



Public Procurement at the Intersection of Trade, Administration, and Contract

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Derek McKee
Associate Professor
Faculty of Law
Université de Sherbrooke

The liberalization of public procurement is at the heart of the recent Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, as well as its intra-federal counterpart, the Canadian Free Trade Agreement (CFTA). These agreements are expected to have a profound impact on public markets across Canada, especially at the provincial and municipal level. The implementation of trade law with respect to procurement raises familiar questions about the characterization of domestic laws as trade barriers. However, in the case of procurement, rather than confronting domestic rules, trade law generally confronts domestic discretion, framed either by administrative law or contract law. The purposes of these domestic regimes are to some extent compatible with the goal of trade liberalization, but there also exist important tensions between domestic legal values and those of the trade agreements. Internally, there are also tensions between contract and administrative law, which in the case of Canada has given rise to competing parallel and hybrid legal regimes. An analysis of the implementation of trade law with respect to public procurement must grapple with these tensions.