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WP/98/51

INTERNATIONAL MONETARY FUND

Western Hemisphere Department

The Canadian Agreement on Internal Trade: Developments and Prospects

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April 1998

Abstract

Under a federal system of government, the division of responsibilities between the federal, provincial/state, and local levels of government may create internal barriers to trade. To deal with this problem, the federal and provincial governments in Canada established the Agreement on Internal Trade (AIT). This paper takes stock of the achievements and shortcomings of the AIT. Because the internal barriers to trade being addressed by the AIT are not unique to Canada, the agreement presents a useful model for reform that could be emulated by other countries.

JEL Classification Numbers: F14, F15

Keywords: internal trade, trade barriers, trade agreements

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¹The author wishes to thank Steven Dunaway and Sean O'Connor for their comments on an earlier draft. The author also thanks Jeffrey Cole for his assistance in preparing the data on interprovincial trade flows.

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Summary

Under a federal system, the division of responsibilities between federal, provincial/state, and local governments may create internal barriers to trade. To deal with this, the federal and provincial governments in Canada negotiated the Agreement on Internal Trade (AIT), which entered into force on July 1, 1995. This paper examines the achievements and shortcomings of the AIT. Although no other government appears to have undertaken a comparable reform, the internal barriers to trade addressed by the AIT are not unique to Canada and thus the AIT presents a useful model that could be emulated by other countries.

The AIT eliminates some existing barriers and impedes the introduction of new barriers through a number of general rules governing trade-related provincial policies, and through a set of specific sectoral provisions. While the general rules would appear to create a highly liberal environment, they apply only to matters covered in the specific-provisions sections of the agreement and these specific provisions often explicitly qualify, or exclude, the applicability of these general rules. Major exceptions to the liberalizing elements of the agreement include: a transitional exclusion for energy products and related services; exceptions for reasons of regional economic development; an exclusion of certain government agencies from the obligations on government procurement; a blanket exemption for measures adopted or maintained with respect to culture or cultural industries; and a potentially far-reaching "legitimate objectives" exception.

Indications are that the terms of the Agreement are being met. There have, however, been a number of significant delays in meeting the AIT's time-based commitments. Improving the record of compliance with agreed timetables for the implementation of existing obligations may require some strengthening of the AIT's institutional arrangements. The AIT, as virtually all trade agreements, also contains significant holes and loopholes, some of which could be narrowed over time.

I. INTRODUCTION

Under a federal system of government, the division of responsibilities between the federal, provincial/state, and local levels of government may create internal barriers to the free flow of goods, services, labor, and capital, that reduce the efficiency of the economy. To deal with this problem in a systematic fashion, the federal and provincial governments in Canada established the Agreement on Internal Trade (AIT), which entered into force on July 1, 1995. Along the lines of international trade agreements, the AIT established a legal/institutional structure that is designed to diminish barriers to interprovincial trade flows. The signing of the AIT was an important step toward progressively liberalized interprovincial trade in Canada. This paper takes stock of the achievements and shortcomings of the AIT. Although no other government appears to have undertaken a comparable reform, the internal barriers to trade being addressed by the AIT are not unique to Canada. The Canadian AIT thus presents a useful model for internal trade reforms that could be emulated by other countries.

Section B presents a brief overview of the size and scope of Canadian internal trade barriers in the period leading up to the AIT. Section C reviews the essential features of the AIT. Section D updates developments since the AIT entered into force, including a review of the implementation of scheduled commitments and any developments under ongoing negotiations. Section E brings into focus the remaining obstacles to the free flow of goods, services, workers, and capital across Canadian provinces and identifies those areas where further progress is warranted.

II. BARRIERS TO INTERNAL TRADE IN CANADA

In the period leading up to the AIT negotiations, the Internal Trade Secretariat identified three kinds of government practices that created barriers to internal trade: (i) discriminatory practices (e.g., preferences based on provincial residency); (ii) unharmonized practices (e.g., different product standards); and (iii) the inequitable application of administrative practices (e.g., publication of tender requests only locally). Discriminatory practices were identified in all areas except consumer protection and the operation of financial institutions, with provincial government procurement practices and discriminatory practices toward workers identified as among the most significant problem areas. Unharmonized provincial standards, business and product regulations, and licensing requirements presented difficulties in all areas except government procurement and natural resources trade. The inequitable application of administrative practices established barriers to internal trade in the areas of provincial government procurement and the sale of alcoholic beverages.

Some indication of the significance of internal barriers to trade can be inferred from recent developments in interprovincial versus international trade. After remaining relatively flat from 1984-91, the real value of Canadian international trade expanded significantly, while real interprovincial trade has remained essentially flat since 1984 (Chart 1). The increase in the former reflects the implementation of the regional trading arrangements beginning in January

1989 (Canada-U.S. Free Trade Agreement) and January 1994 (North American Free Trade Agreement). The data on interprovincial trade suggest that the restrictiveness of internal trade barriers were more or less unchanged in the decade leading up to the AIT. Most provinces have also seen a decline in the significance of interprovincial trade flows as a percent of provincial GDP; in 1996 *interprovincial* exports accounted for a smaller share of GDP than *international* exports for all but 3 of the 12 provinces and territories (Chart 2).

Despite qualitative evidence that barriers to interprovincial trade have been significant,² the restrictiveness of these barriers do not appear to have been as large as international barriers to trade, particularly those that existed between Canada and the United States prior to implementation of the regional trading agreements.³ McCallum (1995), using a gravity-type model of trade,⁴ compared interprovincial trade flows within Canada to trade flows between Canada and the United States using 1988 data.⁵ The data suggest that, other things equal, trade between two Canadian provinces is more than 20 times larger than trade between a province and a U.S. state.⁶ Engel and Rogers (1996) investigate departures from the law of one price within Canada and between Canada and the United States. Using disaggregated price data from nine Canadian cities in six Canadian provinces and from 14 U.S. cities, they compared the variation in relative prices of the same goods across cities, controlling for

²A study by Trebilcock, et al. (1983) identified hundreds of barriers to interprovincial trade and helped to initiate the national debate that led to the AIT.

³Research that has attempted to estimate directly the potential benefits of eliminating internal trade barriers shows gains ranging from 1 to 1½ percent of GDP (see Trebilcock and Behboodi (1995, p. 22) and Migué (1994)). In contrast, the Department of Finance Canada (1988) estimated the gains for Canada from tariff reductions under the original free trade agreement with the United States to be equal to 2½ percent of GDP.

⁴Gravity trade models specify regional trade flows as a function of economic activity in both regions (usually measured by regional GDP) and geographic distance between regions. Interregional trade flows are typically found to be positively related to the level of economic activity at home and abroad, and negatively related to the distance between regions.

⁵The most recent period for which province-to-province trade data was available at the time McCallum's study was done.

⁶McCallum points out, for example, that a gravity model without national borders would predict that Ontario and Quebec would export about ten times more to California than to British Columbia, because the distances are essentially similar and British Columbia's GDP is less than one-tenth that of California. But in 1988 Quebec and Ontario exported in excess of three times as much to British Columbia as to California.

differences in geographical distance.⁷ Engel and Rogers found, however, that crossing the border was comparable to adding about 75,000 miles of distance.⁸

III. ELEMENTS OF THE AIT

The AIT eliminates some existing barriers and impedes the introduction of new barriers. It does this through a number of general rules governing trade-related provincial policies, and through a set of specific sectoral provisions that address some of the direct and indirect barriers to internal trade. The Agreement also establishes a framework for settling internal trade disputes.

Under the AIT, the parties to the agreement are guided by six general rules. A *nondiscrimination* provision requires that Parties accord equal treatment to all Canadian persons, goods, services, and investments regardless of their provincial origin.⁹ A *right of entry and exit* prohibits measures (adopted or maintained) that restrict the movement of persons, goods, services, or investments across provincial boundaries. Parties must ensure that measures (adopted or maintained) create *no obstacles* to internal trade. It is recognized that provincial governments in pursuing important nontrade objectives may cause some deviation from the above rules, but in pursuit of such *legitimate objectives* governments must ensure that policies have a minimal adverse impact on interprovincial trade.¹⁰ Different standards and

⁷If Canadian interprovincial trade barriers were restrictive relative to barriers at the U.S. border, relative price dispersion for the same goods selling in two Canadian cities should exceed that between a Canadian city and a comparably close U.S. city.

⁸The data covered the period from June 1978 to December 1994. When the sample period was split into a pre- and post-1989 period (i.e. before and after the Canada-U.S. Free Trade Agreement), the authors surprisingly found a slight *increase* in the estimated border coefficients in the post-1989 period.

⁹ In technical terms, the requirement is “no less favorable treatment” than that accorded resident persons, products, services, or investments. This is in line with the “national treatment” obligations under Article III of the General Agreement on Tariffs and Trade (1994) which prohibits discrimination on the basis of national origin once a product has been imported into the territory of a WTO member country. Moreover, the AIT explicitly notes that offering identical treatment might not be enough to meet the nondiscrimination standard.

¹⁰ The AIT requires that a party demonstrate that the purpose of an otherwise nonconforming measure: (i) is in pursuit of a legitimate objective; (ii) does not impair internal trade unduly; (iii) is not more restrictive than necessary to achieve the legitimate objective; and (iv) does not create a disguised restriction on internal trade. The “legitimate objectives” are generally

(continued...)

regulatory practices across provinces must be *reconciled* through harmonization, mutual recognition,¹¹ and other means, in order to underpin the freer movement of goods, services, labor, and investment. Parties must also ensure a high level of *transparency* respecting all matters covered by the AIT. These general rules apply only to matters covered in the specific-provisions sections of the agreement and these specific provisions often explicitly qualify, or exclude, the applicability of these general rules.¹² Moreover, the AIT specifically indicates that in cases of inconsistency between the highly liberal general rules and the specific sectoral provisions, the specific rules are to prevail.

Eleven sectoral chapters govern the reduction of internal trade barriers in such areas as government procurement, labor mobility, and agriculture. While these specific rules institute important steps toward freer internal trade, significant exceptions remain. Major exceptions to the liberalizing elements of the agreement include: an exclusion for financial institutions or services;¹³ an exclusion for energy products and related services until a specific agreement could be reached;¹⁴ exceptions for measures that are part of a "general framework" of regional

¹⁰(...continued)

defined as "any of the following: public security and safety; public order; protection of human, animal, or plant life or health; protection of the environment; consumer protection; protection of the health, safety, and well-being of workers; or affirmative action programs for disadvantaged groups."

¹¹In the event that regulatory rules and practices are not harmonized, under "mutual recognition" provinces could accept the regulatory standards of another province in order to facilitate interprovincial trade. Provinces, however, need only adopt mutual recognition if it accepts the regulatory measures of another as equivalent to its own.

¹²The AIT provides that, "the general rules established under this Chapter apply only to matters covered by Part IV (specific rules), except as otherwise provided in this Agreement. In the event of an inconsistency between a specific rule in Part IV and a general rule in this Chapter, the specific rule prevails to the extent of the inconsistency."

¹³Internal barriers to trade in the financial sector derive from unharmonized regulatory practices, including overlap and duplication in the area of prudential regulation, and unharmonized regulations governing insurance and securities firms.

¹⁴Barriers to internal trade in energy products and services are attributable to certain discriminatory practices (including, for example, monopoly provincial control over the transmission and distribution of electricity; and provincial restrictions on the use of local transmission lines by nonlocal utilities to provide electricity to third parties) and unharmonized regulations (including, for example, unharmonized standards on licensing and rate setting). Eliminating such obstacles would improve efficiency in the transmission and delivery of energy products
(continued...)

economic development; exceptions for a number of services and the exclusion of certain government agencies from the obligations on government procurement; a blanket exemption for measures adopted or maintained with respect to culture or cultural industries; and the potentially far-reaching "legitimate objectives" exceptions described in footnote 11. Moreover, numerous areas in which agreement could not be reached, or which required further clarification of obligations, were left for future implementation or further negotiations; these are detailed in Appendix 1 and summarized in the next section. Each sectoral chapter is discussed briefly in Appendix 2 with a view to laying bare important liberalizing features and identifying areas of retrenchment and/or delay.

IV. DEVELOPMENTS SINCE ENTRY INTO FORCE

With the exception of a number of important time-specific obligations contained in the AIT, indications are that the terms of the Agreement are being met. Of the 20 complaints lodged since the agreement entered into force, 17 of which involved alleged barriers to labor mobility, investment flows, or government procurement contracts, at least 8 were dropped before a ruling was reached and none has resulted in a finding of a prohibited practice.¹⁵

There have, however, been a number of significant delays in meeting the AIT's time-based commitments. Perhaps the most significant of these has been the inability to conclude an agreement on the energy sector, which was to have been concluded by July 1, 1995. Negotiations have produced a draft agreement, and a final agreement is expected to be finalized by July 1998. The commitment to extend the obligations of the Agreement in the area of government procurement to the so-called MASH sectors¹⁶ also was delayed beyond the scheduled completion date of June 30, 1996. Since mid-1997, there has been a good deal of progress in the MASH extension talks, and it is likely that an agreement will be reached. However, British Columbia has been resisting an extension to the MASH sector. To get around this problem, because the AIT requires a consensus among all parties on new commitments, the other provinces and territories are reportedly considering an agreement to accept new commitments on MASH sector procurement outside of the AIT.

In the area of labor mobility, a number of time-based commitments were specified with open-ended completion dates, and progress in these areas generally has been slow. The obligation

¹⁴(...continued)
and services.

¹⁵Internal Trade Secretariat (1997).

¹⁶Procurement activities of municipalities, municipal organizations, school boards and publicly funded academic, social service, and health entities (the MASH sector) were initially excluded from AIT obligations.

to complete a work plan for the implementation of the agreement on labor mobility was completed, but the commitment to implement, within a "reasonable period of time," the agreement on the recognition of occupational qualifications and reconciliation of occupational standards remains incomplete. Most of the time-based commitments in the sensitive areas of agriculture and food goods remain under discussion. In the area of trade in alcoholic beverages, a number of reviews on the implementation of the Agreement and mandated negotiations for further liberalization were delayed from July 1, 1996 to March 31, 1997 before the reviews were completed. In the event, no changes in existing discriminatory practices resulted from these reviews. Negotiations to reach agreement on special provisions required to extend coverage of the transportation chapter to regional, local, district, or other forms of municipal government were not completed, and Ministers now recommend dropping this obligation. Efforts to reconcile ("by harmonization, mutual recognition, or other means") regulatory and standards-related measures affecting trade in transportation services are nearing completion.

V. SCOPE FOR FURTHER PROGRESS

Improving the record of compliance with agreed timetables for the implementation of existing obligations may require some strengthening of the AIT's institutional arrangements; for example, steps could be taken to increase transparency and thus heighten all Parties' interest in abiding by agreed timetables. There are also a number of open-ended commitments (particularly in the chapter on labor mobility) that could be set on a firm timetable. Beyond such steps, however, the AIT, as virtually all trade agreements, contains significant holes (exclusions and exemptions from the obligations of the Agreement) and loopholes (conditions under which exceptions to obligations arise), some of which could be narrowed over time.¹⁷ In formulating an agenda for further progress, priorities should be set for gradually narrowing those holes and loopholes that are not necessary to accommodate important noneconomic objectives.

Exclusions for energy products and related services, financial institutions and services, and measures adopted or maintained with respect to culture or cultural industries are the most prominent sectoral holes in the AIT; the former two would appear to address no clearly defined noneconomic objective. The deadline for achieving agreement on the energy sector was missed, but negotiations have produced a draft agreement and a July 1998 completion date is envisaged. On the other hand, no timetable was established for integrating the financial sector or cultural industries into the Agreement.¹⁸

¹⁷ For an overview of the kinds of "holes and loopholes" that appear in a wide range of regional and multilateral trade agreements see Hoekman and Leidy (1993).

¹⁸ Financial services are expected to be addressed under separate negotiations; see Canadian Chamber of Commerce (1996, p. 14).

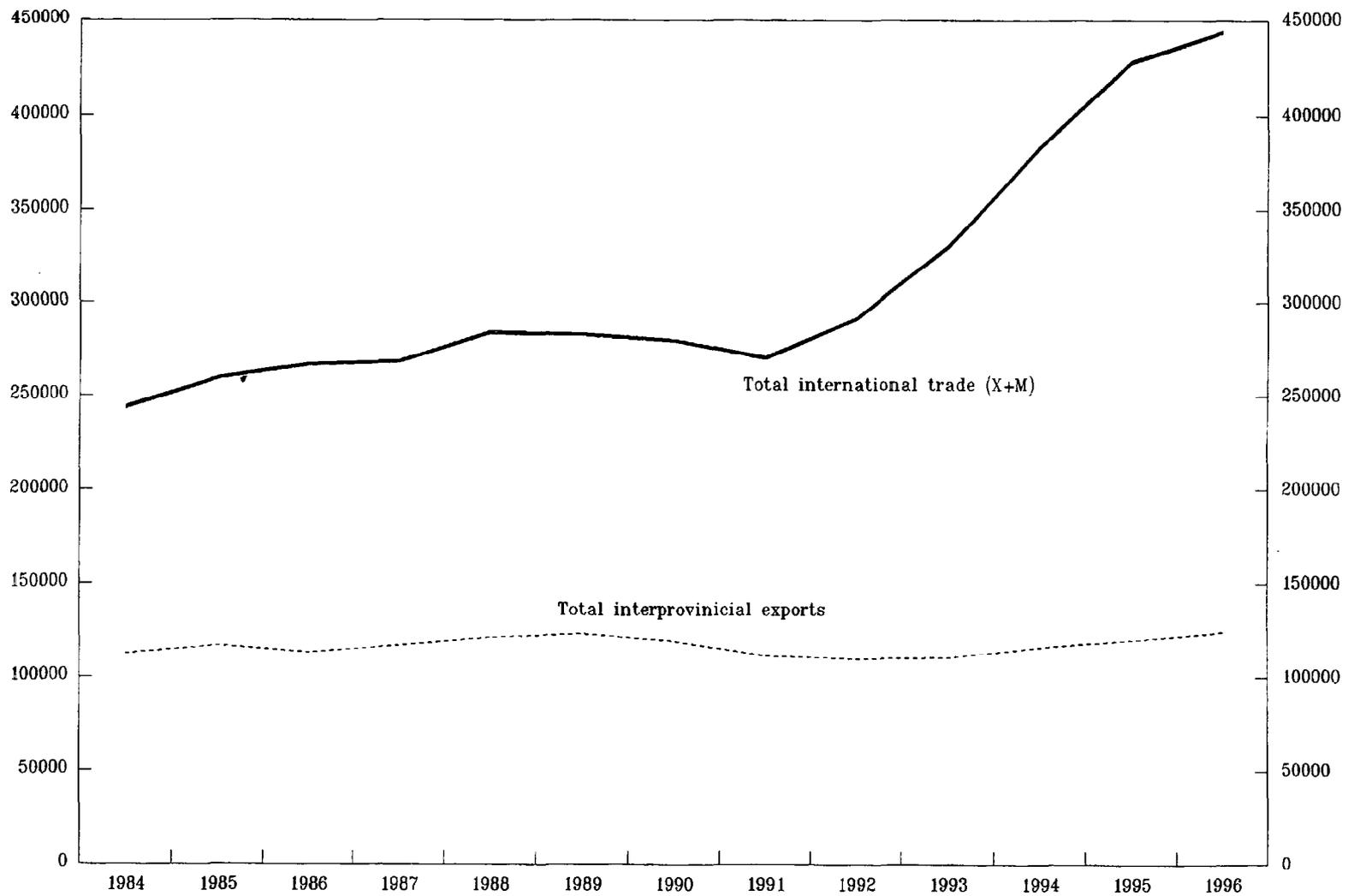
The general exception for “legitimate objectives” is a loophole with potentially far-reaching effects. Whether this escape clause will be applied sparingly or not remains unclear. However, the prospect that this provision could cast a wide net generates uncertainty, and efforts to narrow its potential reach could help solidify the liberalizing goals of the Agreement. This might be done, for example, by creating a short positive list of examples for each of the general areas of “legitimate objectives” that would apply; applications of the “legitimate objectives” escape clause in specific cases outside the list could then require a high burden of proof before being judged acceptable. Moreover, all of the various exceptions in the Agreement should be assessed according to whether they address specific legitimate noneconomic objectives. For those exceptions that do address a legitimate noneconomic objective, it would be desirable to determine whether nonconforming measures taken or maintained under these rules are serving the objective without creating undue barriers to trade.¹⁹ For those exceptions that serve no clear noneconomic objective, it would be desirable to launch further negotiations to narrow or eliminate them.

¹⁹Article 404 requires that such measures not be unduly trade restrictive, but does not provide for oversight. As under most international trade agreements, oversight takes place only via the dispute-settlement process, which implies a complaint must be registered by another Party.

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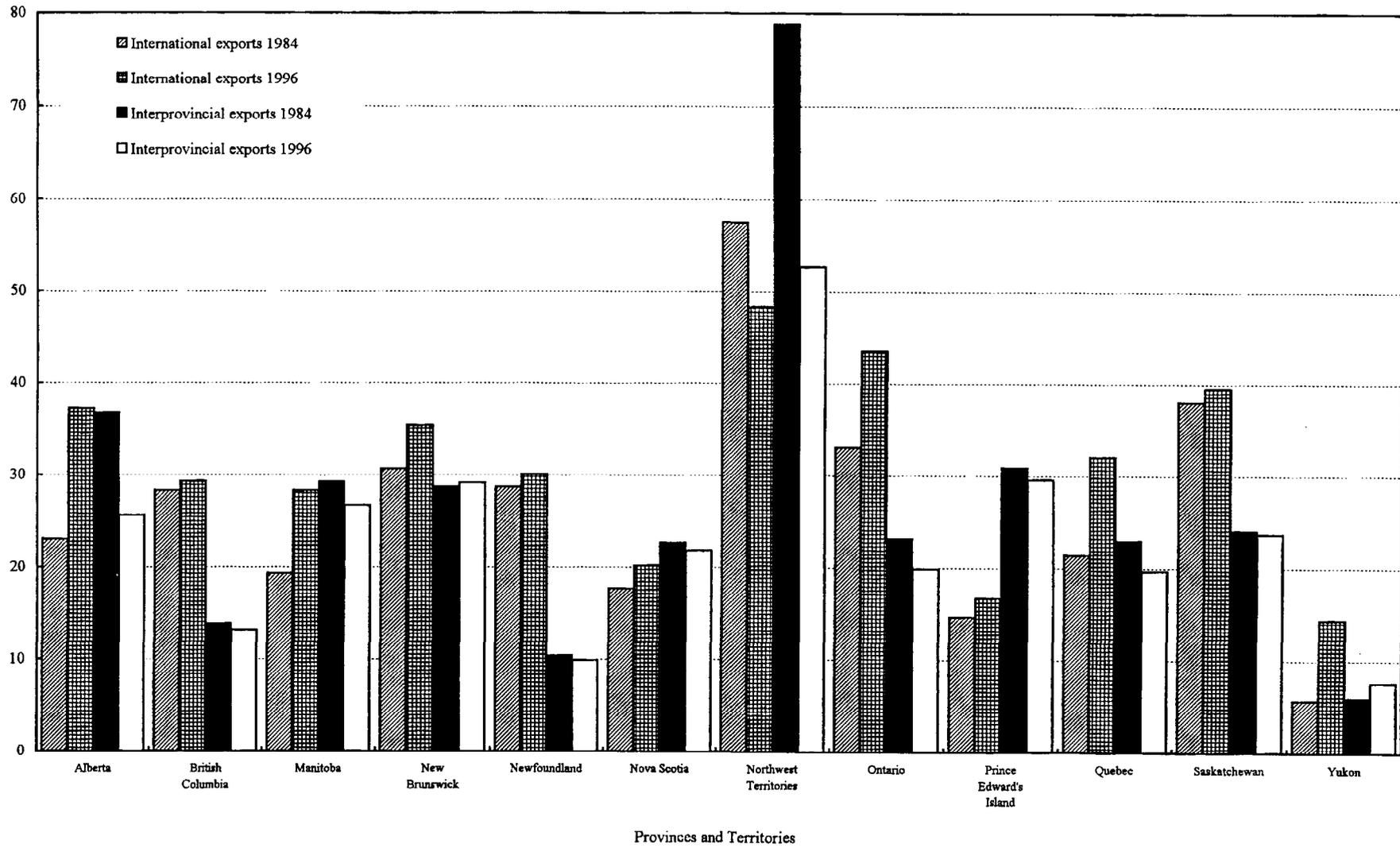
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CHART 1
CANADA
CANADIAN INTERNATIONAL AND INTERPROVINCIAL TRADE
(In millions of 1986 dollars)



Source: Statistics Canada.

CHART 2
 CANADA
 INTERNATIONAL AND INTERPROVINCIAL TRADE, 1984 and 1996
 (In percent of provincial GDP)



Sources: Statistics Canada.

Time-Based Commitments in the AIT²⁰ and their Status²¹

- **Government procurement**

The Provinces shall enter into negotiations, to be concluded no later than **June 30, 1995**, for the special provisions required to extend coverage of this Chapter to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities. **Negotiations were initiated and a text has been developed; 11 of 12 provinces and territories find the text acceptable. A deal may be concluded outside the context of the AIT.**

The Provinces, pursuant to negotiations under Article 517(1), agree to extend coverage of this Chapter to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities no later than **June 30, 1996. Same as above.**

The Parties shall enter into negotiations, to be concluded no later than **June 30, 1996**, with a view to reducing, modifying or amending the list of entities set out in Annex 502.2A in order to achieve reciprocity by, in particular, listing such entities in either Annex 502.1A or 502.2B. **Not completed, ongoing, draft text developed.**

The Parties shall, within **12 months** after the date of entry into force of this Agreement, undertake a review to: (a) assess whether this Chapter has met its objectives; (b) assess and adjust threshold levels, as necessary; © revise this Chapter to accommodate changing principles under this Agreement; and (d) review the opportunities for progress related to public procurement not covered by or excluded from this Chapter (Article 516.1). **No action pending completion of other obligations.**

The Parties shall, no later than **January 1, 1995**, establish a working group on electronic tendering. **The Working Group on Electronic Tendering was established, and the group announced in 1997 the selection of Cebra Inc. as their "Supplier of Choice" to operate a national electronic tendering service.**

The Parties shall review the opportunity to harmonize or reconcile the bid protest procedures provided in Articles 513 and 514 and make appropriate recommendations to the Committee **no later than three years after the date of entry into force of this Agreement. No action.**

²⁰Author's compilation drawn from the text of the Agreement on Internal Trade (July 1994).

²¹Internal Trade Secretariat, "Internal Trade Barriers in Canada," (March 31, 1997), press reports, and other information available on the Internal Trade Secretariat's Web page.

- **Investment**

Each Party shall, no later than **December 31, 1995**, list in Annex 604.4 its existing measures that are inconsistent with paragraph 1 or 2. **Completed**

The Parties shall, no later than **December 31, 1996**, examine the measures listed in Annex 604.4 and make recommendations to the Committee as to the appropriate retention, removal or replacement of such measures. **Completed and awaiting CIT approval.**

Article 615: The Parties shall establish a Working Group on Investment that shall prepare an annual report (Article 615). **Draft of first report is complete but is undergoing further revision and consolidation before submission to Ministers.**

The Parties shall, no later than July 15, 1995, prepare an implementation plan (under Article 606 on corporate registration and reporting requirements) for consideration by the Committee. **Completed and awaiting CIT approval.**

- **Labor mobility**

For the purposes of Article 102(1)(b) and © (Extent of Obligations), each Party shall, through appropriate measures, seek compliance with this Chapter (Article 703.1), and where a Party has been unable to secure voluntary compliance with this Chapter by an entity referred to in paragraph 1 within a reasonable period of time, it shall adopt and maintain measures to ensure such compliance. within a reasonable period of time (Article 703.2). **Slow progress; consultations ongoing.**

The Forum shall develop a framework for the Parties to establish and review annually a schedule listing specific measures permissible under paragraph 1 (of Article 709: legitimate objectives). **No measures have yet been filed for inclusion in the schedule.**

Calls for the development of a work plan for the implementation of the chapter's obligations (Article 712:1a) and an **annual report** on the operation of the chapter (Article 712:1c). **Completed.**

Parties shall initiate the process described in this Part (Part I of Annex 708: Occupational Qualification and Standards: Recognition of Occupational Qualifications and Reconciliation of Occupational Standards) **within 12 months after the date of entry into force** of this Agreement in order to implement the provisions of this Annex within a reasonable period of time (Annex 708, Part I, section 10). **Process started July 1, 1996; not completed; process continuing.**

- **Consumer-related measures and standards**

Effective **July 1, 1996**, each Party shall, in accordance with Article 401 (Reciprocal Non-Discrimination), eliminate any licensing, registration and certification fees that are applied to suppliers of any other Party in a manner inconsistent with that Article and shall ensure that, where it maintains any difference in the level of such fees, that difference reflects actual costs (Article 805). **Completed.**

The Consumer Measures Committee shall, **no later than July 1, 1997**, report to the Committee of Ministers responsible for Consumer-Related Measures and Standards (the "Ministers") on any agreement that the Parties might conclude on matters relating to consumer-related measures and standards, such as reciprocal investigative powers, enforcement of revocation rights, financial compensation for consumers and enforcement of judgments (Article 808). **Completed; work begun on cooperative enforcement measures.**

The Parties shall submit to the Ministers an **annual report** on matters relating to Chapter Eight for transmittal to the Committee on Consumer-Related Measures and Standards (Article 809). **Completed for "consumer measures committee meeting."**

Each Party shall, where appropriate, complete negotiations on harmonized measures respecting direct selling contracts and cancellation rights **no later than July 1, 1995**, and adopt such harmonized measures **no later than July 1, 1996** (Annex 807.1:1). **Completed.**

Parties that maintain registration systems for upholstered and stuffed articles on the date of entry into force of this Agreement shall harmonize any differing registration requirements that might otherwise constitute an obstacle to trade and adopt harmonized registration requirements **no later than January 1, 1996** (Annex 807.1:4). **Completed.**

Parties that maintain labeling standards for upholstered and stuffed articles on the date of entry into force of this Agreement shall negotiate and adopt uniform labeling standards **no later than January 1, 1996** (Annex 807.1:5). **Completed.**

Parties that adopt registration requirements or labeling standards for upholstered and stuffed articles after the date of entry into force of this Agreement shall negotiate and adopt harmonized registration requirements or uniform labeling standards **no later than January 1, 1996** (Annex 807.1:6). **Completed.**

The Parties shall complete negotiations on the harmonization of cost of credit disclosure **no later than January 1, 1996**, and shall adopt such harmonized legislation **no later than January 1, 1997** (Annex 807.1:10). **Completed.**

- **Agricultural and food goods**

Measures involving technical barriers with policy implications shall be included in the scope and coverage of this Chapter **effective September 1, 1997**. The Federal-Provincial Trade Policy Committee (the "Trade Policy Committee") shall, **on or before September 1, 1997**, give written notice to the Committee on Internal Trade of such measures (Article 902:3). **Not completed; on agenda and some barriers being addressed.**

The Ministers shall, **no later than September 1, 1997**, complete a review of the scope and coverage of, and any recommendations for changes to, this Chapter with the objective of achieving the broadest possible coverage and further liberalizing internal trade in agricultural and food goods (Article 902:4). **Not completed. (Agricultural Ministers have requested a delay until December 1998).**

Subject to any changes that may be agreed to by all Parties, the Parties shall adopt, with an effective date **no later than September 1, 1997**, the measures referred to in paragraph 6 (of Annex 902.5 regarding the establishment of industry consultation and review work programs) and the recommendations made in relation to those measures that are contained in the reports prepared under that paragraph (Annex 902.5:7). **Not completed; ongoing.**

With regard to technical barriers, and recognizing that the proliferation of different technical standards and norms can constitute significant impediments to trade, Ministers agree to work towards the adoption of common national standards **within the next five years** (Annex 903.1.II.). **Incomplete.**

The Agreement represented by this Memorandum of Understanding (Annex 903.1) will be **subject to a general review each year** and the Federal-Provincial Agricultural Trade Policy Committee will report on progress and necessary improvements as part of the review process at the annual Conference of Agriculture Ministers. **Completed for the July 1997 Agriculture Minister's meeting.**

The Ministers have, within the framework of their review of Canadian agri-food policy, agreed to: undertake a comprehensive review of the framework governing supply managed commodities and implement an action plan towards the development of sustainable orderly marketing systems in the Canadian dairy, poultry and egg industries (Article 903:2.a). **Not completed, underway.**

- **Alcoholic beverages**

Following approval of the Canadian Wine Standards, the Parties **shall review and endeavor to reconcile** the definition "wine and wine products" in Article 1013 with the definition approved by the Standards Committee on Wine of the Canadian General Standards Board (Article 1007). **Completed.**

Article 1010 contains five specific dates for review of non-conforming measures ranging from July 1, 1996 to December 31, 1999.

- Nova Scotia reserves the right to maintain differential floor pricing mechanisms for beer and beer products of Parties other than Nova Scotia and New Brunswick. Other Parties reserve the right to apply differential pricing mechanisms to beer and beer products of Nova Scotia. In both cases, this will be subject to review by the Parties before **July 1, 1996. Review Completed after deadline extended to March 31, 1997; but no change resulted.**
- New Brunswick and Quebec reserve the right to apply a differential cost of service, fees or other charges to beer and beer products of any other Party where it can be demonstrated that beer and beer products originating from New Brunswick or Quebec, respectively, encounter higher cost of service, fees, other charges or handling requirements than beer and beer products of that Party. Any implementation of this reservation will be subject to review by the Parties no later than **July 1, 1996. Review completed after deadline extended to March 31, 1997; but no change resulted.**
- Ontario reserves the right to apply its Canadian grape content requirements, pursuant to its 1988 grape and wine adjustment program, to the wine and wine products of a producer of any other Party until December 31, 1999. Ontario will review these requirements before the earlier of **July 1, 1996**, and the date of adoption of the Canadian Wine Standards in respect of these requirements by the grape and wine industries. **Review completed after deadline extended to March 31, 1997; no change resulted and Ontario holding discussions with grape growers.**

British Columbia and Quebec agree to negotiate by July 1, 1996, equivalent access for wine and wine products of the other Province (Article 1011). **Not completed after deadline extended to March 31, 1997; initial discussions have been held and bilateral negotiations are continuing.**

- **Natural resources processing**

The Working Group (on Processing of Natural Resources) shall, **within 12 months after the date of entry into force** of this Agreement, and no later than **every second year thereafter**, or earlier at the call of the Committee, undertake a review with the purpose of: (I) assessing whether this Chapter has met its objectives; (ii) identifying and resolving outstanding implementation issues respecting this Chapter; (iii) revising this Chapter to accommodate changing principles under this Agreement; and (iv) reviewing the opportunities for progress on matters related to the processing of natural resources that are not covered in, or are excluded from, this Chapter (Article 1104). **Completed.**

- **Energy**

The Parties agree to continue negotiations on Chapter Twelve (Energy) to conclude **no later than the date of entry into force** of this Agreement. **Not completed; draft chapter developed and completion now expected by July 1998.**

- **Communications**

The Parties shall establish a Committee on Communications-Related Measures composed of representatives of each Party (Article 1303). **Not completed** (but no issues for resolution have been raised).

- **Transportation**

The Provinces shall enter into negotiations, to be concluded no later than July 1, 1996, for the special provisions required to extend coverage of this Chapter to regional, local, district or other forms of municipal government (Article 1404.3). **Not completed; Transportation Minister recommended deletion of obligation.**

The Parties shall reconcile, by harmonization, mutual recognition or other means, their regulatory and standards-related measures in accordance with Annexes 405.1 and 405.2 and their measures listed in Annex 1408.1 in accordance with that Annex (Article 1408.1). **Not completed; work ongoing, nearly completed.**

The Parties shall, through the Council, periodically, but in any event **at least every two years**, endeavor to negotiate to liberalize or remove measures listed in Annex 1410.2. **Completed; recommendations accepted with reservations by Ministers.**

- **Environmental protection**

A list of existing non-conforming measures is to be completed within two years after the date of entry into force of this Agreement (Annex 1507.2). **Completed; one measure listed.**

On identification of non-conforming environmental measures, each Party shall endeavor to develop a work plan to eliminate those measures by January 1, 2000 (Article 1507.3). **No Action.**

- **Institutional provisions**

The Committee shall prepare an annual report on the functioning of this Agreement, including the operation of Chapter Seventeen (Dispute Resolution Procedures) (Article 1601.6). **Draft report completed and is to be included in the annual report on the AIT.**

The Parties shall, no later than April 1, 1996, establish a Working Group on Adjustment, composed of representatives of each Party, which shall seek to determine the effects of this Agreement on each Province in each fiscal year (Article 1602.1). **Not completed; parties uncertain whether a Working Group on Adjustment is necessary.**

The Working Group on Adjustment shall report annually to the Committee and may make recommendations for appropriate action to assist the Parties to adjust to the effects of this Agreement (Article 1602.2). **Not completed; pending further study.**

- **Dispute resolution**

The Parties shall maintain a roster of panelists in accordance with Annex 1705.1 (and advise the Secretariat of this roster) (Article 1705.1). **Eight parties have named panelists to the roster; Secretariat still trying to clarify status of notification from one other party.**

Each Party shall, before the date of entry into force of this Agreement, appoint an individual (the "screener") to review requests made under Article 1712(1) or (2) (Article 1713.1). **Seven parties have reports to the Secretariat.**

- **Final provisions**

Each Party shall:

- within a reasonable period of time after the date of entry into force of this Agreement, notify all other Parties of its existing programs relating to regional economic development (Article 1801.3); **five parties have not yet reported.**
- prepare an annual written report on its programs relating to regional economic development (Article 1801.3); **five parties have not yet reported.**

The Parties agree to review the effectiveness of existing mechanisms for consultation and participation within one year after the date of entry into force of this Agreement (Article 1810.4). **Not completed; no review in place.**

(Article 1810, future negotiations) The Committee shall review annually the scope and coverage of this Agreement and may make recommendations for the inclusion of measures not otherwise covered by this Agreement or of new chapters. **First Annual Report expected to be made public in early 1998. It is the intention of the Federal Government to table the report in the House of Commons.**

Summary of Commitments by Sector

- **Government procurement**

By most accounts, discriminatory **government procurement** practices presented the single most significant obstacle to internal trade. The stated purpose of the AIT's chapter on government procurement is to ensure equal access to procurement for all Canadian suppliers. Under the terms of this chapter, Parties are required to apply the general principle of non-discrimination, but only to the procurement practices of a specific set of provincial government entities, and provided that a specified dollar threshold is reached.²² All of the other "general rules" are specifically identified as applying to government procurement, with the exception of transparency.²³ Certain services are excluded from the non-discrimination obligation, there are exceptions based on regional and economic development objectives, and there are rules governing transition periods for selected non-conforming practices (identified in Annex 508.3). The entities to which the agreement applies are identified for each province (Annex 502.1A). Another annex (Annex 502.1B) identifies a set of services that are *not covered* by the agreement, including, for example, health and social services and the services of licensed professionals such as architects, engineers, pharmacists, nurses, veterinarians, chartered accountants and lawyers. There is also a specific list of entities by province that are excluded from the obligations on government procurement (Article 502.2, Annexes 502.2A and 502.2B). Finally, procurement activities of municipalities, municipal organizations, school boards and publicly-funded academic, social service and health entities (the MASH sector) were excluded from the obligations until further negotiations were completed (these were to be concluded by June 30, 1996).

- **Investment**

The chapter on **investment** broadly prohibits discriminatory treatment of non-resident investment projects (Article 603); prohibits the imposition of local presence or residency requirements (Article 604); prevents the federal government from discriminating among provinces in its investment activities (Article 603.3), prohibits the imposition of local content

²²In cases where the largest portion of a procurement is goods, the threshold is \$25,000. In cases where the largest portion of a procurement is services, or construction, the threshold is \$100,000 (Article 502.1).

²³While the chapter on government procurement also specifically excludes the general rule on non-discrimination, it includes its own rule on non-discrimination that is more encompassing than the general rule. For example, Article 504.3 includes an illustrative list of prohibited discriminatory practices and Article 504.4 establishes a prohibition on local-content requirements. What is missing from Article 504 that appears in the general rule on non-discrimination is the statement that "identical treatment may not necessarily result in compliance ..." (Article 401.4).

requirements on investment projects, or conditioning the receipt of incentives on a local content requirement (Article 607); and prohibits the adoption of investment incentives that discriminate on the basis of local ownership or presence (Article 608). These liberalizing measures are qualified in various ways.

While the chapter applies generally to measures adopted or maintained (i.e., existing measures), the broad proscriptions against requiring local presence or residency were not applied to practices in place at the time of entry into force.²⁴ There is also a section that excludes the application of the non-discrimination and local presence/residency obligations to existing measures that restrict the acquisition or use of land by non-residents (Article 611.2). Such measures are, however, precluded from being made more restrictive. The proscription on performance requirements (which includes the prohibition on local content) is weakened by two exceptions (beyond the standard exception for “legitimate objectives”). The first is a clarifying clause that a Party may condition “the receipt of an incentive on any requirement to carry out economic activities in its territory or to create or maintain employment (Article 607.2).” This would appear to imply that firms with a significant local manufacturing presence, for example, might be better situated to meet such tests than non-resident firms with little or no existing local manufacturing presence. The second is a specific escape clause that allows the imposition of performance requirements for regional economic development purposes under “exceptional circumstances” (Article 607.3). This safeguard provision specifies no time limits under which such actions may be invoked.

- **Labor mobility**

Like discriminatory practices in government procurement, provincial obstacles to **labor mobility** were among the most significant of Canada’s internal trade barriers. In some cases, Canadian workers have been required to reside in a province as a condition for employment eligibility or for occupational licensing. Moreover, because it is usually a provincial body that conducts professional licensing, certification and registration activities, the resulting array of diverse standards and practices has tended to inhibit the free flow of labor across provinces. The stated purpose of the chapter on labor mobility is to grant qualified workers in one jurisdiction access to employment opportunities in any other jurisdiction.

Barriers to labor mobility based on residency requirements are addressed through a specific prohibition on making residency a condition of employment, licensing, certification, or registration relating to a workers occupation (Article 706). Barriers to labor mobility owing to the non-harmonized provincial licensure, certification, and registration procedures are

²⁴Parties were required to list all such non-conforming measures by December 31, 1995, to make recommendations as to the appropriate retention, removal or replacement of such measures by December 31, 1996, and no prior non-conforming measure would be subject to these local presence and residency prohibitions, or to dispute-settlement proceedings, before January 1, 1997 (Article 604.4-6).

addressed in two ways. First, Parties are required to ensure that procedures relate strictly to competence, are transparent, result in no unnecessary delays, and impose no undue costs on non-resident workers (Article 707). Second, Parties are to undertake to mutually recognize the occupational qualifications of any other Party and to reconcile differences in occupational standards (Article 708). This obligation is given some additional strength by a set of specific steps Parties are to implement to achieve mutual recognition (Annex 708).²⁵ All of these provisions are, however, subject to a sector-specific “legitimate objectives” exception (Article 709).²⁶ There is also a specific safeguard clause authorizing time-limited departures from these obligations under exceptional circumstances (Article 710). Moreover, compliance with the obligations under this chapter are voluntary in the first instance (Article 703.2). If, “within a reasonable period of time”, voluntary compliance is not forthcoming, Parties are obligated to adopt measures to ensure compliance. What constitutes a reasonable period of time in this context is to be determined by a forum on labor mobility (Article 703.3 and Article 712.1). The Forum of Labour Market Ministers, established in 1983, is charged with implementing the Labour Mobility Chapter and established the Labour Mobility Coordinating Group to achieve that end.

- **Consumer-related measures and standards**

Differences in consumer product standards, which are adopted for consumer-protection purposes, impose additional costs on firms trying to penetrate multiple markets. Moving closer to harmonization of such measures and standards, and streamlining these, is the ostensible objective of the chapter on **consumer-related measures and standards**. However, there is no general rule or timetable for requiring mutual recognition or harmonization of standards. The chapter prohibits residency and local presence requirements as a condition of licensing, registration, or certification of a supplier (Article 806). It also calls for, “to the greatest extent possible”, reconciliation of consumer-related measures and standards “to a high and effective level of consumer protection” (Article 807.1), but this only applies to a small set of items (listed in Annex 807.1). Even with these apparently minimal obligations, this

²⁵ The Agreement requires that Parties initiate the process toward mutual recognition within 12 months of entry into force and that this be achieved within a reasonable period of time (Annex 708, Part I, paragraph 10). The Federal Government of Canada, through Human Resources Development Canada (HRDC), is offering financial assistance for certain activities intended to move toward mutual recognition of the occupational qualifications of workers and to reconcile occupational standards.

²⁶ “Legitimate objectives” is specifically defined in the Chapter on Labor Mobility as objectives that include public safety and security; public order; protection of human, animal or plant life or health; environmental protection; consumer protection; protection of the health, safety, and well-being of workers; affirmative action programs for disadvantaged groups; provision of adequate social and health services to all its geographic regions; and labor market development.

chapter includes a specific escape clause based on “legitimate exceptions” that appears to be unusually open-ended. Parties remain free to establish their own consumer-related measures and standards as long as the “legitimate objective” criterion is met, and this criterion is defined in a circular manner, as protecting personal safety or consumer economic interests (Articles 803, 804, and 810). Any measures or standards in pursuit of consumer protection are apparently permissible as long as they do not impair unduly access of persons, goods, services, or investments, and are not more trade restrictive than necessary to achieve the objective. These conditions help to minimize, but will not eliminate, the capture of legitimate consumer standards goals to achieve protectionist objectives.

- **Agriculture and food products**

Like the case of consumer-related measures and standards, barriers to trade in **agriculture and food products** can arise from differences in product standards and regulations. In addition, supply management, and price and income stabilization programs, which are administered by the provinces, can affect interprovincial trade flows. Nevertheless, supply management, and price and income stabilization programs, are excluded from coverage.²⁷ The chapter on agriculture and food products applies only to measures identified as technical barriers to trade by the Federal-Provincial Agri-Food Inspection Committee (Article 902.2).²⁸ Technical barriers that require policy actions were scheduled to be included in the scope of the agreement effective September 1, 1997 (Article 902.3). The section dealing with sanitary and phytosanitary measures²⁹ (Article 904) establishes a number of rules to help ensure that such measures do not impose unnecessary barriers to internal trade. In regard to such measures, Parties are required to take into consideration the implications for internal trade, to ensure that such measures do not “arbitrarily or unjustifiably discriminate between Parties”, and to refrain from imposing such measures “in a manner that would constitute a disguised restriction on internal trade.” Regarding measures other than sanitary and phytosanitary measures, there is an obligation not to amend existing measures or adopt new measures that would restrict internal trade in agriculture or food products (Article 905). The general transparency rules set out in Section III of the AIT are supplemented by more specific transparency obligations (Article 907.1), which in isolation appear to be quite significant. These are potentially weakened, however, by an escape clause in the event of an “urgent problem relating to sanitary or phytosanitary protection (Article 907.2). The agreement affirms the intention of

²⁷Canada does, however, have obligations regarding its agri-food policies under international trade agreements, including the Uruguay Round Agreement. The AIT re-affirms Canada’s commitment to meeting these international obligations (Article 903).

²⁸While the “Inspection Committee” has the responsibility of identifying specific technical barriers, these are broadly defined in Article 908.

²⁹These are measures that protect human, animal, or plant life from risks arising from disease-causing agents, toxins, additives, or other contaminants.

the Parties to work toward the adoption of "common national standards within the next five years" so as to alleviate those barriers arising from differing technical standards (Annex 903.1.II). Moreover, within the limited scope of this chapter the general rules of the AIT all apply, except as otherwise specified.

- **Alcoholic beverages**

Trade in **alcoholic beverages** has been a sensitive issue in Canada for some time as reflected, for example, in the beer-trade disputes between Canada and the United States.³⁰ The kinds of discriminatory practices regulating the sale of alcoholic beverages that have generated international trade disputes have also restricted internal trade. The AIT explicitly prohibits discriminatory practices in such areas as pricing, listing, access to points of sale, distribution, merchandising, and cost of service, fees and other charges (Article 1004). This provision essentially codifies existing "national treatment" obligations under the WTO; without it, non-local Canadian suppliers of alcoholic beverages could be treated less favorably than foreign suppliers. The general "no obstacles" rule of Section III is also strengthened with reference to its applicability to representative measures including administrative procedures, requirements and decisions, labeling and packaging regulations and requirements, and enological regulations, requirements and standards (Article 1005).³¹ Provinces are called upon to "endeavor, where practicable, to undertake to reconcile, through harmonization or other means" standards-related measures (Article 1007). The section on "non-conforming measures" establishes timetables for the review of a number of otherwise inconsistent measures that provinces reserve the right to apply.³²

³⁰A GATT dispute-resolution panel called for an end to certain discriminatory practices against U.S. beer by Canadian Provincial liquor boards in December 1991. An "agreement in principle" was then reached in April 1992 to eliminate these practices by October 1, 1993. However, the dispute was reignited on July 24, 1992, following the doubling of an Ontario environmental levy on cans containing beer. Ultimately a memorandum of understanding was reached in August 1993 resolving the outstanding issues.

³¹Trebilcock and Behboodi (1995, pp.68-69) contend that this provision will prove effective in eventually eliminating a number of the "more egregious disguised barriers to trade in alcoholic beverages".

³²For example, "Newfoundland reserves the right to deny beer and beer products of any other Party access to outlets of brewers' agents until it determines, in consultation with the other Parties, that the existing system is no longer necessary" (Article 1010.1). "Ontario reserves the right to apply its Canadian grape content requirements, pursuant to its 1988 grape and wine adjustment program, to the wine and wine products of a producer of any other Party until December 31, 1999" (Article 1010.5).

- **Natural resources processing**

Although there are some specific exceptions, all of the general rules of the AIT apply in the area of **natural resources processing**. Processing includes the production and sale of certain forestry, fisheries, and mineral products.³³ The agreement, however, does not cover existing measures by British Columbia and Alberta on the export of logs, chips and residuals; existing export approval measures by Quebec on unprocessed fish; and measures under the Newfoundland Fish Inspection Act requiring fish to be processed at facilities licensed under the Act (Article 1102.3 and Annex 1102.3). The scope of the agreement is narrowed further by excluding (i) licensing, certification, registration, leasing or other disposition of rights to the harvesting of forestry, fisheries or minerals; (ii) the management or conservation of forestry, fisheries or mineral resources; and (iii) water and related services and investments (Article 1102.3). A working group on processing of natural resources was established and that group is authorized to report within 12 months of entry into force, and every two years thereafter, assessing whether the objectives in this area have been met; identifying and resolving outstanding implementation issues; reviewing opportunities for further progress; and revising the chapter on the processing of natural resources to “accommodate changing principles” (Article 1104). Similar to the cases of labor standards and consumer product standards, the Parties to the AIT are called upon to “make every effort” to reconcile (in accordance with Annex 405.1) measures that affect trade in the processing of natural resources.

- **Energy**

Negotiations for a chapter on **energy** products and related services were left incomplete and, under the terms of Article 1810 (Future Negotiations), the continuing talks were to conclude no later than the date of entry into force of the agreement. No provision of the agreement would apply to any measures relating to energy goods or services.

- **Communications**

Like the chapters on natural resources processing, and agriculture and food products, the chapter on **communications** services and telecommunications is subject to all of the AIT’s general rules, except as otherwise provided. The application of the non-discrimination provisions of Part III are given greater specificity by explicitly including “access to and use of public telecommunications transport networks and services” (Article 1302). The Parties are to establish a Committee on Communications Related Measures to monitor the implementation of the chapter, provide a forum for consultations, and “identify communications-related measures that may require reconciliation ...” (Article 1303). The Agreement also calls upon Parties to ensure that local monopolies do not use their market power to engage in anticompetitive conduct in outside markets (Article 1304); some have suggested that it might

³³Annex 1102.2 lists all products to which the agreement applies.

have been preferable to leave such matters to the Canadian Radio-television and Telecommunications Commissions and the Bureau of Competition Policy (Trebilcock and Behboodi, 1995). In addition to these provisions, this short Chapter establishes a specific exception for Saskatchewan (Article 1305), exempting the province from the access-and-use-requirements specified in Article 1302 and the competition policy provisions of Article 1304.

- **Transportation**

Interprovincial **transportation** services--particularly trucking--can be hindered and made more costly by, *inter alia*, varied regulations on licensing and inspection. Both the federal government and the provinces are called upon to grant carriers of any province treatment that is no less favorable than the best treatment accorded to carriers of any other province (reciprocal non-discrimination, Article 1406). Provinces may not “adopt or maintain any measure that restricts or prevents the movement of transportation services across provincial boundaries ...” (Article 1407). However, like other such obligations in the AIT, both of these otherwise powerful obligations are qualified by exceptions for “legitimate objectives”, and the scope of such exceptional cases could be excessively broad in practice. Beyond the conditions set out in Part III (Article 404), and the general definition expressed in Part I (Article 200), specific examples include objectives respecting: the availability and quality of transportation services; the accessibility of transportation facilities and services to mobility disadvantaged persons; and protection of public transportation infrastructure. Obligations with respect to reconciliation of regulatory and standards-related measures include those set out in Part III (Article 405), and are also to include a set of specific measures (Article 1408 and Annex 1408.1).³⁴ The obligations on transportation are restricted in scope by a specific exclusion for a set of existing measures which were listed by the Parties (Article 1410.1 and Annex 1410.1).³⁵ Periodic efforts to negotiate for the liberalization of such measures are required at least every two years (Article 1410.2) and the Parties agreed to phase out certain non-conforming measures according to a specific timetable.³⁶

³⁴These include, for example, establishing and maintaining uniform rules governing the size and weight of commercial motor vehicles, eliminating operating authority requirements for extra-provincial trucking operations, and implementing the National Safety Code for Motor Carriers (Annex 1408.1, paragraphs 1, 3, and 4).

³⁵It is noteworthy that Alberta, New Brunswick, and Northwest Territories elected to list *no measures* as excluded from the obligations on transportation.

³⁶Of those provinces that listed exceptions in Annex 1410.1, Newfoundland, Nova Scotia, Prince Edward Island, and Ontario elected not to list any non-conforming measures to be phased out (Annex 1411).

- **Environmental protection**

Environmental protection is specifically listed as a “legitimate objective” in Part II (Chapter 2) of the Agreement. Nevertheless, the Parties chose to elaborate on the scope of rights and obligations in this area. The Agreement re-affirms the autonomy of each province to set environmental protection standards as they see fit (Article 1505.2 and 1505.3), subject to ensuring that these measures provide for high levels of protection (Article 1505.4)--waiving environmental measures as an inducement to private industries is specifically prohibited (Article 1505.5)--and provided these measures are not more trade restrictive than necessary to achieve a legitimate objective (Article 404, legitimate objectives). While Article 404 indicates that a measure is not to be “more trade restrictive than necessary to achieve (a) legitimate objective”, this is qualified by noting that a measure will not be considered “more trade restrictive than necessary” as long as a Party “takes into account the need to minimize negative trade effects when choosing among equally effective ...” measures (Article 1505.7). This would appear to indicate that if deliberations leading up to the adoption of a new environmental measure pay some attention to the need to minimize trade effects, the outcome of such deliberations will not be second-guessed at a later date, for example, by a dispute-settlement panel. Moreover, in this same vein, an environmental measure will not be judged as non-conforming solely because of the lack of full scientific certainty regarding the measure’s effectiveness (Article 1505.8). These clauses clearly reflect an intention to err on the side of maintaining autonomy in environmental protection.

The most important exception in this area is the non-applicability to any existing non-conforming environmental measures (Article 1507). Such measures were to be delineated by July 1, 1997 and Parties are obliged to “endeavor to develop a work plan to eliminate” these listed measures by January 1, 2000 (Article 1507.3). Thus the environmental provisions only preclude new environmental protection measures that may cause undue barriers to internal trade (subject to the exceptions mentioned above).