THE AGREEMENT ON INTERNAL TRADE:
TAKING STOCK AFTER THREE YEARS

THE CANADIAN CHAMBER OF COMMERCE

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THE IMPORTANCE OF THE AIT

Last July 1st the Agreement on Internal Trade (AIT) celebrated its second birthday. The date - the same day as Canada's birthday - is no coincidence. This symbolism is entirely appropriate as the AIT is an important building block in keeping our country strong and united. If Canadians are not free to buy and sell their goods and services, to practise their professions and trades, and to invest on equal terms from coast to coast, how can they be expected to have a sense of belonging to the whole country and not to just their province or territory? How can our country expect to remain united?

The Canadian Chamber of Commerce feels very strongly about the need to strengthen the ties that bind the provinces and territories together into the geographically difficult country we call Canada. In the early 1990s, we urged the federal government to take the lead in enlisting provincial and territorial support for a comprehensive trade-liberalizing accord, which it did culminating in the signing of the AIT in 1994. Now we are producing our third report that focusses on Canada's economic union. In our first report, published in May 1995 before the Quebec referendum, we highlighted the importance of the interprovincial trade as an engine of economic growth, focussing in particular on the links between Quebec and the other provinces and territories.[1] In a follow-up report released in the fall of 1996, we examined the AIT from the point of view of its contribution to the economy and national unity and found it sadly lacking in several important respects.[2] This year, we return to take another look at the AIT now that it has been in effect for more than two years. This report, which is based on extensive interviews with federal, provincial and territorial officials responsible for making the AIT work, provides our report card for the first two plus years of the AIT. It also offers our suggestions and recommendations on how to improve the AIT and strengthen the economic union.

Regrettably, our examination has found that progress towards a more united Canadian market has ground to a virtual halt since the signing of the AIT. Numerous deadlines have been missed for implementing the provisions of the Agreement. Moreover, there have been few, if any, attempts to extend the coverage of the AIT to other economic sectors. The momentum to expand trade within Canada has been stalled and the result is that hundreds of impediments to trade, investment and labour mobility continue to persist.

The problem is not that everyone can not agree on the national interest in creating a barrier-free internal market. It is that very narrow sectoral or regional interests, which benefit from discriminatory trade practices, are often allowed to predominate. This is because of the requirement for unanimous agreement before any concrete actions can be taken to eliminate barriers. There will always be at least one recalcitrant province ready to stand in the way of progress to protect some special interest. We need to adopt some form of majority rule to make sure that the national interest in a barrier-free internal market prevails.

The AIT is too important to be left to the federal, provincial and territorial governments. Nothing less than the national unity of our country is at stake. The business community needs to

continuously challenge governments to create a truly national market for goods and services, labour and capital. The Canadian Chamber of Commerce intends to be at the forefront of those pushing for freer trade within Canada, and hence promoting national unity.

A REVIEW OF PROGRESS BY SECTOR UNDER THE AIT

Procurement

As we noted in our 1996 report, the procurement provisions of the AIT are one of the greatest accomplishments of the Agreement. In contrast to other areas of the Agreement, the text of Chapter 5 is explicitly rules-based, as opposed to principles-based, and holds the federal, provincial and territorial governments to concrete commitments and specific deadlines.

While the Canadian Chamber was pleased at the ambitious scope of the original procurement agreement, our pleasure has turned to increasing disappointment with the unwillingness of governments to undertake the obligations they agreed to meet in the AIT.

MASH Sector Negotiations

The achievements of Chapter 5 have been overshadowed by the failure to meet important deadlines consented to at the time of the original agreement. By June 30, 1996, provinces and territories were to have agreed to extend coverage of the chapter to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities (the MASH sector). By the same date, governments were also to have concluded negotiations aimed at reducing the list of crown corporations and other government entities excluded from the provisions of the Agreement and at reducing the list of excluded services. While the federal government is a Party to Chapter 5, it has only observer status for the purposes of the MASH sector negotiations.

MASH sector negotiations have been at a stalemate for some months, principally as a result of British Columbia's reluctance to form part of an agreement covering this sector. Reports are that the other provinces and the two territories have approved a draft text.

Hopes were raised that there would be a breakthrough in MASH sector procurement following the First Ministers Conference in St. Andrews in August 1997. At that time, Premiers agreed to intensify efforts to reach an agreement "in a manner acceptable to all jurisdictions, if possible". Unfortunately, the Premiers' commitment have done little to galvanize the stalled negotiations.

The chief opponent to an agreement on MASH sector procurement is the government of

British Columbia. Provincial officials have cited concerns that an AIT accord liberalizing procurement in the health and social services sectors would undermine the exemption Canada negotiated in the NAFTA for these sectors and would open the door to U.S. interests seeking access as service providers. The result, in the view of British Columbia officials, would be the end to a province's ability to establish and enforce standards in health care, education and social services.

In a more general way, the British Columbia government's attitude on MASH sector procurement demonstrates its uneasiness with the Agreement as a whole. The government's recent actions suggest a discomfort with rules-based agreements that would limit its future ability to pursue policies favouring British Columbia companies or citizens over those of other provinces and territories.

Given the reluctance on the part of the government of British Columbia, the decision the other parties face is whether they should strike an agreement among themselves that excludes the dissenting provinces. The second question that needs to be addressed is if such an agreement is achieved, should form part of the AIT or fall outside its scope?

Some provincial governments are uncomfortable with the idea of an accord that does not include all provinces and territories, fearing the precedent that it would create for future sets of negotiations. Others favour proceeding regardless, and question why the progress of the majority should be held up by one or two intransigent players. Quebec has apparently gone as far as to maintain that any agreement excluding B.C. should explicitly provide that preference could be given to suppliers from provinces and territories that form part of the agreement, over suppliers from B.C.

The question of whether an accord among all but one provincial or territorial government could or should form part of the AIT or be concluded as a separate, stand-alone agreement is expected to be discussed at a meeting of the CIT scheduled for February 1998. The current view of most provincial officials is that unanimity among all parties is necessary for any measure undertaken under the AIT. This is a position British Columbia favours.

The Canadian Chamber is sincerely disappointed that the Premiers' strong statement at St. Andrews on MASH did not result in an agreement under the AIT that covers all provinces and territories. The procurement accord was one of the sterling achievements of the AIT and an extension of its scope to other areas of public sector purchasing is tremendously important, both in economic terms and in terms of signaling a continued commitment to freer trade within Canada.

In our view, an agreement covering the majority of provinces and territories would be preferable to the current limbo characterizing this set of negotiations. We strongly urge governments to work towards this end without further delay.

Crown Corporations

The AIT's commitment to reduce the number of crown corporations excluded from the provisions relating to government procurement is another deadline missed. Progress on this front was to have been made by June 30, 1996.

The AIT's provisions related to crown corporations are strikingly unbalanced. Some provinces – notably Saskatchewan, Quebec and British Columbia – included lengthy lists of government entities they wanted excluded from the requirements of Chapter 5. Others, for example, Ontario, Manitoba, Alberta and the Northwest Territories, submitted no requests for exclusion. Hence, some governments have a much higher stake in the negotiations over crown corporations than others.

Productive discussions have taken place based on proposals submitted by the government of Quebec to bring more crown corporations under the coverage of Chapter 5 and to tighten the definition of excluded entities. Several provinces and territories that were notable for having provided lengthy lists of non-covered or non-intervention entities as part of the original AIT have indicated a willingness to shorten their lists considerably. Saskatchewan, in particular, has moved a considerable distance in this regard. However, other provincial governments, notably British Columbia and New Brunswick, have been unwilling to bring more of their provincial crown corporations within the scope of the chapter. It could be that crown corporations is another area where a plurilateral, as opposed to a multilateral, solution might be the eventual result.

Excluded Services

Another important deadline that governments have failed to meet is a commitment, made in Annex 502.1B, to shorten the list of services excluded from the agreement. This obligation, which was to have been met by July 1995, was meant to address such matters as the procurement of medical, engineering, legal and architectural services as well as advertizing and public relation services contracted by governments.

Given the importance of provincial and territorial expenditures on procurement in these areas, we consider the failure to conclude negotiations on excluded services to be a major disappointment. Our frustration is compounded by the fact that recent international trade negotiations under the GATT have targeted trade barriers in the services sector. The failure to address internal trade barriers hampers our international competitiveness, not only in the services industries themselves but in the manufacturing and resource sector that rely on these services as an important input.

Electronic Tendering System

On the positive side, commitments made in the AIT to put into place a standardized, national electronic tendering system have been realized. A nation-wide service has been operating since June 1, 1997 run by Cebra Inc., a subsidiary of the Bank of Montreal. An enhanced version of the network became operational last fall.

The achievement on electronic tendering is meaningful for two reasons. First, and most obviously, it demonstrates that Ministers are prepared to respect their obligations under the Agreement and are capable of conducting the necessary negotiations to bring this about. Second, the electronic tendering system will vastly open the procurement market in Canada, diminishing the importance of government rules, regulations and negotiations. As an illustration of this, a number of MASH entities across the country (such as the University of Calgary) have indicated an interest in becoming part of the national electronic tendering system and others (including Edmonton's Grant McEwan College) are already part of the system, realizing that the advantages in terms of cost savings and access to a wider range of suppliers could be considerable. This, combined with efforts underway in a number of MASH institutions to pool their procurement needs in order to save costs, allows some institutions and their suppliers to operate under a more open procurement regime in spite of the failure of governments to achieve a MASH sector agreement.

Investment

The AIT's requirement for fair treatment of out-of-province investors and its Code of Conduct on Incentives has already been the focus of much attention and some conflict.

Corporate Registration and Reporting Requirements

The investment chapter sets out only one notable area for future negotiation. By July 15, 1995, parties were to have prepared an implementation plan for the reconciliation of provincial and territorial corporate registration and reporting requirements. After protracted negotiations, provinces and territories have reached an agreement that they will submit to the CIT for formal approval at its upcoming meeting in February. The result will be a single window for the filing of information with access provided to authorities in the other provinces and territories. While technological advances that permit the sharing of information across jurisdictions provided much of the solution in this area, the negotiations still stumbled over a couple of issues. The chief was revenue splitting — a critical matter in times of fiscal restraint. Other sore points concerned matters of consumer security. The smaller provinces and territories, recognizing that they are likely to be served by corporations registered and based in Ontario, rather than the other way around, needed assurances that their standards would not be compromised. These concerns were largely accommodated by provisions to allow individual provinces and territories to request additional information.

Code of Conduct on Incentives

Despite the absence of large areas of negotiations, Chapter 6 has been the focus of much activity over the past two years. Most of this attention has centred on an annex to the chapter that sets out a Code of Conduct on Incentives. The Code prohibits provinces and territories from offering direct and indirect financial incentives aimed at attracting enterprises to its territory from other parts of Canada. It also bans provinces and territories from providing subsidies to business that would result in the business undercutting competitors in other provinces and territories.

It has recently become apparent that provinces and territories have quite different opinions on how the Code should be interpreted, reflecting their divergent philosophies on the issue of industrial incentives, not only among provinces but among businesses and Canadians generally. At the August 1997 Premiers' Conference, it was agreed that Ministers would "examine, as a major priority, potential clarifications and improvements to the Agreement's Code on Conduct on Investment Incentives."

On one side of the incentives debate are those that support some latitude in rules governing investment incentives to permit smaller provinces to use location incentives to attract businesses and encourage the expansion of local firms. This view has been exemplified by the government of New Brunswick which has maintained that flexibility is needed in the crafting and interpretation of incentive rules to reflect the reality of the global marketplace.

On the other side of the investment incentives issue is British Columbia. While British Columbia stops short of calling for tougher rules in Chapter 6, the province has linked its reluctance to deal with other AIT matters to the Parties' failure to come to grips with investment incentives. British Columbia's first altercation over incentive incentives was the UPS dispute with New Brunswick. More recently, British Columbia refused to allow shipyards located in other provinces and territories to bid on the procurement of ferries by the British Columbia Ferries Corporation. In defending the action, Premier Clark stated: "I am not going to allow subsidized shipyards in Quebec or New Brunswick to build British Columbia ferries."

Disputes over Investment

The highest-profile dispute over investment concerned the New Brunswick government's subsidy to United Parcel Services (see box). However, other disagreements over investment incentives continue to crop up on a regular basis.

While not a full-fledged dispute, British Columbia is apparently pursuing reports that a $5 million forgivable loan from the Saskatchewan government was behind a decision by Intercontinental Packers to close its Vancouver meat-packing plant and consolidate its operations in Saskatchewan.

Suggestions have also been made that Nova Scotia's commitment to contribute $12 million to AT&T's employee training and recruiting costs was behind the corporation's decision to locate a new telephone call centre in Halifax. Ironically, Nova Scotia won the business in an aggressive marketing effort over New Brunswick.

The UPS Dispute

The first public test of the AIT's Code of Conduct on Incentives was the British Columbia - New Brunswick dispute over United Parcel Service (UPS). UPS accepted a $6 million subsidy package to move its 900-job operation from British Columbia, Ontario and Manitoba to New Brunswick in 1995. New Brunswick's position was that its subsidy offer pre-dated the entry into force of the AIT, and therefore was not covered by the Agreement. As a result of New Brunswick not engaging in the agreement's dispute settlement process, the case did not proceed. The question of whether one province (in this case, a party to the dispute) can exert veto power over decisions to invoke the dispute settlement mechanism was never challenged by the other provinces or territories at the time.

While New Brunswick's subsidy might not have violated the actual letter of the AIT, it offended the spirit of the agreement. Moreover, by not addressing British Columbia's concerns in the UPS case, New Brunswick also paid a high price. British Columbia's sense of frustration over investment incentives remains and threatens to scuttle progress towards freer internal trade.

Subsidies and Trade Remedies

The government of British Columbia's linking of the procurement and investment incentives issues is understandable. Why should a province open its procurement to firms located in other provinces and territories if those provinces and territories provide subsidies that give their businesses an unfair competitive advantage over other bidders?

In many respects, concerns over what many consider to be runaway subsidization by provincial and territorial governments are misplaced. The fiscal crisis facing most provincial and territorial treasuries makes industrial subsidies a barely-affordable luxury. As the budgetary situation shows little sign of imminent improvement, it might be that government subsidies will dwindle to mere shadows of their former selves. Nevertheless, the perception of a trade impediment is often more important than the reality. The concerns of British Columbia and other

provinces and territories must be treated seriously if progress is to be made in other areas of the Agreement. Unless British Columbia receives the assurance it seeks on the subsidy issue, it might not be prepared to make the compromises necessary to move forward in other areas of negotiation.

Subsidies is one area where international trade rules have more bite than interprovincial. In the international sphere, countervailing duty measures provide a means for countries to ensure that their enterprises are not disadvantaged by subsidized competition from other jurisdictions. Producers who believe that they have suffered injury or are threatened with injury from subsidized imports can petition their government to bring a case against the offending country. The producers have to prove the existence of the subsidy, the fact that it is a prohibited subsidy under the international agreements and that the subsidized imports have caused, or threaten to cause them harm. If they are successful, special duties are imposed on the subsidized imports, the effect of which is to negate the impact of the subsidy.

While it is impossible to imagine how one province imposing countervailing duties on another could ever be justified in the federal context, the idea of a subsidy code and measures to address subsidized competition is one that has some merit for internal trade. It is ludicrous that a Canadian producer faces the prospect of a countervailing duty action if it sells subsidized product into the United States or another foreign country, but it is free to sell the same product in the neighbouring province, even if its subsidized prices cause serious harm to its Canadian competitors. The message to provinces and territories should be clear: subsidize if you must, but do not expect that you are entitled to sell in other provinces and territories at subsidized prices and take business away from non-subsidized enterprises.

The first step to resolving the issue of subsidies and investment incentives is to develop a clearer list of what is allowed and what is not in the realm of provincial subsidies. Provinces and territories could adopt the WTO practice of categorizing subsidies into those that are prohibited, and could attract trade action (e.g. "export" subsidies and direct grants and tax incentives), and those that are acceptable (e.g. R&D assistance, Employment Insurance payments). The next requirement would be a fully enforceable dispute settlement system that would require an offending province to discontinue the offensive subsidy practices, or face retaliation in some other area. For example, firms based in another province could be denied access to procurement business if they are found to benefit from prohibited subsidies. Measures such as these could provide British Columbia and other provincial and territorial governments the comfort that they need to address trade barriers in other areas.

Clarifying the AIT's rules on location grants and subsidies is only a first step to resolving this contentious issue. The effectiveness of the rules would be greatly enhanced by a fully binding dispute settlement system to provide the "teeth" to ensure that provinces and territories comply with the AIT's prohibition against job poaching using taxpayers' money.

Labour Mobility

Difficulties Due to Independent Regulatory Bodies

Labour mobility is an area where it is difficult to make progress because of the independence of the provincial and territorial non-governmental regulatory bodies. An additional weakness of the chapter is the absence of firm deadlines with virtually all obligations requiring compliance only within a vaguely specified "reasonable period of time." Nevertheless, it must be admitted that, within the framework of this unambitious schedule, the process of implementing the chapter has gotten underway. The Forum of Labour Market Ministers has prepared a work plan for implementing the obligations of Chapter 7 of the agreement as required. Official contact persons have been designated to receive complaints. The first annual report on the chapter is already available on the Internet site and the second annual report has been prepared and is scheduled to be released after the next meeting of Labour Market Ministers on January 22-24. The process of securing mutual recognition of occupational qualifications among 400 provincial/territorial regulatory bodies covering 50 regulated professions began on schedule.

Guidelines Sent Out

In July 1996, a letter was sent out by provincial and territorial ministers of labour to non-governmental regulatory organizations in their provinces and territories asking them to comply with the labour mobility chapter. This means: removing residency requirements as a condition of employment or eligibility to practice an occupation; making sure that practices for licensing, certification or registration of workers in a regulated profession are based mainly on competence and do not create needless barriers to labour mobility; and reconciling differences in occupational standards and working toward the achievement of mutual recognition of competencies. Detailed guidelines have been provided to regulatory bodies for comparing standards for each regulated occupation to establish the degree of commonality and to facilitate mutual recognition.

Financial Assistance Provided

A new program was also created by the federal department of Human Resources Development (HRD) to provide financial assistance to occupational regulatory bodies to support their work to reconcile standards and to remove interprovincial barriers to the mobility of workers. This is an important initiative.

A real stumbling block to progress in reducing regulatory barriers to labour mobility is the inability or unwillingness of regulatory organizations to act expeditiously. While some regulatory bodies are jealous to maintain their independence to set standards, others simply lack the resources to get together and talk to their counterparts in other provinces and territories. Some strategic financing can help to bring these groups together and facilitate progress in achieving mutual recognition of occupational standards. Another good idea that has been suggested is to hold a conference to bring the regulatory bodies together to learn from each others' experience.

Need Firm Deadlines for Compliance

One of the main reasons that there has been so little substantive progress to date is that occupational regulatory bodies are given an unspecified “reasonable period of time” to comply with the provisions of the chapter. This is much too vague and invites obstructionism and foot dragging. A greater sense of urgency would be created and the removal of barriers to labour mobility would be accelerated if a firm target date for compliance were set. If the bodies do not comply voluntarily by the specified date, appropriate regulatory or legislative changes should be considered. One way of encouraging progress would be to select a few professions that were willing to participate and to assist them to be a model for others.

Red Seal Program Should be Expanded

In addition to the regulated occupations, there are regulated trades. The Red Seal program establishes interprovincial standards for apprenticeship and examinations which enable qualified workers in many trades to practice throughout Canada. This program is a key part of the AIT and needs to be expanded.

Disputes

Labour mobility is the one aspect of the AIT that impacts most directly on individuals and that understandably people feel most strongly about. For this reason, the labour mobility chapter has given rise to the second largest number of disputes after procurement - 9 out of a total of 34 since the agreement came into effect (up to December 10, 1997). Cases have involved health care workers (see box on dental assistant), pharmacists, embalmers, and accountants among others. The results must be discouraging to those who may have similar grievances. Only one of the cases has actually been resolved so far, two cases are still pending and six cases have been dropped, denied or judged to have no basis.

A major disappointment was the break out of a long-festering dispute between Ontario and Quebec over construction labour mobility. It was resolved outside of the AIT in a bilateral agreement only after Ontario threatened to barr Quebec construction workers from employment in Ontario. This calls into question the relevance of Chapter 7 of the AIT and the Agreement’s formal dispute settlement provisions in general.

But Still Better than in Other Countries

On the bright side, Chapter 7 goes far beyond what is available in any other federation or under any trade agreement. The United States has no comparable guarantee of labour mobility. The EU has something similar on labour mobility, but it focusses on diplomas not occupational licenses. The list of professions allowed entry under NAFTA does not provide for recognition of credentials. There is no labour mobility section of the WTO agreement. On labour mobility, the AIT is pioneering.

Alberta Dental Assistant Moving to Manitoba

A dental assistant who moved from Alberta to Manitoba was not able to practise because her qualifications were not recognized even though she already had a valid Alberta license. To continue practicing, she would have to be retested in Manitoba prior to being licensed at a cost of $3,000 and significant delay. She got the Alberta government to take up her case which is now pending under the dispute settlement mechanism of the labour mobility chapter. A key issue to be resolved in the dispute is what constitutes a "reasonable period of time" for the provincial regulatory body concerned to make sure that its licensing practices are based mainly on competence and do not create needless barriers to labor mobility. Manitoba has argued that it still is too early to have worked out all the differences in requirements. The issue, which was not resolved in consultations between the parties has gone to Chapter assistance whereby the Forum of Labour Market Ministers has been formally requested by the parties to provide assistance in attempting to resolve the matter. This assistance can take a variety of forms including conciliation, mediation or recommendations. In this particular case, it will involve trying to get the provincial dental associations regulating dental assistants to come to some sort of agreement.

Consumer-Related Measures and Standards

Consumer-related measures and standards is another area where governments were slow in meeting even the minimal objectives that were set out in the AIT.

While the Canadian Chamber is discouraged with the AIT's unambitious work plan and the missed deadlines, it must acknowledge that the AIT's provisions dealing with consumer-related measures and standards are a useful example for what could be accomplished in other sectors. The combination of general principles and concrete deliverables has been a good model for negotiations. Hopefully, the progress that has been achieved to date will create some momentum for tackling other barriers that exist in this sector.

An End to Discriminatory Fees

The Parties have met the requirements of the agreement with respect to discriminatory licensing, certification and registration fees. All jurisdictions have reviewed their fee structure with only one province -- Prince Edward Island -- finding an instance in which higher fees were charged to out-of-province applicants. PEI has revised its policies to eliminate the differential fee.

Progress in Reconciling Consumer Standards

The three areas set out in Chapter 8 for reconciliation are standards governing direct selling, upholstered and stuffed articles and the cost of credit disclosure. An agreement to harmonize direct selling measures was to have been reached by July 1, 1995, with implementation by July 1, 1996. A final agreement has recently been reached in this area and has received approval by consumer Ministers. Most jurisdictions, notably, Manitoba, Saskatchewan and Alberta, have already made the legislative revisions that are necessary to implement the agreement. Others, such as Quebec and New Brunswick have introduced the proposed changes and they are awaiting formal legislative approval. It is expected that the agreement will be fully implemented shortly.

An agreement has also been reached to eliminate the duplication and inconsistency in regulations relating to upholstered and stuffed articles. Only four jurisdictions are affected -- Ontario, Quebec, Manitoba and the federal government (Alberta had regulations in this area but dispensed with them on entering into the AIT). Reports indicate that the relevant governments have made the regulatory changes necessary to implement their agreement in this area.

The final area for reconciliation, measures relating to cost of credit disclosure, has fallen behind schedule. However, an agreement in principle has reportedly been achieved that would provide a standard template for consumer credit disclosure to be used across the country. Officials are now in the process of drafting guidelines to be used by governments in revising their legislation in this area.

Areas for Future Work

In light of the progress made in the area of consumer related measures and standards, the obvious question is the committee's game plan for the future. The agreement allows for the reconciliation of additional matters, and a report has been prepared for Ministers that both suggests ways to reduce the effects of using the "legitimate objectives" exemption as a barrier to trade and proposes some other areas for harmonization.

In the broader context of internal trade barriers, the reconciliation of consumer measures and standards must be considered one of the least contentious areas of interprovincial negotiation. Yet, the failure of governments to fully come to grips with this issue imposes a burden on the business community and creates confusion for consumers. We urge governments to establish, as a priority, a concrete program to identify and address overlapping and contradictory consumer regulation across jurisdictions.

Agriculture and Food Goods

The agriculture chapter of the AIT is regarded more as a statement of principles than as a serious attempt to reduce internal trade barriers. It deftly avoids any commitment to address the really tough issues plaguing internal trade in agricultural products, such as supply management, recognizing that progress in this area will be dictated by international trade developments, not domestic political resolve.

Whether governments like it or not, they might not be able to completely avoid a confrontation over internal trade in agricultural products. The decision by Unilever to challenge the government of Quebec's restrictions on margarine colouring might force an examination of provincial restrictions, and particularly those affecting supply managed products.

The International Imperative

There is no doubt that actions in the international sphere will determine many Canadian agricultural policy developments over the next decade, and it is probably more productive for Canada to trade off changes in our domestic agricultural programs for reductions in trade barriers in the United States, the European Union and other countries. This does not mean, however, that the AIT could not have played an important role in preparing Canada's agriculture sector for heightened world competition. Halting though its progress has been, inevitably, international trade in agricultural products will be liberalized. Canada narrowly won a recent NAFTA challenge of the high tariff rate quotas protecting our dairy, egg and poultry sectors. We face another challenge shortly with the U.S. government's decision to undertake a WTO challenge of our two-price policy for industrial milk. The United States has these lucrative markets in its sights and it is only a matter of time before it renews its attempts to reduce the prohibitive import barriers protecting these industries. The challenge for Canada is how best to prepare our agri-

food sector to take advantage of the new global competitive reality.

Sadly, the AIT missed many opportunities to better position our agricultural sector for increased international competition. Short of eliminating the powerful marketing boards, much could still have been accomplished in the dairy, poultry and egg sectors to encourage the rationalization of production within Canada, in anticipation of heightened competition from the United States and abroad. For example, the relaxation of provincial production quotas and measures to permit interprovincial trade in some of these commodities would have been a first step towards greater domestic competitiveness. In a host of other areas from inspection standards, packaging requirements and phyto-sanitary measures, the AIT missed the chance to raise the level of our game.

Modest Progress in Some Areas

In spite of its unambitious goals, progress over the past two years in the few areas Chapter 9 sets out to liberalize has been spotty at best. On the plus side, the federal government did meet its commitment to eliminate the Western Grain Transportation Act, although fiscal demands would likely have dictated the same outcome. Progress is being made to both identify and tackle technical barriers to trade. At the urging of Prince Edward Island and New Brunswick, work is underway to develop a federal standard for small, round potatoes that will allow growers in these provinces and territories to tap markets in central Canada. Discussions are underway to reduce technical barriers in a number of areas, including restrictions on the interprovincial transport of bulk produce such as apples and potatoes, restraints on the marketing of imitation dairy products and butter/margarine mixtures in some provinces and territories and to develop common standards for fluid milk production.

Progress in reducing internal trade barriers is hampered by the fact that the agricultural sector differs vastly in character from one province to another. The western provinces are dominated by industries such as red meat and grains where interprovincial trade barriers are a minor issue. While provinces such as Alberta are particularly impatient with the slow progress, they are acutely aware of the regional sensitivities that permeate all negotiations in the agricultural area. In particular, other provinces and territories are sensitive to the dislocation that would be caused to Quebec, which accounts for half of the country's industrial milk production quota, by efforts to liberalize trade in this area.

Missed Deadlines

Parties failed to meet the September 1, 1997 deadline for including technical barriers with policy implications within the scope and coverage of Chapter 9. Recognizing the difficulties encountered when attempting to dismantle trade barriers on a case by case basis, agriculture ministers agreed at a meeting in July 1997 to work instead at developing a set of principles to be included in the Chapter 9 that would discourage the establishment of new barriers and ensure the

same treatment for producers in all provinces and territories. This proposal will be discussed with stakeholders in the coming year and reconsidered by Ministers in 1998.

Dispute Over Margarine Colouring

Under pressure from its dairy lobby, Quebec decided to ignore a commitment made in the AIT to eliminate its requirements governing margarine colouring by September 1, 1997. As a result, Unilever Canada Ltd., which sells Fleischmann's, Monarch and Becel margarine, has prompted a challenge of the Quebec restrictions under both the NAFTA and AIT.

Quebec's longstanding regulations prevent margarine sold in the province from being butter-coloured. Until recently, Ontario and Prince Edward had similar requirements on margarine colour. However, they have not enforced them since provincial and territorial Ministers of Agriculture agreed in 1994 to eliminate the restrictions, a commitment that was later made part of the AIT. The AIT commitment was made, not because Ministers were particularly intent on removing internal barriers to trade in agricultural products, but because they believed that such restrictions were in violation of Canada's international trade obligations and would have to be removed in any event.

As a result of Quebec's regulations, manufacturers are forced to maintain separate inventories for the province, which increases their cost of doing business. Manufacturers and oilseed producers see the Quebec measures as both an internal trade restriction and as another example of the lengths to which the government will go to protect dairy producers against fair competition from non-dairy substitutes. The Quebec market for margarine is estimated to be $60 million.

The AIT challenge was brought in November 1997 by the Government of Ontario, since Unilever, as a business entity, does not have direct access to the Agreement's dispute settlement provisions. The next stage in the resolution of the dispute is formal consultations between the two governments. If negotiations fail to resolve the issue, either government could request the formation of a dispute settlement panel.

As with many issues in the internal trade sphere, the margarine dispute has an international trade dimension as well. Unilever has maintained that Quebec's restrictions violate both the WTO and NAFTA phyto-sanitary provisions (which essentially require any such restrictions to be based on scientific principles and be necessary for the protection of human, animal or plant health). Hence, the matter could resurface in other fora, specifically under the WTO or NAFTA's dispute settlement provisions.

Alcoholic Beverages

While under the AIT governments have agreed not to discriminate against alcoholic beverages produced in other provinces and territories on the basis of listing, pricing, access to points of sale, distribution, merchandising and service costs associated with alcoholic beverages, and not to impose obstacles to the internal trade in alcoholic beverages, there are still certain non-conforming measures and exceptions in effect. Some of these were supposed to be reviewed by now, but so far not much progress has been made in negotiating their elimination.

We find the lack of progress to be rather ironic, in light of the minimal commitments entered into by provincial governments. The AIT's provisions dealing with alcoholic beverages largely play "catch up" to what Canada agreed to in the NAFTA and GATT negotiations and what we have been forced to concede as a result of international challenges to our liquor pricing and distribution policies. Alcoholic beverages is one area where governments had little alternative but to provide access to products from other provinces, since they are no longer able to discriminate against out-of-country product. Still, protectionist practices persist, and governments show a stubborn reluctance to dismantle them.

Non-Conforming Measures

Nova Scotia's differential floor pricing mechanism for out-of-province beer (and the reciprocal treatment of Nova Scotia beer by other provinces and territories) should have been reviewed July 1, 1996. Increases in the price of Nova Scotia beer have narrowed the price differential in favour of Nova Scotia beer, but a price differential still persists.

Discussions are still ongoing between New Brunswick and Ontario over the technical barriers Moosehead Brewery faces in the Ontario market (see box). If New Brunswick is not satisfied, it has the right to impose a differential cost of service, fees, or other charges on any other province or territory that levies higher costs on its beer. Quebec has also reserved the right to impose differential costs on New Brunswick beer if New Brunswick imposes higher costs on Quebec beer. So far New Brunswick has not imposed higher costs, but the threat remains in effect until the issue is resolved.

Quebec has retained its requirement that wine sold in grocery stores be bottled in the province. It is concerned that opening up grocery stores to wine from other provinces would require a similar opening for American and European wine because of Canada's international trade obligations. But it had agreed to negotiate with British Columbia equivalent access for wine and wine products of the other province by July 1, 1996. So far no agreement has been reached. British Columbia in turn has reserved the right to apply reciprocal measures to Quebec wine. Surprisingly, given the larger size of its wine industry and its proximity to Quebec, Ontario has expressed no reservation.

Other non-conforming measures related to beer sold in Newfoundland and Newfoundland-produced beer, and the timetable for the progressive elimination of mark-up differentials for wine

produced with Canadian grapes remain in effect. Exceptions allowing Ontario and British Columbia to continue distribution policies that discriminate in favour of their own wines also remain in place.

Moosehead Beer

Moosehead is a small New Brunswick brewery that has encountered numerous and formidable obstacles in selling its beer in other provinces. It was only after a GATT ruling served as a catalyst for a Canada-United States Beer Agreement which opened up the Canadian market that Moosehead finally got on to the shelves in many provinces.

In Ontario, the Beer Store, which is owned by the two largest Canadian breweries, has a provincially guaranteed monopoly over the distribution of beer. Moosehead, which can not ship directly to the Beer Store but must deal through the LCBO, still faces some technical barriers impeding its access to the Ontario market. The Durham warehouse of the LCBO where Moosehead must deliver its product will only accept one truckload of beer per day which Moosehead says is not enough to meet demand for its product. In addition, higher handling charges are levied on Moosehead because the warehouse is not well set up to handle the distribution of beer. This puts Moosehead at a competitive disadvantage compared to Ontario breweries that can ship directly to the Beer Store. Moosehead has complained that as soon as one technical barrier is resolved another crops up.

In Quebec, Moosehead also faces daunting technical barriers. Most importantly, Moosehead is not allowed to sell beer in grocery stores as can Quebec breweries. To overcome these obstacles, Moosehead has been going through a long and drawn-out process to obtain a license to sell beer in Quebec.

As a response to the barriers Moosehead faces, New Brunswick initiated a reservation under Chapter 10 of the AIT that enables it to put similar barriers in the way of central Canadian brewers shipping into New Brunswick. Quebec has responded with a counter reservation of its own.

Voluntary National Standards

Wine and wine products labelling, legislation, regulations and policy have not yet been brought into conformity with the voluntary national standards recently approved by the Standards Committee on Wine of the Canadian General Standards Board. Provinces and territories are willing to consider changing policies and practices, but changes requiring legislation are not a priority. There are no agreed upon deadlines and no work plan. Action is being left up to individual jurisdictions.

Further Liberalization Not a Priority for Governments

Further progress in liberalizing interprovincial trade in alcoholic beverages does not seem to be a priority. The interprovincial market in liquor, wine and beer was opened up by a series of GATT panel rulings. The AIT initially did not go much further. In the two years since the agreement came into effect, there has not been any significant additional progress.

Natural Resource Processing

As stated in our 1996 report, the natural resources provisions of the AIT are a major disappointment. They will do little to liberalize internal trade in natural resource products or to constrain governments that are intent on favouring local producers over those from other provinces and territories. Among the practices not subject to the provisions of Chapter 11 are licensing, registration or any matters relating to the disposition of forestry, fisheries or mineral rights as well as management and conservation policies for these sectors. The AIT also fails to address the major issue affecting this sector, namely the access to and management of the primary resource.

Few Deadlines

Beyond a vague commitment to reconcile measures affecting trade in processed natural resources, the only requirement of Chapter 11 is to establish a working group. This latter requirement was met, mere days before the deadline set out in the Agreement. While the group has met by telephone, it has not shown any real interest in reconciling measures affecting trade in processed natural resources or in extending the scope of the chapter.

Disputes

There has only been one dispute affecting natural resource products and that failed to materialize into a full-fledged issue. Alberta expressed concern about a British Columbia pilot project that appeared to favour British Columbia secondary manufacturers over out-of-province operations. The program expired and no further action was taken.

Areas for Future Work

There has been minimal progress since the AIT was signed to introduce rules governing internal trade in the natural resource sector. At a minimum, governments should be expected to establish firm deadlines for reconciling measures that have an impact on trade in the processing of natural resources. They should also take a serious look at the four provincial programs that explicitly restrict trade in natural resource products and are exempted from the provisions of the AIT: British Columbia and Alberta's restrictions on log, chip and residual exports, Quebec's export measures on unprocessed fish and the Newfoundland's Fish Inspection Act which requires fish to be processed at facilities licensed under the Act.

Energy

Provinces and territories were unable to agree on energy matters at the time the AIT was negotiated and put this area off for future discussion. The deadline for completion of negotiations (July 1995) passed without an agreement being achieved, further testimony to the inertia that has characterized internal trade discussions.

This lackadaisical attitude changed, however, when a recent U.S. regulatory ruling forced governments to address the question of cross-boundary transmission of electricity or risk losing access to the lucrative U.S. market. In response to this threat, internal trade negotiations went into high gear and an agreement on energy is near completion, with only a few loose ends reportedly remaining. The critical issue of cross-territory transmission of power has been resolved. The agreement is expected to go to Ministers for approval shortly.

It remains to be seen how comprehensive the agreement on energy will be. Indications are that it might still leave a number of trade barriers intact. If true, this would be a disappointing outcome.

Impetus from a U.S. Ruling

The key U.S. regulatory ruling by the Federal Energy Regulatory Commission (FERC) driving the AIT's energy negotiations essentially makes it impossible for Canadian utilities to use American transmission lines when selling electricity south of the border unless reciprocal access is provided to suppliers of U.S. electricity who might wish to sell to Canada. The ruling, which blows open the long-standing reluctance of provinces to "wheeling" power across either national or provincial boundaries, presents more of a problem for some than others. Manitoba, for example, is unlikely to have to provide U.S. suppliers reciprocal access in the foreseeable future since it is a low-cost, net exporter of power. Hence, the province favours abiding by the FERC ruling in order to maintain secure access to for its electricity exports south of the border. Other provinces, such as British Columbia, have permitted wheeling for some time. Ontario, on the other hand, relies on U.S. electricity suppliers at times of peak demand, and opening its grid to out-of-province utilities represents a significant change in practice. Compounding the complexity

of the issue is the continued acrimony over Churchill Falls.

Despite these challenges, the FERC ruling, combined with the fact that most provinces had already committed to the principle of cross-territory transmission access, made agreement on the cross-boundary transmission of electricity relatively straightforward in the end. The major stumbling block has been Ontario, which has had to deal with important issues involving Ontario Hydro, and preferred to wait for the provincial commission and review panels examining these broader matters to complete their work.

We cannot help but wonder whether, if governments had had an energy agreement in place that encouraged the development of a national power grid and the creation of more efficient transmission linkages between provinces, whether the severity of the power disruptions caused by the recent ice storm that hit western Quebec and Eastern Ontario could have been mitigated.

Other Energy Issues Still up in the Air

There are a number of other outstanding issues in the energy sector and it is not clear how they were dealt with in the negotiations. For example, provincial regulations, including licensing and rate setting, limit access in the distribution of natural gas. Provincial and territorial regulations regarding energy performance standards for buildings and equipment are not harmonized. A resolution of these matters is important to achieving a comprehensive agreement on energy.

Communications

Communications services and telecommunications facilities are under federal jurisdiction. This was confirmed by a 1989 Supreme Court decision in the case of CNCP vs. Alberta Government Telephone. Consequently, provinces and territories can not impose barriers to internal trade and Canada enjoys a largely barrier free internal market in communications services.

Chapter 13 of the AIT, which was modelled on the corresponding chapter of NAFTA, does not really add much to the provisions of the federal Telecommunications Act as it was not necessary. It prohibits governments from discriminating in providing access to public telecommunications networks and services and government monopolies from engaging in anti-competitive behaviour in non-monopoly markets. The language is the same as in the Telecommunications Act.

Sasktel's Exemption

The chapter contains a provision that exempts the Saskatchewan crown telecommunications company. This is the same exemption contained in the Telecommunications

Act. Under the Act, it can only be terminated at the request of Saskatchewan or after October 25, 1998 (the fifth anniversary of the passage of the Act) by federal Order in Council. In the meantime, the province undertakes to continue to reduce the differences between its policies and measures and those of the federal government. This is an obligation that goes beyond that contained in the Telecommunications Act.

Governments do not need to take further action to liberalize internal trade in telecommunication services.

Transportation

Chapter 14 bars governments from discriminating against carriers from any other province. It prohibits any measure that restricts or prevents the movement of transportation services across provincial and territorial boundaries or that creates an obstacle to trade in transportation services. It also commits governments to reconciling differences in a wide range of regulations governing motor vehicles, including safety standards, weights and dimension rules, bills of lading, tax administration and operating authority requirements for extra-provincial trucking operations.

General and specific goals for regulatory harmonization and the elimination of barriers were set in the AIT. All governments agreed to harmonize standards and regulations affecting the transportation of goods and passengers. They also agreed to implement the National Safety Code Standards and to eliminate economic licenses (operating authorities) for extra-provincial motor carriers.

A detailed work plan has been prepared and some progress is being made, but the work load is heavy and much remains to be done.

Completion of Deregulation of Trucking Except for Safety

There has been progress in phasing out the non-conforming measures listed in an annex to the chapter. The federal government already has the enabling legislation in place to repeal Part III of the Motor Vehicle Transport Act, 1987 effective January 1, 1998. This will eliminate operating authorities for the intra-provincial operations of extra-provincial motor carriers and substantially complete the deregulation of the trucking industry nationally. British Columbia, Manitoba and Saskatchewan have agreed to deregulate intra-provincial trucking. Only Quebec will retain regulation of local bulk trucking.

In the Motor Vehicle Transportation Act Review discussion paper released in April 1997, the federal government proposes to focus on safety fitness performance of extra-provincial motor carriers and to eliminate most of the remaining economic regulations of both extra-provincial truck and bus carriers.. A National Safety Code for Motor Vehicles has already been established

with the exception of the Compliance Review Safety Rating which is still under development. In the future, if the federal government has its way, carriers will be required to obtain a safety rating rather than an operating authority.

Bus Transportation

In the area of bus transportation, there is less agreement among governments. There is a consensus among governments on the proposed deregulation of charter buses and bus parcel express, but no agreement on the more contentious issue of the deregulation of scheduled bus service.

Little Progress in Liberalizing or Removing Listed Measures

There has, as yet, still been little progress to report on the commitment to liberalize or remove listed measures specified in another annex to the AIT even though the agreement required Transportation Ministers to meet and try to make some progress on the issue. A problem with the initial agreement is that no timetable was established for dealing with listed measures.

Bills of Lading and Reducing Administrative Burdens

On other fronts, progress has been made in developing a Canada universal bill of lading as required and work is underway on a North American bill of lading. The federal government has announced that it will regulate bill of lading requirements for extra-provincial motor carriers if necessary to achieve national consistency. A harmonized arrangement is now in place for fuel and sales tax and vehicle registration administration. These reforms are important in reducing paper burden for extra-provincial carriers and facilitating interprovincial shipments.

No Extension of Chapter to Municipal Governments

There was a commitment in the initial agreement to extend coverage of the chapter to regional, local, district and municipal governments. However, the Council of Ministers Responsible for Transport and Highway Safety have informed the Committee on Internal Trade (CIT) that they are unwilling to proceed because they believe this extension falls outside their jurisdiction. Some observers have argued that the extension is unnecessary because this sector falls under provincial jurisdiction and is thus already under the AIT.

Ministers Don't Keep Public Informed

The Council of Transport Ministers has not kept the public well informed of their decisions and their rationale. No press release was issued after the meeting last year. The annual

report on progress in implementing the chapter that was prepared as required by the Agreement was provided to the Committee on Internal Trade but has not yet been published.

Environmental Protection

The environment chapter of the AIT makes few commitments of Parties and sets out no deadlines, beyond a requirement to notify, by July 1997, of measures that do not conform with the Chapter. However, environmental standards is one area where recent progress has been made in harmonization, despite the absence of firm requirements and timetables in the AIT.

Progress in Achieving Harmonization

In January 1998, environment ministers across Canada, with the exception of Quebec, signed the Harmonization Accord that will give provinces more control over the regulation of air, water and land standards. The intention behind the Accord was to reduce the duplication and overlap resulting from joint federal and provincial jurisdiction over environmental matters. Quebec refused to sign the accord on the grounds that it did not go far enough. The government of Quebec would have preferred that the federal government formally amend its legislation to reduce overlap and duplication among jurisdictions.

Harmonization of environmental standards and assessment procedures is an important issue for Canadian business. The hodge-podge of overlapping regulatory regimes adds to compliance costs, often without achieving a commensurate increase in environmental protection levels. Common environmental standards is a text-book example of the benefits that can result from intergovernmental cooperation, resulting in lower cost to business and greater benefit to citizens.

A Looming Dispute

The most notable development affecting environmental regulation since the signing of the AIT is the government of Alberta's challenge of the federal government's ban on the importation of and interprovincial trade in MMT (see box). The MMT dispute is significant for three reasons. First, it is likely to be the first case to proceed all the way through the AIT's formal dispute settlement process. Second, a NAFTA challenge of the same legislation is also proceeding at the same time. Finally, it puts the federal government, a long time proponent of freer internal trade, in the uncomfortable position of having to defend an internal trade barrier of its own making.

MMT

MMT is a gasoline additive designed to increase octane levels. Acting on the advice of motor vehicle manufacturers and environmentalists, who claim that MMT damages vehicle onboard diagnostic systems and is harmful to health and the environment, the federal government introduced a bill in April 1996 to prohibit imports and interprovincial shipments in MMT. The bill received Royal Assent in the spring of 1997.

The government of Alberta has brought the case in the interests of oil producers in the province. It takes issue with the trade restrictions, noting that if MMT is truly harmful, the logical way to proceed would be to ban the substance altogether. However, Alberta argues that the federal government proceeded by way of trade restriction, instead of a ban, because tests of MMT's effects yield results that are ambiguous. In particular, tests conducted by Health Canada conclude MMT is non-toxic and the substance does not appear on Environment Canada's Priority Substances List for Toxic Substances. For its part, the federal officials cite U.S. studies that demonstrate MMT to be harmful to the environment and note that the majority of U.S. refiners refuse to use the substance, despite the fact that a court case in the late 1970s, which was decided on a legal technicality, permits its use.

Consultations between the two governments under Chapter 15 of the AIT ended in a stalemate in July 1997, prompting the government of Alberta to indicate its intention to proceed to the next stage of the AIT's dispute settlement mechanism set out in Chapter 17 of the Agreement. A five-person panel has been selected, to be chaired by University of Manitoba professor Clay Gilson and including former Ontario Premier, Bob Rae. A public hearing, expected to last two days, has been slated for April in Ottawa. Chapter 17 sets out provisions for the panel to seek expert advice, a step this panel will probably take, given the complex scientific issues involved in this case. The panel must produce its report within 45 days of completion of the hearing.

The governments of Nova Scotia, Quebec and Saskatchewan officially declared their support for the government of Alberta's position in the Chapter 15 dispute proceedings. The same provinces are expected to support Alberta's position at the Chapter 17 stage of the dispute.

In a complex twist to the case, MMT's sole manufacturer, Ethyl Corp. of Richmond, Virginia launched a claim against the federal government for $350 million in compensation under the NAFTA in April 1997. The case will be the first brought under Chapter 11 of the Agreement which deals with Investor State Enterprises. The NAFTA case is unlike that of the AIT in that its purpose is to seek damages, not to have the federal legislation changed or repealed. The case will be decided by arbitrators established under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules and is likely to be determined in early to mid-1998.

Ethyl Canada has also filed a lawsuit with the Ontario Court General Division arguing that the federal law invades provincial jurisdiction over property rights.

Financial Services

Financial services are important in internal trade and major obstacles to interprovincial trade in financial services exist. Yet they are not addressed by the Agreement. The main reason for this anomaly is that Finance Ministers jealously guard their jurisdiction over the financial sector and are reluctant to share it with Internal Trade Ministers.

There are separate processes underway under the jurisdiction of Finance Ministers to deal with issues of overlap and duplication of financial regulation. But they have not focussed on identifying barriers to interprovincial trade in financial services and developing a work plan for their elimination. They are consequently not as likely to achieve quick progress in removing barriers.

One initiative under the consumer-related measures and standards chapter of the agreement that affects financial services and has already been discussed above concerns the cost of credit disclosure.

Barriers Due to Regulatory Overlap and Duplication

The barriers impeding interprovincial trade in financial services arise primarily because of overlap and duplication between federal and provincial legislation governing financial institutions and financial services. An important barrier is the separate securities regulatory regimes in each of the provinces and territories. While the twelve different regimes have been largely harmonized, they still impose large additional costs on business for duplicate securities filings and related disclosure documents and for the provision of other required information. This imposes substantial extra burdens on Canadian business and increases the cost of raising capital, undermining our international competitiveness. Investors as well as businesses are penalized in that often new securities are not offered in some provinces and territories or at all because of the additional paper burden entailed in complying with the regulatory requirements in the different jurisdictions. International companies often avoid making their offerings available in Canada for this same reason.

A National Securities Agency

An obvious solution to this problem would be to establish a National Securities Agency (NSA) that would facilitate access to Canadian capital markets and give Canada a national voice in international fora on securities regulation. This is also becoming increasingly necessary in a time where securities are being sold out of call centres and Internet sites that are often outside the jurisdiction of provincial regulators.

While the establishment of a National Securities Agency was identified as an important short-term goal at the 1996 First Ministers conference, there has been little progress since. In

January 1997, the federal Minister of Finance sent a letter to his provincial colleagues responsible for securities regulation asking for their views on a draft memorandum of understanding on a NSA. The proposal reportedly faces resistance from some of the provinces including most notably British Columbia and Quebec. Even Ontario has become less enthusiastic about the idea because of its concerns over the lost fee revenue from the Ontario Securities Commission. At the same time, globalism and technology have been making the case for a NSA increasingly compelling.

Trust and Loan Companies

The regulation of trust and loan companies used to be an area where overlapping and duplicate regulations were a barrier to trade in financial services. Over time these barriers have become less economically significant as the trust industry has diminished in size. Many trust companies have been taken over by banks. The proposed takeover of National Trust by the Bank of Nova Scotia will leave no large provincially incorporated trust companies operating in Ontario. Responsibility for regulating the solvency of trust companies taken over by banks is transferred to the federal government. Under the old "equals approach" to regulation applied in Ontario and some other jurisdictions, these trust companies would still have had to comply with the rules the provincial regulators imposed on trust companies registered in Ontario. But the Conservative government in Ontario has introduced legislation that will end this and leave the field of regulating the solvency of trust companies operating in Ontario to the federal government. Other provinces and territories might follow suit.

Other regulatory issues remain, however. Provinces and territories will continue to exercise "conduct of business" regulation over federally regulated trust companies to protect consumers and to maintain privacy. Saskatchewan and Alberta have recently drafted legislation retaining power to regulate "market conduct." The time is ripe for the federal government to attempt to bring all trust companies under the federal regulatory umbrella and to seek to harmonize provincial consumer protection and privacy regulation. This would eliminate the remaining barriers to interprovincial trade in this sector.

Insurance

The regulation of insurance companies and insurance brokers also gives rise to barriers to interprovincial trade in insurance. Insurance companies must be licensed by the departments of insurance in all provinces and territories in which they do business. Requirements are often a little different. It can take new companies several months to be licensed. New products also must be approved by provincial regulators. Statements must be filed with provincial regulators as well as with the federal Office of the Superintendent of Financial Institutions (OSFI). Often the forms demand slightly different information. Federal and provincial audits are not coordinated. Insurance agents must be licensed in the province in which they are selling the insurance which can cause problems for telephone sales or in border regions. Two of the provinces require insurance agents to be provincial residents, which runs counter to the no residency requirements rule of the labour mobility chapter.

Provincial legislation and regulations governing insurance often differ significantly from one province to another. An important initiative underway in the Atlantic provinces with the involvement of the Insurance Bureau of Canada is the Regulatory Harmonization Project. Its objective is to produce a common Insurance Act for the four Atlantic provinces.

Interestingly, there has been one dispute in the financial service area brought up by an insurance broker. It never proceeded because it dealt with an exempt service (financial services).

Credit Unions

Credit unions also face interprovincial barriers. Most of their deposit business is not affected because it is local. But securities regulations impede their ability to offer other financial products to their customers. Overlapping regulations can be a problem. Locals are regulated provincially, but centrals federally. In British Columbia, an agreement has been reached so that OSFI will do inspection one year and the provinces and territories the next. The existence of nine different deposit insurance corporations also complicates business.

Need for More Harmonization of Regulations

There is a separate process under Finance Ministers to harmonize the regulation of the financial sector. In theory, it should result in reduced barriers to interprovincial trade in financial services. But this process has not been given a high priority by Finance Ministers who are more concerned about other matters.

To ensure an explicit focus on eliminating barriers to interprovincial trade, financial services should be formally brought into the AIT. Finance Ministers should be charged by first ministers to negotiate a financial services chapter and to develop a work plan to eliminate barriers in interprovincial trade in financial services. Being part of the AIT would be an indication that governments have increased the priority they attach to liberalizing interprovincial trade in financial services and would make the process of removing barriers more transparent.

AN ASSESSMENT OF THE INSTITUTIONS THAT MAKE THE AIT WORK

Federal-Provincial Committees

The Committee on Internal Trade (CIT) made up of federal, provincial and territorial ministers responsible for internal trade has overall responsibility for the AIT. This Committee in turn takes its political direction from First Ministers.

Different sectors are the responsibility of committees of sectoral ministers. For instance, the labour mobility chapter of the agreement is the responsibility of the Forum of Labour Market Ministers, the energy chapter the responsibility of energy ministers, the agriculture and food goods chapter the responsibility of agricultural ministers, the chapter on natural resources processing the responsibility of natural resource ministers, the transportation chapter the responsibility of transportation ministers, and the environment chapter the responsibility of environment ministers.

Understandably, sectoral ministries have their own priorities which are often not related to internal trade. The ability of the CIT to provide leadership and direction in a specific sector is very much a function of the power of the ministries involved. The lack of progress in removing barriers in the agricultural and natural resource sectors reveals the importance of agriculture and resource ministries. And the absence of a financial service chapter is testimony to the overwhelming influence of finance ministries. First Ministers need to give Internal Trade Ministers a stronger mandate to provide leadership to sectoral ministers and to ensure that removing barriers to internal trade is one of their highest priorities.

Following the conclusion of the original agreement, the CIT has displayed a reluctance to provide strong leadership in meeting the deadlines specified in the agreement for completing unfinished business. The Committee is hamstrung by the requirement that all its decisions must be unanimous. The unanimity requirement prevents the CIT from tackling the difficult issues head on. Other forms of decision rules that are much less restrictive are utilized abroad. In the European Union, for instance, the Council of Ministers makes all its decisions based on a form of qualified majority rule with weighted voting. Each member state is given a certain number of votes depending on its size and importance. The number of votes allotted goes from ten for Germany, France, Italy and the United Kingdom to two for Luxembourg. In another area of the world, Australia, the general rule in Commonwealth-state councils is majority rule.[3] However, a particularly innovative example of qualified majority rule was followed in the Australian Loans Council which is made up of representatives of the Commonwealth and state governments. In it, the Commonwealth has three votes (two plus one for the Chair) to one vote for each of the six states. The very fact that a majority vote can be taken fosters agreement among the parties in Australia. Similar qualified majority voting schemes, which could be developed for Canada., would also encourage agreement. There are also Canadian precedents for less restrictive decision-making rules than unanimity. Under the 1982 Constitution Act, a two thirds majority of the provinces and territories with over half of the country's population is the general amending formula. To make changes in the Canada Pension Plan the agreement of seven out of ten

provinces is required.

The CIT has not tried to break out of the unanimity straightjacket confining it and has instead been content to let officials toil away in the background trying to negotiate the remaining issues in a climate lacking in political urgency. It was as if the Committee were afraid to tackle the difficult issues for fear of failure and the political costs that this would entail.

The fact that the Committee allowed almost two years to elapse between its latest meeting in February 1998 and its previous in June 1996 suggests that it has not played a key role in high priority negotiations such as the extension of the procurement agreement to the MASH sector and the completion of an energy chapter. The Committee's preferred strategy is to wait until there is an agreement in the bag and then to meet to ratify it and take the public credit. Moreover, the Committee has also not yet published its annual report on the functioning of the agreement. By all measures, the Committee has not provided the type of vigorous leadership required to make the AIT work and to create an barrier free internal market from coast to coast.

Internal Trade Secretariat

Within the last year and a half, the Internal Trade Secretariat required by the AIT was finally established in Winnipeg. The ITS is a small organization designed to provide administrative and operational support to the CIT, working groups and other committees. Its minuscule $800,000 a year budget reflects its modest responsibilities. These include assisting the CIT to prepare the annual report and providing support to sectoral negotiating groups.

The ITS does not have an explicit mandate to provide the public with information on the AIT. Its efforts to date have been limited to establishing an Internet site to providing information on the agreement and to preparing a study of trade barriers.[4] Its reporting relationship to the CIT, which requires a consensus for any decision, prevents the ITS from serving as a champion for freer internal trade. Virtually every decision of the ITS to spend money, no matter how trivial the amount, must be approved by the CIT. This makes it difficult, if not impossible, for the ITS to carry out any studies of any provincial or territorial practices that might be regarded as sensitive by any of the provinces and territories.

The ITS has done a good job of assisting in the resolution of disputes. But there have been some complaints from provincial governments that the ITS has not clearly communicated to them when provinces and territories have failed to comply with the AIT. Evidently, the ITS bends over backwards to soften its criticism to such an extent that even those provinces and territories that are to blame for not meeting negotiating or implementation deadlines claim they fail to recognize themselves in the ITS progress reports. The ITS's excess of diplomacy apparently stems from its reporting relationship to the provinces and territories through the CIT and, possibly, from concerns that it will offend its benefactor governments and, thus, jeopardize its funding.

The ITS should provide more information to the public on the functioning of the AIT. Regular reports should be issued documenting disputes under the AIT and their resolution. It should also communicate more clearly with governments and the business community, as well as with the general public, on the compliance obligations of particular governments.

Dispute Resolution

The overriding objective of the AIT's dispute settlement provisions is to encourage the resolution of disputes in a conciliatory, cooperative and harmonious manner. The avoidance of disputes, as opposed to the litigation of disputes, was the chief goal underlying the Agreement.

Most chapters of the AIT have their own dispute avoidance and reduction provisions, and these typically call for consultations between disputing parties and reference to a committee of relevant Ministers. Only if the matter remains unresolved, once the procedures set out in the appropriate chapter have been exhausted, are disputing governments entitled to proceed to the formal procedures sets out in the general dispute settlement Chapter 17.

Chapter 17 requires governments to undergo a further round of consultations. If the consultations do not result in the resolution of the dispute, either government can request the matter be referred to the CIT for assistance and, as a final step in the process, to a dispute settlement panel.

The AIT's dispute settlement provisions have been criticized for failing to provide direct access to companies and individuals seeking redress for internal trade barriers, for the long time frames it provides for the resolution of disputes, and for the fact that decisions of the dispute settlement panels are not binding on governments.

Table 1 shows the Internal Trade Secretariat's recording of the number and status of disputes that have arisen since the entry into force of the AIT.

TABLE 1: NUMBER & STATUS OF COMPLAINTS UNDER AIT SINCE ENTRY INTO FORCE OF THE AGREEMENT
(Updated December 10, 1997)

CHAPTER	DROPPED/ NO ACTION	DENIED	PENDING	NO BASIS/ EXPIRED/ EXEMPT	RESOLVED/ UPHELD	TOTAL
5 PROCUREMENT	0	11	1	3	6	21
6 INVESTMENT	1	0	0	0	0	1
7 LABOUR MOBILITY	2	2	2	2	1	9
9 AGRICULTURE	0	0	1	0	0	1
10 ALCOHOLIC BEVERAGES	1	0	0	0	0	1
14 TRANSPORTATION	0	0	0	0	0	0
15 ENVIRONMENTAL PROTECTION	0	0	1	0	0	1
TOTAL	4	13	5	5	7	34

SOURCE: Internal Trade Secretariat

According to the Internal Trade Secretariat, a total of 34 disputes arose between July 1995 and December 1997.[5] Of the disputes tabulated by the Secretariat, four were dropped or did not proceed, thirteen were denied, five were found to have no basis, were out of time or concerned measures that were exempt from the AIT, seven were resolved or upheld and five are still pending. Based on the Secretariat's accounting, therefore, of the 29 disputes that have been fully addressed since the entry into force of the AIT, seven have been resolved or upheld, a success rate of 24 percent.

An analysis of disputes by sector shows an interesting pattern. The largest number of disputes (21) concerned procurement issues. Procurement matters also constituted six out of the total seven disputes that were resolved or upheld. The large number of procurement cases and their relatively high success rate (30 per cent of completed cases) is largely attributable to the fact that Chapter 5 provides very specific provisions governing the conduct of public sector procurement and bid challenge procedures. It also provides for businesses to directly challenge federal government procurement decisions to an arms-length, quasi-judicial body (the Canadian International Trade Tribunal), without going through a screener or having to be represented in the

dispute by their provincial or territorial government.

Labour mobility issues represented the second largest number of disputes tracked by the Internal Trade Secretariat. Of the nine cases recorded, and seven completed, only one was resolved or upheld.

The one case lodged involving the AIT's investment provisions and the single case concerning alcoholic beverages were dropped.

As yet, there have been no disputes that have proceeded as far as the establishment of a dispute settlement panel under Chapter 17. The first candidate to go this distance might well be the Government of Alberta's challenge of the federal government's legislation concerning the importation of and interprovincial trade in manganese-based fuel additives (MMT). The case has exhausted the dispute resolution procedures of Chapter 15 without reaching a solution and has proceeded to the dispute settlement provisions set out under Chapter 17. The margarine colouring dispute launched by the Government of Ontario against the Government of Quebec might become the second case to proceed through to a dispute settlement panel.

Experience with the AIT's dispute settlement provisions has been mixed. In the opinion of most provinces and territories, the provisions have been successful. Its proponents point to the large number of issues that have been resolved through informal channels, maintaining that this, rather than a multitude of high-profile intergovernmental battles, is the true test of the AIT's worth.

This raises interesting questions, however, about how best to measure the contribution of the dispute resolution system, or indeed the AIT in general, in reducing internal barriers to trade. Certainly, it is difficult to disagree with its defenders that a healthy roster of disputes is hardly the best indicator of a well-functioning internal market. A crucial function of any dispute settlement system is to discourage the proliferation of barriers, and its mere existence can be helpful in achieving this. Moreover, in providing a forum for the peaceful negotiation of trade irritants, the dispute settlement provisions can prevent issues from evolving into full-blown trade wars. On the other hand, a relatively small number of contentious disputes could also indicate a lack of awareness of the dispute resolution system or frustration with what it contains.

An effective dispute settlement system is an indispensable part of any agreement to break down barriers to trade. Not only does it ensure that governments respect the commitments that they have made but it also helps achieve progress where trade negotiators have failed. A case in point is the AIT's labour mobility provisions. There, negotiators have set out a future game plan and general principles but were able achieve very little in the way of concrete progress for the foreseeable future, mostly because a large number of impediments are the responsibility of professional associations and other non-governmental regulatory bodies. It might be that Canadians do not have the patience to wait through the long process of negotiation and arm twisting that will be necessary to make process in this area. Impediments to labour mobility, such as the non-recognition of professional credentials, resonates very strongly with individuals. Quite

possibly, a series of individual challenges to provincial and territorial impediments in the area of labour mobility will achieve greater success at dismantling these unfair and inefficient barriers than the provisions of Chapter 7 ever would.

To be truly successful in furthering the cause of freer internal trade, however, the AIT's dispute resolution provisions need several important modifications. First, the rules set out in the sectoral chapters have to be made more explicit, so that companies and individuals that encounter trade barriers have some basis against which to evaluate the merits of pursuing a challenge. As noted earlier, the AIT is very spotty in this regard. Some chapters are rules-based in nature, whereas others merely set out watered-down principles and a future work plan.

Second, for the dispute resolution provisions to be effective, individuals and companies need access to the system. Unless Canadians know that it is possible to challenge barriers that deny them work, capital and markets in other provinces and territories, there will be little pressure on governments to liberalize trade. Unfortunately, too few governments have made efforts to educate their citizens about the AIT and the recourse available to those who encounter trade barriers. Moreover, in all but a few instances, individuals and citizens are denied direct access to the dispute resolution system. While a dispute can proceed if the province or territory in which the individual or business has a substantial interest agrees to pursue it, it is not impossible to imagine a situation where barriers are allowed to continue because governments themselves have a stake in them. If governments truly believe in the principles underlying the AIT, they should be prepared to hold themselves accountable to Canadians who wish to challenge whether their policies and practices adhere to the rules set out in the Agreement.

Finally, the AIT's dispute settlement system needs some teeth if it is to advance the cause of freer internal trade. As it now stands, decisions of the panels are not binding on governments, making it hardly worthwhile for companies to go to the expense and trouble of pursuing a trade dispute. Governments are similarly unlikely to risk the ill-will that would come from tackling a program or subsidy of a neighbouring province if there is nothing to force a change in actions found to be in violation of the AIT. The result is that the disputes provinces and territories really care about (such as the Ontario-Quebec construction trades dispute) are dealt with through public threats of retaliation, and not through the AIT. Others either never make it past the provincial or territorial screeners, are dropped before their successful resolution or languish for months and months at the consultation stage.

It has been said that few high-profile trade disputes would focus attention on the AIT and galvanize action aimed at reducing trade barriers. Indeed, the UPS dispute showed early promise in this regard but fizzled badly down the stretch and ended up leaving many Canadians even more cynical about the value of the Agreement. Hand-in-hand with a rules-based system of sectoral commitments, a dispute settlement system could do much to foster freer trade within Canada. But Ministers will need to agree to give the system some teeth if it is to accomplish this end.

A REPORT CARD ON THE AIT		
Grading Scale:	**A** Excellent **B** Good **C** Average **D** Needs Improvement **F** Failed	
SUBJECT	**GRADE**	**COMMENTS/SUGGESTIONS**
Procurement	C	High marks for governments for biting off as much as they did at the time of the original Agreement and for meeting obligations to put into place a national electronic tendering system. The "C"grade reflects the inability of the CIT to negotiate a procurement agreement covering the MASH sector and to reduce the list of excluded crown corporations and services. If, however, a MASH agreement covering all Parties is successfully negotiated, the grade would be raised to A. If one or two provinces do not sign on to the agreement, the grade would only be raised to B.
Investment	D	The AIT's investment provisions, and particularly, its Code of Conduct on Incentives, look good on paper but, in reality, don't hold water. Mr. McKenna's aggressive sales pitches on one Team Canada mission and Glen Clark's promise to deny ferry shipbuilding contracts to subsidized Quebec and New Brunswick firms are testimony to the need for clearer rules in this area. Premiers admitted as much at their latest First Ministers' Conference. We wish them luck on this score.

Labour Mobility	C-	A great weakness of this chapter is the absence of firm deadlines with virtually all obligations requiring compliance only within a "reasonable period of time." Nevertheless, it must be admitted that, within the framework of this unambitious timetable, the process of implementing the chapter has gotten underway. The Forum of Labour Market Ministers prepared a work plan for implementing the obligations of the labour mobility chapter. The first annual report on the chapter is already available on the Internet site and the second annual report is scheduled to be released in the near future. A letter was sent out in July 1996 as required asking non-governmental regulatory organizations to comply with the chapter and providing detailed guidelines. A new program was created to provide financial assistance to occupational regulatory bodies to help them remove interprovincial barriers to the mobility of workers. Nevertheless, progress in reducing regulatory barriers to labour mobility has been disappointingly slow. The real stumbling block has been the unwillingness of regulatory organizations to act expeditiously. Instead of being given a reasonable period of time, a target date should be specified. The Ontario-Quebec dispute over construction labour mobility, which had to be settled outside of the agreement under threat of retaliation is a disappointment.
Agriculture and Food	D-	This mark would have been an F, had it not been for minor progress in some areas, including elimination of the WGTA and discussions pertaining to technical standards and barriers. Quebec's refusal to meet obligations to abolish its prohibition on coloured margarine is very discouraging, since this was one of the few specific barriers identified for elimination. We are disappointed generally that the chapter is wholly lacking in ambition to address the impediments to trade that would enhance the competitiveness of the agri-food sector, and particularly the supply-managed industries.

Consumer-Related Measures and Standards	C-	Ministers deserve a passing mark for achieving virtually all their commitments in Chapter 8, albeit somewhat behind schedule. Their breakthroughs in the area of direct selling and upholstered and stuffed articles, while not stupendous in terms of volumes of trade involved, are an important indication of what can be achieved through good will, hard work and a spirit of cooperation. This is an area replete with internal trade barriers, however, and there is much work left to be done. We encourage Ministers to complete implementation of a nation-wide cost of credit disclosure system and to take on new barriers and inefficiencies in the area of consumer measures and standards.
Alcoholic Beverages	C	Most of the barriers to interprovincial trade in alcoholic beverages have been eliminated, but thanks to the need to meet international obligations and no thanks to the AIT. No progress has been made in eliminating the remaining barriers specified in the alcoholic beverages chapter of the agreement.
Natural Resources Processing	F	Ministers deserve a failing grade for their efforts in the area of natural resources. Not only did they set very unambitious goals for themselves at the time the AIT was first crafted, but they have displayed a very minimal effort in meeting the few commitments that were made. As a result, numerous restrictions still exist that limit the extraction and processing of raw resources to only local operators, to the considerable disadvantage of fish processing plants, sawmills and processors in other provinces and territories. This is a clear case of narrow self-interest winning out against greater national efficiency and competitiveness.
Energy	D	By all rights, the absence of an energy chapter from the original agreement should have meant an F in this area. However, negotiations have taken place since the Agreement was signed, albeit behind schedule and spurred by regulatory developments south of the border, not by the initiative of energy Ministers. The agreement reportedly reached by Ministers should result in a more efficient use of our electrical grid and cheaper electricity costs for Canadians. Full marks will be awarded in the next report, provided the agreement deals with all of the outstanding energy issues.

Communications	A	Since communications services and telecommunications facilities are under federal jurisdiction, the Canadian market for telecommunications services is largely barrier free. A sole remaining exemption from the obligations of the Telecommunications Act for Saskatchewan's crown telephone company is in the process of being phased out.
Transportation	D	Much work set out in Chapter 14 of the AIT remains to be done. Areas where progress is lacking include the deregulation of intraprovincial trucking, the extension of the provisions to regional and municipal governments and the removal of listed measures. Furthermore, the Council of Transport Ministers has not kept the public well informed - no press release was issued after its meeting last year, and its annual report, which was provided to the CIT, was not released.
Environmental Protection	B	The chapter makes few concrete commitments in the first place and provides no deadlines for achieving results. In spite of the AIT's weaknesses, however, all environment ministers except Quebec's have recently signed a Harmonization Accord intended to reduce overlap and duplication between federal and provincial governments in environmental regulation. Good work.
Financial Services	F	Financial services were excluded from the AIT because Finance Ministers wanted to protect their turf from interfering Internal Trade Ministers. Not surprisingly, given that reducing barriers to interprovincial trade in financial services has not been a priority of Finance Ministers, there has been very little progress to date and that which has occurred has been more the result of circumstances than design.
Federal-Provincial Committees	D	There has been a significant deterioration in performance of the CIT since negotiating the initial agreement. Deadlines for extending the procurement provisions to the MASH sector, reducing the list of entities excluded from the procurement chapter, the completion of an energy chapter as well as a number of less important deadlines were all missed. The CIT has not provided effective leadership to the other federal-provincial committees in championing the AIT.

Internal Trade Secretariat	C	The ITS was slow in getting up and running and has not yet published the annual report for the first year of the agreement. The ITS's performance is hampered by the CIT which keeps it on a tight leash. A complaint has been that the ITS has not always communicated clearly to provinces and territories when they were not in compliance with the AIT.
Dispute Resolution	C-	The dispute resolution area is difficult to fully evaluate because there has yet to be a dispute to proceed to the formal stage of panel hearing and ruling. On the positive side, the system has provided a forum for governments to peacefully resolve a large number of trade irritants. We cannot help but suspect, however, that the tendency for governments to deal with important disputes through the media or bilateral negotiations, rather than the AIT, signals the inadequacy of the system. A higher mark would be given if governments were to agree to give businesses and individuals direct access to the dispute resolution system and to make the decisions of the dispute resolution bodies binding on governments found to have broken the rules of the AIT.
Overall Grade	D	After getting off to a good start, the AIT has unfortunately gotten bogged down and performance has deteriorated significantly. Important commitments to extend the procurement chapter to the MASH sector, and to reduce the list of excluded government entities have not been met. The process of obtaining compliance of regulatory bodies with labour mobility provisions is proceeding with glacial slowness. Investment disputes between provinces have cast a cloud over the Agreement. Timetables for action in almost all of the sectoral chapters are being missed. Governments need to renew their commitment to creating a barrier free internal market and get the process moving again more quickly on almost all fronts.

THE NEXT STEPS

Get on with Completing the Unfinished Business

The Premiers at their August 1997 conference in St. Andrews, New Brunswick agreed that a push should be put on to complete the unfinished business under the AIT.[6] This includes: the conclusion of a MASH agreement; a reduction in list of excluded entities; the completion of the energy chapter; the compliance of regulatory bodies with labour mobility provisions; and a review of the scope and coverage of the Agricultural Chapter. They also agreed to instruct the CIT to examine as a major priority, potential clarifications and improvements to the Agreement's Code of Conduct on Investment Incentives. The CIT was also asked to conclude a workplan with deadlines for completion of negotiations within six months. Yet months later little work has been done.

It is about time that the Premiers got more serious about making the AIT work. This was exactly what we urged in last year's report - finish the job that was started. The deadlines in the agreement have been allowed to pass too often without the promised action. The political will to turn the AIT into a reality has been sadly lacking for too long. We are very disappointed that a process that was so optimistically launched with so much flourish by the CIT has been allowed to become bogged down in bureaucratic inertia and byzantine federal provincial diplomacy.

But Even More Needs to Be Done

Just completing the unfinished business under the existing AIT is not enough, however. Canadians have to be better informed of their rights under the Agreement. And these rights have to be expanded by the development of a rules-based dispute settlement system that is fully enforceable and that allows effective access by private parties and not simply by governments. Only when Canadians become more militant in pursuing their rights under the AIT will internal trade barriers begin to come down under the combined onslaught of public opinion and legal pressure.

An institutional reform that would be helpful in creating a barrier-free internal market is the establishment of an Internal Trade Commission. Unlike the existing Internal Trade Secretariat, the ITC should be an independent agency with full powers under the Inquiries Act. It should be charged with publicly identifying barriers to the free flow of goods and services, labour and capital across interprovincial boundaries. The ITC should be given an adequate budget to carry out its responsibilities and should not be put in the straitjacket of having to obtain the unanimous approval of the federal, provincial and territorial governments before taking action.

We also believe that one of the foremost opportunities for progress rests in changing the decision making process of theCIT so that all decisions are made by some form of majority rule, and not by unanimity or consensus as is currently the case. That is, we firmly believe that no one government should be able to prevent or delay other governments from fulfilling the obligations

and commitments they undertook when they signed the AIT under the prescribed time frames agreed. We therefore encourage the CIT to proceed with its trade-liberalizing agenda without making any concessions or delaying time lines to accommodate a single, or a minority of, recalcitrant governments that may be resisting trade-liberalizing measures for whatever reason.

CONCLUSIONS AND RECOMMENDATIONS

Further efforts to encourage internal trade will pay large dividends in terms of economic growth and job creation across the country. Equally as important, it is crucial to the country's survival that we do something concrete to demonstrate that Canada can be made to work better. Free access to markets, labour and investment capital across the country will establish the strong base that will allow Canadian firms to grow and prosper and to take on the best competition that the world has to offer. This can not help but to strengthen the ties that bind our country together.

Canadian governments need to pull together and deliver on their promise to strengthen Canada's economic union, especially with the spectre of another referendum in Quebec looming ominously over our country's future. The AIT took steps in the right direction, but we still have much further to go. The Premiers have confirmed their commitment to reducing barriers to trade among provinces and territories. Will governments follow through with concrete action?

Recommendations

Specifically, we recommend that:

- The CIT begin to make decisions based on some form of majority rule rather than unanimity;

- All Crown Corporations be covered by the provisions of the procurement chapter;

- A more explicit Code of Conduct on investment incentives be established, including an agreement that categorizes government subsidies into those that are permissible and those that are not;

- Firm and tight deadlines be established to eliminate barriers to labour mobility and regulatory bodies be forced to comply through legislation if necessary;

- A comprehensive MASH sector agreement be concluded with a minimum of delay;

- Remaining barriers in agriculture and food, alcoholic beverages, natural resources and transportation be seriously tackled;

- The energy chapter be completed forthwith, eliminating interprovincial barriers in energy trade;

- The financial sector be brought under the AIT and Finance Ministers be assigned the task of removing barriers;

- A binding dispute resolution mechanism be established that is accessible to private parties and not just governments.

ENDNOTES

1. The Canadian Chamber of Commerce, *Interprovincial Trade: Engine of Economic Growth*, prepared with la Chambre de commerce du Québec, May 1995.

2. The Canadian Chamber of Commerce, *The Agreement on Internal Trade and Interprovincial Trade Flows*, September 1996. This earlier study provides a useful overview of the AIT for those unfamiliar with how it works. The rules and principals embodied in the AIT and the institutions that make it work are all explained.

3. The comments on the Australian experience are based on discussions with Douglas M. Brown of the Queen's University Institute of Intergovernmental Affairs who is writing a book comparing federal decision-making structures in Australia and Canada. He contends that the Australian system works better in producing agreements.

4. E. Wayne Clendenning, *Internal Trade Barriers in Canada: Final Report*, prepared for the Internal Trade Secretariat, March 31, 1997.

5. Several disputes have come to our attention that did not form part of the ITS list, suggesting that the Secretariat's accounting might be somewhat incomplete.

6. *Agreement on Internal Trade*, News Release, 38th Annual Premiers' Conference, St. Andrews, New Brunswick, August 6-8, 1997.