government to continue to expand and diversify Canada’s trade partnerships, consistent with its inclusive trade agenda” (Billington 2019). In the view of the premiers, trade agreements like NAFTA have had an “overwhelmingly positive effect on the Canadian economy” (Billington 2020).

This is not to dismiss positive changes within Canadian trade policy over the last decade. Canada had made strides to improve its model FIPA, incorporate gender and indigenous recognition into agreements, include small and medium enterprises to a greater extent, create new governance committees with some sway, and address the flaws of ISDS (see Perreault 2020 for a discussion). These changes are meaningful but, as McBride and Fry (2022) evaluate, slight

in the larger picture of free trade. The larger picture shows Canada layering on new rules in the name of the RBIO.

Institutional Layering and Procurement

Two consequences of layering is stronger expectations and legal risks. Layering stacks expectations over time and increases risk of trade disputes. There is, in turn, a ‘chill’ on social procurement efforts. This chill is facilitated in three ways: agreement inconsistency, rule comprehensiveness, and state exposure. I will discuss each in turn.

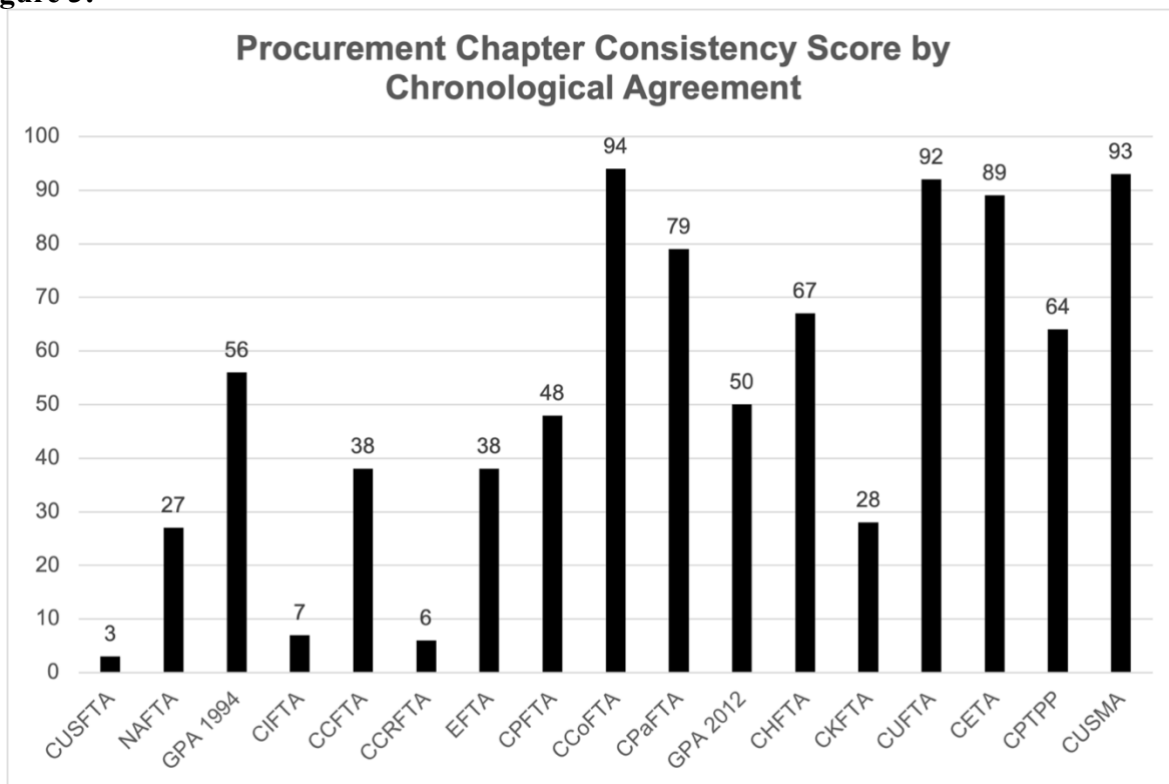
First, the more *inconsistent* procurement chapters between trade agreements, the greater the risk of a dispute. This can be because the substantive content differs (eg. one agreement includes a lower dollar threshold to be actionable), or because there is greater ambiguity between agreements (eg. wording is different, which could lead to differing interpretations). One should note that trade panel ‘jurisprudence’ does not function with precedent, meaning one panel can establish a conclusion that differs from another panel under another agreement.

To measure *consistency*, I use WCopyfind, an open-source plagiarism detection software. WCopyfind can detect ‘matches’ (perfect and approximate) between documents and produce similarity scores (matched words/total words). Using a similar procedure to Dwidar (2022a; 2022b), I searched for phrase matches of five words or more between Canada’s procurement chapters over time.⁵ That is, each chapter was compared against all the other active (at the time) international procurement rules to which Canada was a party (eg. CUSFTA compared with the Tokyo Code Procurement rules, CPTPP compared against all previous agreements). The results are reported in Figure 3.

⁵ Specific conditions are as follows: Shortest phrase to match (5 words), most imperfections to allow between matching portions of a phrase (2), minimum percentage of matching words (100%), Skip nonwords (Yes), Skip words longer than 20 characters (Yes). These conditions are identical to Dwidar except for shortest phrase to match (6 words in Dwidar). Given the particularities with how trade agreements are written, we believe this is justified.

Canadian procurement content varies somewhat by agreement. Given the timeframe, we should expect higher scores over time as rules increase. It is common in writing trade agreements to copy content with slight modifications. The Canada-Colombia Free Trade Agreement (CCoFTA) is one example. Further, it is not a surprise that the WTO Agreement on Procurement (GPA) is a norm-setter that bucks the trend of increased similarity. Still, several agreements share very little similarity with their predecessors. Procurement chapters in CKFTA (Korea), CPTPP (aka the TPP) and, to a lesser extent, CETA⁶ stand out for their inconsistency in content.⁷

Figure 3:



Second, the more *comprehensive* the procurement provisions, the less likely (and able) a country is to adopt social procurement. Canada maintains some of the most robust procurement

⁶ Remember that this is compared against the EFTA signed several years earlier.

⁷ There are a couple ‘anomalies’ like CIFTA (Israel) and CCRFTA (Costa Rica) which make little commitments but are written uniquely.

provisions globally. Using the Deep Trade Agreement dataset, Shingal and Ereshchenko (2020) establish that while 30% of all PTAs have ‘deep’ procurement provisions, the vast majority of Canadian trade agreements have deep procurement chapters. Many of these agreements extend beyond the WTO GPA in several ways: lower thresholds, stronger dispute mechanisms, and greater sub-national public body inclusion.

Table 1 summarizes the content of Canada’s procurement chapters across active agreements. The majority of Canadian agreements contain substantial procurement expectations. 85% of agreements give national treatment to foreign tenders while only 29.9% of all international agreements do the same.⁸ More strikingly, the majority of active Canadian agreements (53.8%) have lower thresholds than the most recent WTO Agreement on General Procurement (GPA). This compares against only 9.0% of global agreements. Canada is a world leader in comprehensive procurement expectations.

Another standout element to Canadian procurement expectations is the participation of subnational governments. Increasingly, provincial governments and their sectors (MASH) have been captured under trade agreements. Provincial governments were added CETA. Moreover, the provinces also signed onto the GPA on their own volition. Given the size and responsibilities of Canadian provinces, this is a major concession.

⁸ Recall that the Deep Trade Agreement Database (1) only profiles agreements up to 2016 and (2) does not contain superseded agreements like the Canada-United States Free Trade Agreement (1989).

Table 1: Procurement Rule Coverage within Active Canadian Trade Agreements

Coverage	# of Canadian active Agreements (%)	Global Total (%)	# of Countries Involved	Global GDP as % 2011
National Treatment	11 of 13 (84.6%)	83 (29.9%)	55	62.7%
Cover all government entities (central, sub-central and utilities)	7 of 13 (53.8%)	44 (15.8%)	53	62.6%
Threshold Value for Annex 1 goods lower than RGPA	8 of 12 (66.7%)	25 (9.0%)	41	31.6%
Requires notice of intended or planned procurement to be published	11 of 13 (84.6%)	67 (24.1%)	55	62.7%
Limited Tendering provisions	11 of 13 (84.6%)	61 (21.9%)	55	62.7%
Provisions on Information provided to bidders (results and non-section reasons)	11 of 13 (84.6%)	64 (23.0%)	55	62.7%
Explicit dispute settlement Procedures	11 of 13 (84.6%)	71 (25.5%)	55	62.7%

Notes: Incorporates data from the Deep Trade Agreement Database (Mattoo, Rocha, and Ruta 2020). At the time of access, the Deep Trade Agreement Database is limited to agreements up to 2016. Author evaluations made for CETA, CUFTA and the GPA. The Canada-UK continuity agreement is not counted among the agreements. Instead, CETA is used as indicator for the UK (the continuity agreement continues CETA).

Not to be forgotten, Canada's internal trade agreement ("the Canada Free Trade Agreement" or CFTA) maintains comprehensive procurement rules that apply to the provincial and federal governments, Crowns and MASH sector entities. The thresholds for covered procurement are stricter than any applicable trade agreement to sub-national public bodies. The agreement reflects the nature of Canadian federalism and the domestic competition it can fuel.

Third, the more countries (and potential tenders) with procurement commitments from a country, the greater the risk to social procurement. That is, the more a country is *exposed* in their commitments, the greater potential for disputes. The Canadian government has made signing trade agreements with major economies a long-term priority. By that measure, they have been successful. Canada remains the only country with a trade agreement with every other G7 country. The Harper government explicitly made signing agreements with South America a priority, as

evinced by the Colombia and Peru trade agreements. The Trudeau government has made Africa a priority, though mostly in terms of FIPAs.

Referring back to Table 1, we can see that Canada has made significant procurement commitments with much of the world's economy. Countries holding approximately 63% of the world's GDP have the right to national treatment, subnational tendering, notice of a procurement process, competition results and dispute settlement procedures. In other words, Canada is highly exposed on procurement expectations. Should there be ambiguity in a social procurement policy or Act, the likelihood of a challenge is not insignificant. Arguably, this is further abetted by federalism: the internal trade agreement has procurement expectations held between provinces.

Figures 4 and 5 reinforce Canada's embrace of neoliberal rules-based institutions. Figure 4 shows Canada's procurement exposure in 1995 and Figure 5 shows the same in 2020. Overall twenty-five years, we have seen a major expansion of trade agreement procurement content. Since 2016, Canada signed CUFTA, CETA, CPTPP and CUSMA, all with procurement chapters.⁹

Overall, in signing trade agreements over time, Canadian trade policymakers have gradually layered new procurement rules on the country. These rules are moderately inconsistent, very comprehensive, and highly exposed. In turn, these rules create real and perceived risk for public bodies looking to experiment with social procurement. We can see this challenge in recent procurement legislation and policies.

⁹ Technically, the CUSMA procurement chapter only applies between Mexico and the United States.

Figure 4: Canada's Procurement Exposure in 1995

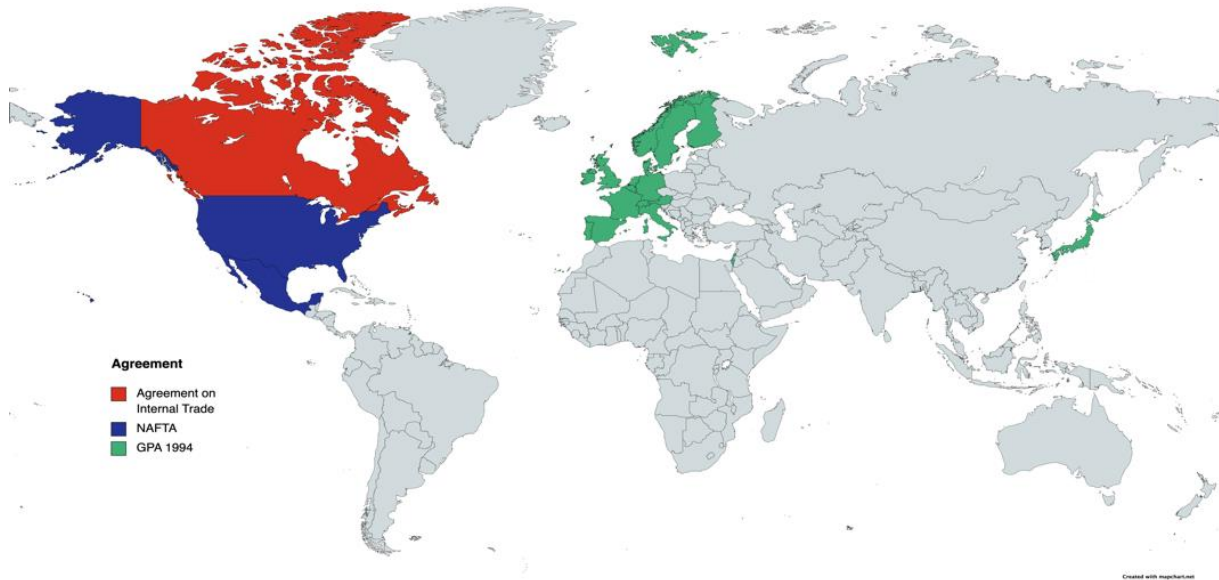
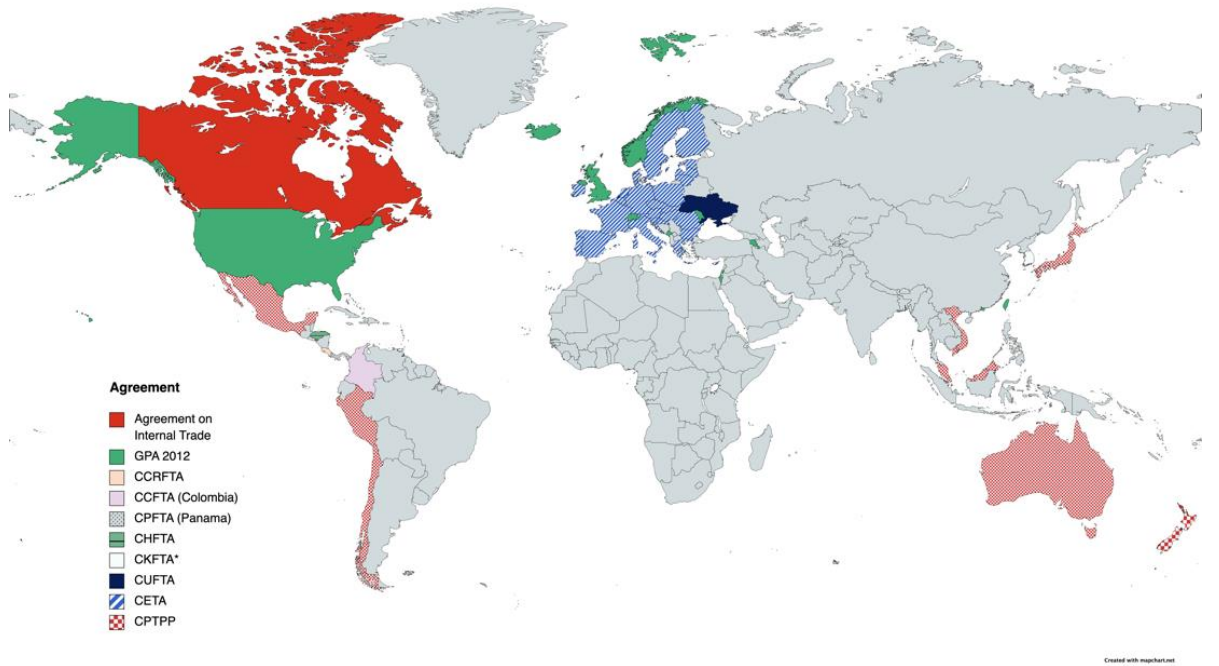


Figure 5: Canada's Procurement Exposure in 2020



III. *Canadian Attempts at Social Procurement*

Since 2006, Canadian governments at different levels have implemented socially-oriented procurement policies. Several of these policies are more specific programs tailored to certain objectives like climate action (eg. federal Policy on Green Procurement). Recently, however, there has been an upswing in more ambitious social procurement efforts. In the same year, the federal government, Government of Ontario, and Government of Quebec implemented social procurement policies. While each of these policies have their merit, they reveal the challenges of re-engaging the state as economic driver while holding a steadfast commitment to neoliberal trade rules.

First, the federal government introduced the *Policy on Social Procurement* as a trial run between 2018-2020 and has since become permanent. Under the policy (Government of Canada 2021), procurement under the Acquisitions Program can include socio-economic measures in its determination of ‘best value’ for the Crown. As specified within the policy, these socio-economic considerations include “enhancing market competition, job creation, and economic and social advantages stemming from purchases from small and medium enterprises, social enterprises or social purpose organizations [. . .] the conduct of socially responsible business and advancing diversity and inclusion” (2.2). In turn, ‘best value’ is defined as “the optimal balance of resource expenditure and realization of outcomes, including socio-economic and environmental returns.”

The application of the policy is designed to be consistent with existing policies, legal frameworks and trade agreements. That is, the policy is not limited to a dollar ceiling to avoid covered procurement under trade agreement. The policy works *within* trade rules by expanding our definition of ‘best value.’ That said, the policy is ambiguous as to how this is measured. It

also avoids ‘positive discrimination’ (ie. favouring Canadian bidders). In that sense, a procuring entity could determine that a foreign bidder offers better social outcomes to a domestic party.

Second, Ontario established its own procurement strategy in 2022. The *Building Ontario Business Initiative (BOBI)* introduces new social considerations to provincial public bodies.

First, the program incorporates social and economic considerations into the evaluation of prospective suppliers. Second, the corresponding Act (*Building Ontario Business Initiative Act*) gives Ontario preference for goods and services procurements below trade agreement thresholds. Third and last, through the Industrial Regional and Technology (IRTB) requirement, the province adds economic development considerations (eg. building Ontario’s supply chain and economic growth) for contracts \$10 million and above.

Notionally, this is an expansive procurement strategy. The challenge with evaluating this strategy, however, is that very little is formally written. The entire Act, for instance, is roughly 450 words and has yet to be in force. The social considerations under the BOBI have no readily detectable follow-up documentation. This speaks to a larger issue with Ontario. Ontario is undergoing a transition to a new Crown agency, Supply Ontario, by November 2023.

Additionally, Ontario has yet to establish an independent dispute resolution authority for bidding, despite it being a requirement under several trade agreements (Jarosz et al. 2023).

Third, The Quebec government (2022) has introduced a new procurement strategy to favour intra-provincial businesses. This strategy, *Priorité à l’achat Québécois : l’État donne l’exemple* [trans: Buy Quebec Priority: The State Leads by Example], has several components applying to provincial public entities. First, the policy aims to eventually raise food purchases to be 100% local in education, health and social services. Second, the strategy aims to increase socially responsible acquisitions over time. Third, the policy seeks to increase the number of

prospective Quebec vendors through training and workshops. Fourth, the corresponding bill will direct procuring entities to favour Quebec-based businesses for all procurements under the threshold of trade agreements. Fifth, the bill aims to have set-asides for both Quebec- and Canadian-based small businesses for procurements valued above the internal trade agreement threshold but below external trade agreements. Sixth and related, there will be a 10% preference allocation for Quebec or Canadian value added advantages within the same monetary range.

This policy is by far the most comprehensive for a Canadian jurisdiction. It combines a value-based approach with positive discrimination. That said, its approach to value is centred around innovation, regionalism, and economic development. The strategy is relatively silent on systemic inequalities and historically marginalized peoples. Its narrow engagement with value reflects the government's right-wing (nationalist) lean. Of course, all aspects of the strategy are written below current international arrangements. As such, most of these ambitious provisions are irrelevant for medium to major procurements.

Table 2 compares the three strategies. Each strategy has its weaknesses. The federal policy is the only one to apply broadly to procurement practices without a designated ceiling. That said, it does not specify how social considerations are to be weighed and does not engage with regional factors. Notably, the policy makes no effort to mirror its southern neighbour (the United States) with positive discrimination.

Ontario's strategy is more ambitious in its Buy Ontarian provisions, though that has yet to be enacted. The lack of details in the policy may lead one to conclude it was pre-election posturing. Should all parts be enacted, there will be questions about their engagement with social factors, which have not been specified to date.

Quebec’s efforts are by far the most comprehensive. The Quebec strategy incorporates much of Ontario’s strategy while extending its interpretation of value. This interpretation is, however, far less considerate than the federal strategy. That is, Buy Quebec eschews to recalibrate ‘best value for money’ to systemic inequalities. Moreover, like Ontario’s strategy, Buy Quebec is limited by low thresholds.

Table 2: Procurement Strategies Compared

Policy Characteristic		Policy on Social Procurement (Federal)	Building Ontario Business Initiative (Ontario)	Buy Quebec Priority (Quebec)
Social Procurement Type	‘Value’ including social determinants	Y	?	Y
	Positive Discrimination	N	Y	Y
	Ethical Purchasing	Y	N	Y
	Third Sector	Y	N	N
Additional Public Bodies	MASH	NA	?	Y
	State Enterprise	Y	Y	Y
Considerations	Specified Weight to social characteristics	N	N	Y
	Fair wages	N	N	N
	Employment	Y	N	N
	Local economic stimulation	Y	N	Y
	Skill development	M	N	N
	Environmental considerations	Y	N	Y
	Race	Y	N	N
	Regionalism	N	N	Y
Contract Value Ceiling ^t	General Value: (Cdn)	NA	(\$25,000 for goods, \$100,000 for services)	(\$25,000 for goods, \$100,000 for services)
	Construction Projects: (Cdn)	NA	(\$100,000)	(\$100,000)
	Crowns Goods and Services: (Cdn)	NA	(\$500,000 for goods and services)	(\$500,000 for goods and services)
Other	Enacted	Y	No.	Y

Notes: “Y” is yes, “N” is no, “M” is maybe, “?” is unclear and “NA” is not applicable. t: I use the covered thresholds as written in the CFTA. Note that the thresholds are more complicated for many public bodies (ie. Crowns). Also note that some provisions in these agreements function under the CFTA but not international trade agreement thresholds. For example, Buy Quebec accords a 10% preference to Canadian bids if under *international* thresholds.

Altogether, we can make two observations with respect to recent social procurement policies. First, we can see the ideological leanings of each government in their strategies. The federal effort, reflecting its liberal-bent, engages the most with inequality but still favours the competitive ‘free market’ approach. Ontario’s strategy is right-wing populist: they favour positive discrimination but minimally engage with social considerations. Quebec’s is consistent with right-wing nationalism in that it also incorporates positive discrimination, engages slightly with regionalism and local economic development, but says little on systemic inequalities at the individual level.

Second and most important, all of these social procurement strategies are limited by international commitments. Ontario’s and Quebec’s strategies only apply to a fraction of procurement dollars. The federal government’s strategy technically applies to general procurements but avoids explicit domestic favouritism. Canadian jurisdictions’ experimentation with social procurement is undercut by their simultaneous steadfast support for the neoliberal RBIO.

IV. Discussion and Conclusion: Contradictory Objectives?

The research puzzle at the heart of this paper asks why we see Canadian governments experiment with social procurement while simultaneously layering new trade rules that undermine these same experiments. In demonstrating the impact on Canadian trade rules on social procurement, I submit the cause is an unfortunate conflation of rules-based institutions with neoliberalism.

To expand, Canada has pursued rules-based institutions since 1945 and with good reason. Canada is a middle power that is vulnerable without state-to-state conflict resolution mechanisms and rule stability. A world governed merely by economic power – the ‘jungle’ as Chrystia

Freeland refers to it – could be devastating for Canadian interests. Canadian trade policymakers, federally and provincially, correctly identify this risk.

The issue is Canada's commitment to the neoliberal variant of these institutions. Early rules-based institutions sought to leave room for state action. Embedded liberalism grants countries maneuverability to respond to crises, absorb individual and corporate risk, and develop social democratic arrangements. These institutions were flawed (eg. consensus-based dispute settlement) but preferable to overly burdensome rules on the state. Neoliberal rules-based institutions sought to gradually remove the state from several policy areas and replace it with unrestrained markets.

Canada has signed a flurry of agreements in this RBIO. These agreements have steadily expanded and public procurement is one victim. Should Canadian policymakers be interested in aligning their objectives, it would start with a reflection on what rules-based institutions are desirable. The Inclusive Trade Agenda offers some useful changes but is mired by its assumptions. The backlash against globalization is not merely based on 'perceptions' but also real struggle. We must interrogate the mission creep of trade institutions, particularly given how uncertain other countries are over this international order. I suggest one beginning point may be procurement provisions.

To be sure, social procurement is a worthwhile pursuit. Not only does social procurement challenge the basis of 'value' under neoliberalism, it provides the opportunity to re-engage the state as economic actor. The neoliberal RBIO is stuck in permacrisis because it denies itself the tools to respond to crises. An absent state with unfettered markets is exacerbating crises. Social procurement is one

Looking at the current state strategies, there is some reason for optimism. Canadian governments at least recognize the value of social procurement and are finding creative ways around trade rules. The Quebec and federal strategies in particular offer a pathway forward in the interim. Ideally, a social procurement approach would combine the federal strategy's emphasis on equity-deserving groups with the substantive provisions of Buy Quebec. It may also be useful for Canadian jurisdictions to better coordinate their procurement strategies. Not only does the different procurement processes across Canada serve as a barrier to potential bidders, it raises the prospect for internal conflict between governments. This is something to consider looking ahead to the next internal trade agreement.

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