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POSSIBILITIES FOR LOCAL FOOD PROCUREMENT IN ONTARIO:

TRADE AGREEMENT RESTRICTIONS & HOW OTHER JURISDICTIONS HAVE AVOIDED
THEM.

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ABSTRACT:

Ontario is affected by many trade agreements that potentially restrict its ability to enact public procurement measures that discriminate in favour of local food. However, an examination of some of the limitations and exceptions of certain trade agreements that affect Ontario as well as a review of public procurement measures adopted by jurisdictions subject to similar trade agreement restrictions, such as the United Kingdom, Italy, the United States, and Nova Scotia, will demonstrate possibilities for local food procurement policies in Ontario.

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I. INTRODUCTION

Local food procurement policies are currently being considered by the Province of Ontario in order to support local food systems. Such policies have been successfully implemented by several other jurisdictions notwithstanding restrictions in trade agreements relating to these jurisdictions, as well as to Ontario.

Public procurement, that is, the purchase of goods and services by government, is a sector that typically represents a significant percentage of economies. As a result, governments enter into trade agreements to access foreign procurement markets, amongst other reasons. However, trade agreements generally demand *quid pro quo*; for example, if a party wants unlimited access to another country's procurement market, that party would in turn be required to provide free access to their own procurement markets. As a result, depending on the trade agreement's scope, parties may limit their ability to use various regulatory measures, such as procurement, for local development purposes.

Ontario is affected by several major trade agreements that potentially restrict its ability to regulate procurement activities, namely:

- The General Agreement on Tariffs and Trade (GATT),
- The Agreement on Government Procurement (AGP),
- The North American Free Trade Agreement (NAFTA), and
- The Agreement on Internal Trade (AIT).

In terms of procurement liberalization, these agreements aim to ensure that government procurement is

- not used to provide preferential treatment for local goods or services,
- undertaken in a manner that is transparent and fair, and
- awarded to bidders that meet all specified criteria for the best value.

Also, trade agreements currently in negotiation, such as the Canada and European Union Comprehensive Economic and Trade Agreement (CETA) and the Trans-Pacific Partnership (TPP), may further restrict provincial government procurement powers and should be observed closely.¹ In addition Canada has been increasingly entering into bilateral trade and investment agreements that may affect Ontario's procurement powers, an examination of which is outside the scope of this paper.²

¹ Canada is currently in Free Trade Agreement negotiations with Ukraine, Morocco, EU, South Korea, the Andean Community, the Caribbean Community, the Dominican Republic, the 'Central American Four', Ukraine, India, Singapore, Japan, and the Free Trade Area of the Americas.

² Canada has bilateral trade agreements with Peru, the European Free Trade Association, Costa Rica, Israel, Chile, Panama, Jordan, Colombia, and Honduras. In addition, Canada has Foreign Investment Promotion Agreements (FIPA) with 35 different countries, three Trade and Investment Cooperation Agreements (TICA) and four Trade and Economic Cooperation Arrangements (TECA).

The following analysis will outline how within the major trade agreements which may relate to Ontario, overlapping limitations and exceptions have carved out room for certain types of local food procurement measures. This regulatory space will be demonstrated through an analysis of public procurement measures taken by other jurisdictions subject to the same or similar trade agreement restrictions.

II. TRADE AGREEMENTS AFFECTING ONTARIO'S PROCUREMENTS

Trade agreements primarily restrict local food procurement through 'national treatment' provisions. These provisions require bound entities to provide the same treatment to goods and services of other parties as they do to their own. In other words, parties are not allowed to discriminate in procurement contracts based on the source of goods or services. This principle is generally referred to as 'non-discrimination'.

The breadth of public procurement covered within trade agreements varies depending on the agreement's specified

- monetary thresholds,
- government entities covered (e.g. municipal, provincial),
- type of procurement covered (e.g. construction, services, goods, etc.), and
- applicable overall exceptions (e.g. legitimate public interest regulation).

In addition, trade agreements include exceptions that apply to specific provisions, as well as overall general exceptions for legitimate public interest measures. In certain situations these exceptions could apply to local food procurement policies; however, it is important to note that trade tribunals generally interpret these exceptions narrowly.³

Breaches of trade agreement provisions can result in legal challenges that require significant legal fees and threaten considerable orders for damages.

a. GATT

The World Trade Organization's (WTO) General Agreement on Tariffs and Trade (GATT) is a key multilateral trade agreement. The GATT binds its 155 signatory's central governments to non-discriminatory public procurement practices. Central national governments are only required to take best efforts to have local and regional governments comply with GATT provisions.⁴

GATT exceptions for public procurement include:

³ See for example *The Panel Report*, Norway - Procurement of Toll Collection Equipment for the City of Trondheim, *GPR.DS2/R*, paras. 3.8., 3.9 and 4.5.

⁴ GATT Article XXIV:12; GATS Article 1:3(a); see also, Thomas & Meyer, *The New Rules of Global Trade, A guide to the World Trade Organization* (Carswell: Toronto, 1997) at p.213. (hereinafter "A Guide")

- i. Although this agreement technically requires parties to apply non-discrimination to their procurement processes, it does not effectively restrict public procurement due to its exception for “**government procurement measures for government purposes not for commercial resale.**”⁵ This exception is often characterized as excluding the application of the GATT from procurement altogether, allowing governments to purchase domestic products and services preferentially.⁶

However, this provision was recently considered in two WTO trade dispute Panels.⁷ These disputes involve the domestic content requirements found in Ontario’s *Green Energy Act’s* Feed-in-Tariff program. The Panel’s decisions in these matters provides some clarity to the exception, namely a ‘government purposes’ was not held to be present as the electricity was being provided to consumers in competition with private retailers and for a profit.⁸ However, the Panel further noted that whether a profit accrues is not indicative on its own, as a commercial resale could be found to occur even where it is undertaken at a loss.⁹ This decision raises many questions relevant to local food procurement policies, such as would selling meals at a not-for-profit cafeteria constitute ‘commercial resale’?

- ii. The GATT also allows for **general public interest exceptions** to its provisions. The two most relevant for local food procurement measures are:

- (b) measures necessary to protect human, animal or plant life or health; [...] and
- (g) measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.¹⁰

Subsection (b) requires that a necessity test be satisfied, which is onerous. Section (g) could be applied to justify local food procurement measures on the basis that they are being applied in order to conserve fossil fuels, or arable land, or the ozone layer, etc., and not to support the local economy.

b. GPA

The Agreement on Government Procurement (GPA) is a plurilateral agreement, to which only certain, primarily developed, countries are members.¹¹ It contains the only substantial procurement restrictions within the WTO framework.

⁵ GATT Article III(8)(a), GATS Article XIII.

⁶ A Guide, p.213.

⁷ WTO Disputes DS412 (see: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds412_e.htm) and DS426 (see: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds426_e.htm).

⁸ WTO Panel Report, WT/DS412/R & WT/DS426/R (Dec.19, 2012) at 7.151 (available at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds426_e.htm).

⁹ *Ibid.*

¹⁰ Article XX; however, these exceptions cannot be applied arbitrarily or as a disguised restriction on trade.

¹¹ The GPA has 15 parties, including the EU (with regards to 27 of its member states), Japan, Canada, United States, and China.

The GPA applies to purchases of goods and services and construction contracts of certain government bodies above specified monetary thresholds, as committed by each signatory's Annexes to the Agreement. Canada's Annexes list all provincial ministries and agencies, and certain entities and services, including the AgriCorp agency and food and beverage serving services.¹² Canada's monetary threshold for these sub-central government entities is 355,000 SDRs¹³ (approximately \$544,431 CAD).¹⁴

The GPA includes a national treatment provision that ensures all suppliers are treated equally, no matter their percentage foreign of ownership, or from where their product originates. It also restricts the consideration of offsets in awarding contracts.¹⁵ Offsets are contract conditions that encourage domestic development by requiring, for example, local content. The GPA does however allow requests for proposals to outline technical specifications in terms of:

- performance, rather than design or descriptive characteristics, and
- based on international standards, where such exist; otherwise, on national technical regulations, or recognized national standards.¹⁶

Notably, the GPA requires parties to establish effective bid challenge procedures by which aggrieved foreign suppliers can challenge alleged breaches of the Agreement.¹⁷

GPA exceptions for public procurement include:

- i. In its Appendix, Canada exempted procurements that provide **set-asides for small and minority businesses or contracts for agricultural products made in furtherance of agricultural support programs or human feeding programs;** and
- ii. The Agreement's relevant **general exceptions for public interest measures** include measures necessary to protect human, animal or plant life or health.¹⁸

c. NAFTA

¹² Canada's Appendix to the GPA, Annex 2, All Ministries and Agencies (All Government Departments and Provincial Agencies, Boards, Councils, Committees and Commissions) of the Province. Canada's Annex 4 outlines its Services commitment.

¹³ 0.646608 SDRs per Canadian dollar as of June 29, 2012, according to the International Monetary Fund, accessed at: http://www.imf.org/external/np/fin/data/rms_five.aspx.

¹⁴ conversion on February 10, 2013 from: http://www.likeforex.com/currency-converter/special-drawing-right-sdr-xdr_eur-euro.htm/355000.

¹⁵ GPA, Article XVI.

¹⁶ GPA, Article VI.2. A national technical regulation, according to the footnote that modifies this text, is any standard set by a recognized body.

¹⁷ GPA, Article XX.

¹⁸ GPA, Article 23, "...provided that such measures are not a means or arbitrary unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade."

The North American Free Trade Agreement (NAFTA), a trilateral agreement between Canada, the United States and Mexico, is primarily different than the GPA because of its lower monetary thresholds. The monetary threshold for procurement between Canada and United States for goods contracts is \$25,000 (USD).¹⁹

NAFTA is similar to the GPA in that it also prohibits the use of "offsets" in covered procurements.²⁰ Technical specifications are also permitted if they are based on performance criteria rather than design or descriptive characteristics.²¹

NAFTA exceptions for public procurement include:

- i. Canada has reserved the right to favor domestic suppliers for **programs designed to benefit small and minority business, and agricultural products made in furtherance of agricultural support programs or human feeding programs.**²²
- ii. Relevant **general exceptions for public interest** to the agreement's procurement provisions include measures necessary to protect human, animal or plant life or health; or relating to goods or services of handicapped persons, of philanthropic institutions or of prison labour.²³

NAFTA is not binding on municipal and provincial governments;²⁴ however, in 2012 Canada's Prime Minister, Stephen Harper said he intended to "create a mechanism" to reclaim money paid out because of provincial violations of NAFTA.²⁵

d. AIT

The Agreement on Internal Trade (AIT) regulates contracts between the Provinces and Territories of Canada for goods above \$25,000.²⁶ It also governs goods procurements of the MASH sector, that is, municipalities, municipal organizations, school boards and publicly funded academic, health and social service entities above \$100,000.²⁷

The AIT restricts government procurement that discriminates based on the origin of the goods or services, but does allow for tenders to include technical specifications.²⁸

¹⁹ NAFTA, Annex 1001.2c, Country-Specific Thresholds.

²⁰ NAFTA, Article 1006: Prohibition of Offsets.

²¹ NAFTA, Article 1007: Technical Specifications.

²² NAFTA, Annex 1001.2b: General Notes, Schedule of Canada, section 1(d) and (f).

²³ NAFTA, Article 1018: Exceptions.

²⁴ Patrick Clark, "The Role of Sustainable Public Procurement Policies and Non-Governmental Certification Schemes in the European Union and Canada in the Context of Trade Rules" Policy Paper, (2011), published as part of the Canada-Europe Transatlantic Dialogue: Seeking Transnational Solutions to 21st Century Problems, p.8. (hereinafter "Clark, 2011")

²⁵ Shawn McCarthy, "NAFTA ruling puts another Newfoundland thorn in Harper's side", *The Globe and Mail* (8 June 2012) online: <http://m.theglobeandmail.com/news/politics/nafta-ruling-puts-another-newfoundland-thorn-in-harpers-side/article4241093/?service=mobile>.

²⁶ except for Nunavut; see Article 502.1(a).

²⁷ AIT, Chapter 5: Procurement, Article 502.4.

²⁸ *Ibid.*

AIT exceptions for public procurement include:

- i. The AIT does not apply to procurement of **goods intended for resale to the public or contracts with a public body or a non-profit organization.**²⁹
- ii. The AIT also provides exceptions to its government procurement provisions **where all of the following criteria are met:**
 - (a) the purpose of the measure is to achieve a legitimate objective;
 - (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Province that meet that legitimate objective;
 - (c) the measure is not more trade restrictive than necessary to achieve that legitimate objective; and
 - (d) the measure does not create a disguised restriction on trade.³⁰

Legitimate objective means one of the following objectives: (a) public security and safety; (c) protection of human, animal or plant life or health; (d) protection of the environment; (e) consumer protection; (f) protection of the health, safety and well-being of workers; or (g) affirmative action programs for disadvantaged groups.³¹

- iii. A Province may also, but only under exceptional circumstances, exclude a procurement of a **MASH sector entity for economic development purposes.**³²

III. LOCAL FOOD PROCUREMENT IN OTHER JURISDICTIONS

a. E.U.

The European Commission has directives and guides for European Union member states that promote local food procurement in accordance with WTO non-discrimination rules.³³

²⁹ AIT, Article 507(a), (d).

³⁰ AIT, Article 508.

³¹ AIT, Annex 502.4 (f).

³² AIT, Annex 502.4(k).

³³ For example, Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; see also 2011 European Commission Report, *Buying Social: A Guide to taking Account of Social Considerations in Public Procurement Practices.*; see also the European Commission webpage about EU Public Procurement Directives at: http://ec.europa.eu/environment/gpp/eu_public_directives_en.htm; see also *Buying Green: A Handbook on Environmental Public Procurement*, European Commission (2004), available at: http://ec.europa.eu/environment/gpp/pdf/buying_green_handbook_en.pdf.

These documents advise member states to increase local and sustainable procurement through carefully crafted technical criteria. These criteria must relate to the characteristics or performance of the products (e.g. recycled material) or the production process of the products (e.g. organically grown).³⁴ A contracting authority should not designate a specific label or certification, as this is considered a form of discrimination, but rather, criteria that underlies the label or certification.³⁵ For example, requests for proposals from governments can increase percentages of local food purchased by listing criteria such as: freshness, seasonality, frequency of delivery, and methods of production (e.g. organic).

Several EU member states have made policies that support local sustainable food systems, including the United Kingdom and Italy, which will be reviewed below.

³⁴ see GPA Article XVI, Technical Specifications.

³⁵ Clark, 2011, p. 10-11, FN 42.

i. U.K.

As part of the United Kingdom's 2002 Sustainable Farming and Food Strategy, the Department of Environment, Food and Rural Affairs (DEFRA) initiated a **Public Sector Food Procurement Initiative** (PSPFI) in 2003. Through capacity building, this initiative encourages public bodies (hospitals, schools, prisons, and canteens) to procure food in a manner that **considers the principles of sustainable development**.³⁶ This initiative teaches these bodies how to procure sustainably, provide better taxpayer value, and comply with EU laws designed to ensure public procurement is fair, transparent and not discriminatory.³⁷

The initiative encourages public bodies to **specify fresh and seasonal produce in their tenders** for food and to **break larger contracts into lots**. Breaking contracts into lots is not intended to bring the contracts below the monetary threshold of the GPA, but rather to make the contracts accessible to local farmers. For example, Cumbria County Council has split up food procurement contracts (for offices and schools) into several smaller ones, according to product and locality. This structure helps smaller producers to gain such contracts.³⁸

Public bodies can specify in their contracts various **sustainability criteria** set by national or regional bodies or run by voluntary organizations. **Certification** can be evidence of compliance with the criteria; however, equivalent products that also meet the criteria must also be considered.³⁹

a. Italy

Italy promotes local food procurement in its schools and hospitals by **linking culture and food**, as well as through **technical specifications**, such as seasonality.⁴⁰

For example, Italy's 1999 Finance Law provides as follows:

To guarantee the promotion of organic agricultural production of quality food products, public institutions that operate school and hospital canteens will provide in the daily diet the use of organic, typical and traditional products as well as those from denominated areas, taking into account the guidelines and other recommendations of the National Institute of Nutrition.⁴¹

³⁶DEFRA's Sustainable Food and Farming Strategy (2003), accessed at: <http://archive.defra.gov.uk/foodfarm/policy/sustainfarmfood/index.htm> .

³⁷ DEFRA, Sustainable Farming and Food Strategy: Forward Look (July 2006), online at: <http://archive.defra.gov.uk/foodfarm/policy/sustainfarmfood/documents/sffs-fwd-060718.pdf>

³⁸ Facilitating Alternative Agro-Food Products (FAAN) "Local Food Systems in Europe, Case studies from five countries and what they imply for policy and practice" (2010) Genewatch, at p.17.

³⁹ DEFRA website, Sustainable Development in Government, Government Buying Standards, Guidance on food and catering services standards, Scope, definition and context, Legal context, online at: <http://sd.defra.gov.uk/advice/public/buying/products/food/guidance/scope-definition-context/#definition>.

⁴⁰ Martha MacLeod and Jennifer Scott "Local Food Procurement Policies: A Literature Review" (2007) Ecology Action Center, prepared for the Nova Scotia Department of Energy, at p.14-16.

⁴¹ Finance Law, December 1999, Chapter 1, Measures to facilitate the development of employment and the economy, section 4.

In schools this policy has been carried out by including designations in tenders to favour local traditional products in public procurement contracts, for example in Rome and in San Marcello.⁴² This type of specification has been encouraged because the EU has created a designation system for specialty foods linked to geographical areas based on unique territorial characteristics of the food.⁴³ Rome also includes additional specifications in its school food tenders, including seasonal and organic foods, which help increase percentages of local food procurement.⁴⁴

b. U.S.

Several states within the United States have adopted ‘farm to school’ programs to increase local food procurement in schools, as well as broader local food procurement policies.⁴⁵ For example, Illinois *Local Food Farms and Jobs Act*, 2009, directs all State agencies (hospitals, schools, prisons) to purchase 20% of their food locally by 2020, even if it costs more. U.S. States are not bound under NAFTA, but under the GPA, the Illinois Department of Central Management Services is committed under the U.S.’ Annex 2. This Department is responsible for providing procurement services to state agencies. However, it is possible that this measure might be exempted from the GPA as a result of the following two conditions included the U.S.’ Annex 2.

3. Nothing in this annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.

4. The Agreement shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government.

A review of the U.S.’s national local food procurement policies is also relevant because U.S. federal departments are subject to both NAFTA and the GPA.

The 2008 US Farm Bill⁴⁶ directs the Federal Department of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. As a result a Rule was passed under the Bill enabling these institutions to apply a geographical preference in the procurement of unprocessed locally raised agricultural products.⁴⁷

⁴² *Supra* note 37.

⁴³ 1993 EU Regulation enabling the following food certification: Protected Designation of Origin (PDO) and Protected Geographical designation (PGI) and traditional specialty guarantee (TSG).

⁴⁴ *Supra* note 37, at p. 15.

⁴⁵ See <http://www.farmtoschool.org/>.

⁴⁶ Formally called the *Food, Conservation, and Energy Act of 2008*.

⁴⁷ Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, Federal Register Vol76, No.78, April 22, 2011.

This Department of Agriculture Rule appears discriminatory and therefore in breach of the GPA and NAFTA, however, the Rule may be exempted under the U.S.' exceptions for agricultural support programs or human feeding programs included in both the GPA and NAFTA.⁴⁸ It may also be exempted because the geographical preference is deemed to be applied in a manner that is non-discriminatory, and therefore **the term 'local' may qualify as a legitimate technical specification criteria.**⁴⁹

b. Nova-Scotia

Nova Scotia's 2007 *Environmental Goals and Sustainable Prosperity Act* committed the province to develop a draft procurement policy by 2009. In August 2009, Nova Scotia Procurement Services released the Province of Nova Scotia Sustainable Procurement Policy which supports local food procurement through what it calls the Nova Scotia Preference, which provides:

In order to support the local manufacturing, agriculture and aquaculture industries, Departments are authorized **to apply a preference for goods up to and including \$10,000** excluding taxes, **which are manufactured or produced in Nova Scotia**, when it is determined to be in the best interest for the Province of Nova Scotia.⁵⁰

This guideline has been established to support Nova Scotia small businesses and communities. For those contracts above \$10,000, the Department is merely required to consider sustainable criteria.⁵¹

By ensuring such a small monetary threshold for this discriminatory policy, the Nova Scotia government is reducing its risk of breaching the terms of the AIT.

IV. ONTARIO'S CURRENT LOCAL FOOD PROCUREMENT MEASURES

Ontario is currently increasing local food procurement as a result of interventions of non-profit organizations, government funding of projects that support local food efforts and promote local food, and municipal policies.

Local Food Plus (LFP) is a not-for-profit organization that certifies local farmers and brokers procurement contracts between institutions and those farmers. So far, LFP has brokered deals with the University of Toronto and the City of Markham, amongst others.

⁴⁸ NAFTA, US Schedule s.1; see also GPA, US Annex 1, s.1.

⁴⁹ See the 2009 legal opinion provided to British Columbia's Government and Service Employee's Union by Steven Shrybman of Sack Goldblatt Mitchell LLP regarding the term 'local' and the AIT; see also the United States Department of Agriculture Procurement Geographic Preferences Q&A's, (available at: <http://www.fns.usda.gov/cnd/F2S/Geographic.htm>), that discuss how State agencies should apply these geographic preferences.

⁵⁰ Province of Nova Scotia Sustainable Procurement Policy, 2009, p.9, online at: http://www.gov.ns.ca/tenders/policy/pdf_files/procurementpolicy.pdf.

⁵¹ *Ibid*, p.8.

The City of Toronto's Local Food Procurement Policy is part of some of the city's larger projects, such as the "Climate Change, Clean Air and Sustainable Energy Action Plan." The policy's overall objective is 50% local food for city operations. Its implementation started with city run daycares. Its first year, 2008/2009, resulted in a 13.4% increase in local food procurement.⁵² Purchasing practices that focus on seasonal produce have been effective in managing cost impacts of local procurement, as these foods are more readily available locally and therefore more affordable.

The Broader Public Sector Investment Fund (BPSIF) is a partnership between the Ontario Ministry of Agriculture, Food and Rural Affairs and the Green Belt Fund, a non-profit organization. BPSIF is a source of information on local food in Ontario as well as funding for projects that support public sector local food efforts and the promotion of local food.⁵³

V. CONCLUSION

Based on a review of the major trade agreements that may restrict Ontario's food procurement powers, and a review of how Ontario and other jurisdictions have dealt with these restrictions, it appears that there are legal measures available for increasing local food procurement measures in Ontario.

Ontario could adopt local food procurement policies that are fair and transparent and non-discriminatory by carefully crafting requests for proposals for food tenders so that they,

- include technical specifications that favour locally produced food, such as:
 - seasonality,
 - freshness,
 - organic certification (if there is a preponderance of the specified organic food within Ontario),
 - local sustainable certification, or
 - any other specification that describes local food and meets the definitions of "technical specification" included in trade agreements.
- link food to a geographical area based on special characteristics, as is done in Europe.

Furthermore, it is also possible to create local food procurement policies that are exempt from trade agreements altogether and therefore not subject to their non-discrimination principle or ban on offsets. For example local food procurement measures,

- designed to fall below monetary thresholds of trade agreements, such as the local food procurement policy in Nova Scotia,

⁵² City of Toronto staff report, "Local Food Procurement Policy and Implementation Plan – Update" (June 8, 2009).

⁵³ See: <http://bpsinvestmentfund.ca/>.

- that are split to enable local farmers to bid on the contracts, but not broken up in order to get below trade agreement monetary thresholds, which is generally not permitted under trade agreements,
- support non-profit organizations to facilitate procurement deals with the public sector, and
- that focus on the MASH sector, which tends to have higher monetary thresholds.

However, it should be noted that trade agreements often include provisions that recommend that parties respect the spirit of the agreements even in procurements that fall below their monetary thresholds, and thus this approach to local food procurement policies should be managed carefully.

As this is a complex area of law, any government bodies considering adopting any of the approaches listed throughout the paper within their requests for food proposals should first have the proposals reviewed by the appropriate government department with expertise in procurement trade law issues.

APPENDIX - TABLE OF PUBLIC PROCUREMENT RESTRICTIONS EXAMINED

	Covered Entities	Monetary threshold (goods)	Exceptions*
GATT	<ul style="list-style-type: none"> • central national governments 	n/a	<ul style="list-style-type: none"> • measures for government purposes not for commercial resale • measures necessary to protect to protect human, animal or plant life or health • measures relevant to conserving exhaustible natural resources
GPA	<ul style="list-style-type: none"> • provincial ministries • Agricorp Agency • food and beverage serving services 	355,000 SDRs ≅\$544,431 CDN	<ul style="list-style-type: none"> • measures necessary to protect human, animal or plant life or health • set-asides for small and minority business or contracts for agricultural products made in the furtherance of agricultural support programs or human feeding programs
NAFTA	<ul style="list-style-type: none"> • federal government 	\$25,000 USD (Canada & US)	<ul style="list-style-type: none"> • programs designed to benefit small and minority business • measures necessary to protect human, animal or plant life or health • measures relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor
AIT	<ul style="list-style-type: none"> • provincial entities • MASH sector 	\$25,000 \$100,000	<ul style="list-style-type: none"> • goods intended for resale to the public • contracts with public bodies or non-profit organizations. • “legitimate objectives” • MASH sector entity for economic development

* exceptions relevant to local food procurement measures