

July 18, 2023

Honourable Prabmeet Sarkaria  
President of the Treasury Board

**RE: Proposed Approach for Regulations under the Building Ontario Businesses Initiative Act, 2022**

Dear Minister Sarkaria,

Around the world, countries are waking up to the necessity of industrial policy, which can be summarized as using all strategic policy levers to develop our economy and achieve a lasting competitive advantage for our manufacturing sector. With more than \$30 billion in goods and services purchased by the Ontario government every year, procurement is very clearly one of those strategic levers.

While Canadian manufacturers believe in a fair and open economy, preserving our ability to take advantage of procurement opportunities in other jurisdictions, we must not be naïve to the point of thinking all countries around the world share this sentiment.

This is why CME has been vocal in its support of the Building Ontario Businesses Initiative since it was announced in 2022. Building on our previous submissions, we have reviewed the content of your latest regulatory consultation documents and are providing the attached as a response.

Should you or staff have any questions, please do not hesitate to contact us.

Sincerely,



Vincent Caron  
Director, Policy & Ontario Government Relations

CC Honourable Vic Fedeli, Minister of Economic Development, Job Creation and Trade

## Regulatory Submission

### Building Ontario Businesses Initiative Act (BOBI)

Reflecting the make-up Ontario manufacturing, CME membership is diversified. While over 90% of Ontario manufacturers are small businesses, the most significant capacity to produce at scale and export often resides with more established firms.

To remain competitive on global markets, set proper incentives for companies to succeed and avoid unintended consequences in the implementation of BOBI, it is important for the government of Ontario to develop it with the needs of both groups in mind.

While there will be differences in the input you receive from various companies, there are also areas of agreement. The following seek to focus on those areas to inform a proper balance for the implementation of the policy.

#### 1. Definition of an Ontario Business

As is the case in medicine, a significant source of products and services purchased by the government of Ontario, the first principle to stress in the implementation of BOBI is 'do no harm'.

Ontario manufacturers (large or small) cultivate intricate business relationships with a broader network of suppliers located in Ontario or abroad. This complexity requires a flexibility in regulatory development and bias toward outcomes, as opposed to the characteristics of companies.

While our assessment may be refined based on specific regulatory language the province decides on, our general recommendation would be to retain the proposed definition, clarifying that Canadian subsidiaries of foreign-owned companies are eligible **IF** they also have a significant presence in Ontario. Distributing and providing services in the jurisdiction should be excluded, as on their own those activities do not constitute a manufacturing footprint.

When defining what a significant presence in Ontario means, we believe the proposed criteria are too vaguely worded to make a final determination. At the heart of the definition is whether the government wishes to assess the proportion of worldwide employees, wages, salaries, fees contractors or goods produced in Ontario, or just the proportion that relates to the Canadian subsidiary? We would strongly recommend the latter to be a better measure and would recommend against any attempt at prescribing requirements based on worldwide metrics, as those may be impossible to administer and simply result in companies writing off Ontario for manufacturing investment.

With regards to selecting an appropriate and trade-compliant criterion for the Ontario presence, we believe the third one (producing a good or service in the jurisdiction) is the most appropriate, as it lends to a targeted assessment by the procuring agencies within the context in which a good is produced, while limiting ramifications for manufacturing investment. Having a majority of the workforce in the province could be considered as a criteria as well, if this calculation is based on the

headcount of the Canadian subsidiary and if it can be performed without additional administrative burden for the business.

One company consulted suggested to have businesses referred/registered by their local MEDJCT regional representatives. This could provide a reason for businesses to connect with their MEDJCT resources and at the same time ensuring the province supports manufacturing rather than warehousing/reselling.

Other elements that may be considered for a having a 'significant Ontario presence' may be maintaining the following in the province:

- Manufacturing facilities
- Headquarters and administrative offices
- Research and development facilities

In the case of global suppliers with a significant manufacturing presence in Canada, but not in Ontario, we would ask that the government remain careful with any exclusion that could result in new interprovincial trade barriers. The general objective should be to incentivize more manufacturing being done by jurisdictions which have comparable labour, environmental protection and cost structures while more boldly removing incentives to source from jurisdictions with a poor record on those fronts, or which have no reciprocal procurement or trade relationships with Canada.

Finally, because manufacturers source inputs from a broad array of locations, often with significant sensitivity to price, we believe the government must remain flexible with regards to the domestic content of products produced by Ontario manufacturers and sold to government agencies. As a default, the government should require the last substantial transformation to occur in the province (a formulation well-established in trade agreements, for example, in Chapter 4 of CUSMA), rather than mandating 50% of the value of a good (which is our read of the proposed language). In areas where trade agreements have set more stringent requirements, on product domestic content or other criterion (for example, for transit projects), those should continue to apply.

## 2. Prescribing Threshold Amounts for Preference

A general goal of the BOBI initiative is to increase the overall percentage of products purchased from Ontario manufacturers by publicly funded organizations. To achieve this objective, the application must be as broad as possible, binding for all ministries and broader public service organizations, and most products. While granting exceptions should be avoided as much as possible to avoid diluting the policy impact, such exceptions may be needed where Canadian manufacturing capabilities do not exist or for other motives related to public safety, economic competitiveness, or force majeure.

CME does not have specific examples to provide, but we suggest the regulations preserve flexibility to determine such exceptions in the future.

Specific attention should also be given to refining definitions for transaction and contract size, and term of contract. Definitions currently considered are too general and subject to much interpretation, which limits our ability to provide comments in a definitive manner. For this reason, we may provide further comments when the regulations are circulated for comments.

### 3. **Manner in which preference is given to Ontario businesses**

A general principle of procurement is to prescribe more sophisticated evaluation for projects of larger value. We believe the way the preference is given to Ontario companies could follow this principle, with lower value contracts reserved to Ontario businesses, while larger value contracts providing a preference through a points system. For simplicity and consistency of administration, we would advise the latter to be covered through the weighted criteria system originally envisioned for the BOBI initiative.

Finally, government should aim to make it easy for the public sector to purchase goods for verified Ontario manufacturers particularly for small transaction sales. Leveraging existing resources such as the [Ontario Made website](#), there should be an easily accessible procurement portal where manufacturers can be listed, and public sector purchasers can search for goods and services available. The portal should also provide guidance on manufacturing capacity and encourage procurement offices to contact manufacturers if they cannot find the specific good for which they are looking.