



Report on the

**PUBLIC
CONSULTATIONS
PROJECT**

Spring 2002

prepared by the

INTERNAL TRADE SECRETARIAT

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PUBLIC CONSULTATIONS PROJECT REPORT

The Public Consultations Project has now been successfully completed. The following report provides an overview of the consultations and the main findings of this project.

1. BACKGROUND

At its meeting of April 2000, the Committee on Internal Trade (CIT) approved a major public consultations project to assist governments in identifying pragmatic and useful ways for improving internal trade, notably through the *Agreement on Internal Trade (AIT)*.

The consultations project was intended to engage a broad cross-section of Canadians in dialogue concerning the state of the domestic market and internal trade. In proposing such a project, several possible outcomes were envisaged, including:

- the identification of problems/issues which may need to be addressed by governments;
- an assessment of the effect of the *AIT*;
- the identification of structural improvements to, and gaps in the *AIT*; and
- the identification of practical and pragmatic initiatives both within and outside the scope of the *AIT*.

The Public Consultations Project had two sequential components, namely:

- | | |
|---------|---|
| Phase 1 | Three regional meetings each comprising three round tables (Business, Labour and Non-Governmental Organizations (NGOs), and Research Institutes); and |
| Phase 2 | An open, national conference to review and further discuss internal trade issues with a view to identifying initiatives for the consideration of Ministers. |

Detailed descriptions of the format of the Regional Meetings and National Conference are provided in Appendix 1.

Attendance at the regional meetings was by invitation. In all, 375 invitations were sent out by the Internal Trade Secretariat and 130 individuals representing some 120 organizations attended the regional meetings. Participants were present from all provinces and the Yukon and Northwest Territories. Further details on participation are provided in Appendix 2.

Attendance at the National Conference was open. Notices were provided to the Parties and their officials, to all participants and individuals included on the invitation lists for the regional meetings submitted by the Parties, to academic institutions, to NGOs and to national associations representing a variety of industries, unions, professions, or occupations. A total of 118 individuals participated at the National Conference. Participants represented a broad range of groups and interests including government, non governmental organizations, professional associations and regulators, labour, business, consumer groups, academia, research institutes, and think tanks. Residents from all provinces and the Yukon and Northwest Territories were represented at the National Conference. A further breakdown of participation by province or territory of residence is provided in Appendix 2.

2. OVERVIEW OF THE CONSULTATIONS

2.1 Regional Meetings

The regional meetings on internal trade were held in Saskatoon, Montreal, and Moncton, on October 2nd, October 24th, and November 6th, 2000 respectively.

The main themes to emerge from the regional meetings related to the enforceability of the *AIT*, improvements to how the *AIT* works, reducing trade barriers and protecting social, and regional programs, and labour, environmental and consumer standards.

There were significant differences of opinion between the round tables, in particular between business groups and labour groups, relating particularly to the different relative priority accorded to reducing trade barriers and to protecting social and regional programs and labour, environmental and consumer standards.

At the conclusion of the meetings, the findings were summarized in the *Report on the Regional Consultations and Next Steps* which was widely distributed.

2.2 National Conference

The National Conference was held in Toronto on May 31 and June 1, 2001. The National Conference was organized and structured to provide as much balance and diversity as possible in presentations and discussions.

The National Conference was comprised of five panels with 2 to 5 panellists each. The panel topics closely reflected the themes that emerged from the regional meetings. Participants were strongly encouraged to ask questions and participate in the discussions.

The following is a brief summary of each of the panel presentations.

PANEL 1: *Canada's Internal Market - A Report Card*

Panellist 1 - The *AIT* was compared to similar efforts to reform the economic union in Australia and in the European Union. Canada was considered to be ahead of the European Union, and comparable to Australia in terms of economic integration. While considered a comprehensive agreement, it was argued that the *AIT's* potential is hindered by the consensus approach to decision-making.

Panellist 2 - Concerns were voiced that barriers to internal trade and mobility have not diminished to the extent that many in the business community had originally hoped for when the *AIT* was signed. Improvements to the *AIT* were advocated.

Panellist 3 - The potential of the *AIT* was considered substantial, however because it is a work in progress, it was felt that it required constant strengthening and improvement in order to create a strong Canadian internal market. Faster and more effective implementation of the *AIT* was advocated.

Panellist 4 - Trade barriers within Canada were considered to be relatively small, therefore it was thought that the policy effort to reduce these trade barriers should be commensurate with the scale of the problem. In addition, efforts to strengthen the *AIT* were also considered to be potentially harmful to the regional diversity and social framework of this country.

PANEL 2: *Protecting Regional and Social Programs and Environmental, Labour and Consumer Standards*

Panellist 1 - Having a genuine open internal market and protecting the environment was not considered to be inherently contradictory. Regional economic development programs were deemed to be economically harmful to those very regions which are supposed to benefit from them, and were also perceived as destroying important social capital in the process. In conclusion, the importance of interprovincial trade and implicitly the *AIT* was seen as being eclipsed by growth in the absolute value of trade with the United States.

Panellist 2 - The protection of regional economic development programs and the preservation of regional diversity were advocated. Consequently, it was argued that the *AIT* should not be modified in any manner which could place these programs at risk.

Panellist 3 - The full exclusion of health and social services from the *AIT* was advocated. Concern was expressed regarding whether the MASH sector should be opened up further under the *AIT*. It was argued that subjecting public services to the *AIT* could lead to challenges under international trade rules and, eventually, to the privatization of public services. A number of public governance issues were also raised including the need for accountability, diversity versus harmonization, and the ability of provincial or local governments to protect standards and respond to the particular needs of their citizens. Public discussion and involvement concerning the *AIT* were deemed necessary.

PANEL 3: *Enhancing the Free Flow of People, Goods, Services and Investments within Canada*

Panellist 1 - It was argued that the real objective of the *AIT* is to promote an agenda of privatization and deregulation, a process which favours private foreign interests. It was also argued that barriers to trade within Canada are minuscule and efforts to strengthen the *AIT* may also infringe on provincial rights and provincial jurisdiction.

Panellist 2 - The *AIT* was considered to be the right policy tool in terms of enhancing Canada's economic prospects and reducing risk while also preserving flexibility and high standards in many areas of public concern and interest. Implementing improvements to the *AIT*, including changes to the consensus approach, was supported as a means of ensuring that the Canadian economy remains dynamic and continues to grow.

Panellist 3 - Efforts and strategies of the Unified Law Conference of Canada (created in 1917) to harmonize commercial law, were presented. Although outside of the *AIT*, this successful effort shares common objectives with the *AIT* and involves a large number of actors, including all governments.

PANEL 4 *Improving How the Agreement on Internal Trade Currently Works*

Panellist 1 - Constitutional litigation and, in particular, invoking Section 6(2)b dealing with mobility rights in the *Charter* was suggested as a possible way of strengthening the internal market.

Panellist 2 - Although it was thought that the *AIT* had proven to be effective in many ways, an urgent call was made for governments to recommit to the original objectives of the *AIT* and to improve the dispute resolution process, as well as to address directly and practically, the problems which businesses and individuals experience in the domestic market.

PANEL 5 *Where Do We Go From Here?*

Panellist 1 - It was argued that the competing claims concerning internal trade barriers as well as the lack of consensus regarding how to proceed, seem to provide a formula for stalemate and deadlock. It was thus recommended that negotiations and broad-based consultation rather than binding rules represented the most desirable approach to address any issue of barriers within the Canadian internal market.

Panellist 2 - The *AIT* was thought to have demonstrated a high degree of effectiveness. However, the level of commitment on the part of governments and lack of citizen awareness and involvement were considered to be problematic to the future improvement and full implementation of the *AIT*. Public education and awareness, renewed commitment, and the assistance of the Canadian International Trade Tribunal (CITT) were remedies suggested to strengthen the effectiveness of the *AIT*.

Panellist 3 - It was argued that in order for the *AIT* to become more effective, Canadians have to cease burdening it with such unachievable expectations as solving broader issues, including the national unity issue. It was recommended that Canadians proceed in dealing with the technical issues of building the economic union separately from the broader, tougher national issues.

Panellist 4 - It was argued that a stronger economic union would contribute to prosperity and enhance individual opportunity and mobility. Suggested improvements to the *AIT* included reviewing unanimity, strengthening the long-term vision by ensuring that the level of internal free trade constantly matches or exceeds those levels contained in Canada's foreign trade agreements, and the inclusion of First Nation governments in the *AIT*. A process of incremental implementation and a review of the core institutions and norms of the *AIT* with a view to making it clearer, simpler, and more compact were also suggested.

Panellist 5 - Improvement of the *AIT*, and further elimination of internal trade barriers, was considered important in the enhancement of Canada's economic competitiveness and international reputation. The need to discuss and build consensus regarding what economic strategies governments should pursue to achieve the social outcomes Canadians want in the context of global economic integration was strongly advocated, including strategies concerning internal trade barriers and labour mobility.

3. FINDINGS

As the Public Consultations Project consisted of the National Conference and the regional consultations, the findings of both phases of the project have been analysed and are presented in this section. However, before dealing with the specific findings, some general observations can be made.

- No significant regional differences regarding internal trade came out at the regional meetings or at the National Conference.
- The concerns and issues raised during both phases of the Public Consultations Project were very similar, except that the format of the National Conference allowed more detailed and in-depth presentations of issues and concerns by participants.
- There was significant polarization as well as differing priorities between business groups and labour/public advocacy groups particularly with respect to the following: the continued use of regional economic development programs, concern about entanglement with international trade agreements, the dispute resolution process and the threat to local autonomy as a result of the pursuit of national standards.
- Participants and panellists tended not to identify specific barriers that need attention or practical pragmatic initiatives for action but rather discussed broader issues regarding internal trade. When specific initiatives were proposed, they generally were made by one individual and received little further discussion.
- Although clearly supportive of the *AIT* and calling for broadening its coverage, no specific new barriers to internal trade were identified by business groups.
- Although critical of the *AIT* and cautioning against further expansion of coverage, no specific issues or problems with the implementation of the agreement to date were identified by Labour and Public Advocacy groups.
- All participants and panellists appeared to acknowledge the continued existence of the *AIT* and focussed on correcting what they saw as its flaws.

In preparing a more detailed analysis of the findings, reference was made to the report on the Regional Consultations, to the presentation of the panellists at the National Conference, and to the ensuing discussions and questions by panellists and other participants at that conference.

In terms of detailed findings, the analysis suggests three broad categories of findings, specifically findings which deal with:

- The Nature of the Issue;
- Process Issues; and
- Mechanisms.

3.1 The Nature of the Issue

This category includes findings which address, among others, the extent of the problem caused by barriers, the need for balancing provincial/regional interests and national standards, and the need to balance economic considerations and social/environmental concerns.

a) Extent of the Internal Trade and Labour Mobility Problem

The extent to which barriers to internal trade and labour mobility represent a problem in Canada was the subject of considerable debate.

Some panellists and participants, including business groups, were of the view that trade within Canada is being considerably hindered by trade barriers which are costly to enterprises and to individuals. Others, including labour and public advocacy groups, suggested that the problem was relatively small and not particularly costly, and that the efforts to address them should be proportional to their effect.

Furthermore, some participants expressed the view that the cost attributable to barriers has been, over time, naturally incorporated into the cost of doing business in more than one province or territory.

b) Balance Between Provincial/Regional Circumstances and National Standards

The great majority of participants/panellists were of the opinion that the development of national internal trade and labour mobility standards should be balanced with maintaining the ability of provincial and territorial governments to set standards that adequately protect the interests of their citizens and which respect their particular provincial/regional circumstances.

c) Balance Between Economic Interests and Social and Environmental

Concerns

The great majority of participants/panellists were also of the opinion that a balance had to exist between economic interests and social, environmental, labour and consumer concerns.

There was general agreement that the harmonization of standards should not result in a lowering of standards, but rather, in the development of appropriate standards.

d) Flexibility for Governments

With the exception of a few participants, mainly from business sectors, participants/panellists overwhelmingly favoured keeping the *Agreement on Internal Trade* as a political agreement rather than a legal agreement which may reduce government flexibility.

e) Relationship Between the AIT and International Trade Agreements

Some participants/panellists, in particular the labour and public advocacy groups, thought that any attempt to enhance trade and labour mobility within Canada must be pursued cautiously in order not to trigger the application of any adverse international trade rules, which would constrain Canada's ability to continue to provide social, environmental and labour programs and protect the public interest.

f) International Competitiveness

Some participant/panellists, in particular the business groups, stressed that in order for Canada to maintain international competitiveness it must ensure labour mobility and maintain a strong and cohesive internal market.

3.2 Process Issues

This category includes findings which address broader process issues for improving internal trade and mobility such as transparency, decision making mechanisms, and the need for renewed political commitment.

a) Renewed Political Commitment

A number of participants/panellists expressed concern about the level of commitment to the *AIT* on the part of political leaders and more generally to the issue of improved internal trade and labour mobility.

Suggestions were made that governments renew their commitment to the *Agreement on Internal Trade*.

b) Evaluating and Monitoring the *AIT*

Some participants/panellists suggested that the *AIT* and internal trade should be more closely evaluated and monitored in order to measure its effectiveness and impact on provinces or territories.

Individual suggestions included the need to initiate a federal-provincial review of the *AIT* and the use of report cards and benchmarks to evaluate the effectiveness and impact of the *Agreement*.

c) Transparency

Most participants/panellists called for greater transparency regarding the *AIT* and internal trade. The only specific example provided of a perceived lack of transparency on the part of Parties to the *AIT*, involved the negotiations surrounding the Energy Chapter.

d) Lack of Public Awareness

The great majority of participants/panellists agreed that there is a significant lack of awareness and knowledge of the *AIT* among all sectors of Canadian society, including academia, business, labour groups and the general public.

The following measures were proposed by various participants to address the lack of information:

- Increase public awareness of the *AIT* and its content by using a Web site; using media outlets; organizing conferences; having more public consultations; and using management tools such as developing a communication plan and setting benchmarks.

e) Decision-Making Rules

A number of participants/panellists thought that consideration should be given to changing the decision-making rules of the *AIT* from consensus to majority or to qualified majority.

These suggestions were made to address what those participants/panellists perceived to be a significant lack of flexibility in the current consensus model which led to serious difficulties in trying to improve the *AIT*.

In addition to the above mentioned change to the current decision-making rule, a suggestion was made to accept the opting out of Parties from specific provisions in the *Agreement*.

Finally, one participant called for greater use of bilateral and multilateral agreements outside the *AIT* to address internal trade and mobility issues of importance to two or more Parties.

f) Ongoing Dialogue and Consultations

Participants were appreciative of the efforts by the Parties in seeking views on the *AIT* from such a broad cross section of Canadians. Labour and public advocacy groups noted and appreciated the fact that they had been included in the consultations process. One public advocacy representative commented on the contrast between the previous week's Summit of the Americas in Quebec City where he had been exposed to tear gas and the National Conference where he was one of the panellists.

The great majority of participants/panellists thought it was very important to maintain the dialogue now established and to continue public consultations and discussions on the issue of internal trade and mobility.

3.3 Mechanisms

This category includes specific suggestions for improving the *AIT*.

a) **Completing the Implementation of the *AIT***

A number of participants/panellists called for the completion of outstanding obligations in the *AIT* and particular mention was made to speed up the harmonization and reconciliation of standards for transportation, investment and labour mobility. Furthermore, some of the business groups specifically mentioned the need to complete the Energy Chapter.

A number of participants/panellists from the business groups advocated the removal of the long lists of exemptions from the *AIT*.

b) **Broaden and Deepen the *AIT***

A number of participants/panellists from the business groups called for the *AIT* to be broadened. However, only a few specific examples were provided as to how the *AIT* should be broadened. The specific examples were as follows:

- A call by a few participants that the *AIT* apply to First Nations governments. In this regard it should be noted that through Article 1802 of the *AIT* measures adopted or maintained with respect to aboriginal peoples are excluded from the provisions of the *Agreement*.
- A suggestion to investigate and develop standards and a common legal framework for e-commerce. In this regard, mention must be made of the work done by the Uniform Law Conference of Canada and the discussions which have been initiated by the Consumer Ministers regarding e-commerce safety and security issues.
- A suggestion to undertake new initiatives such as an Intelligent Transport System (ITS) and provide functional access to permits by e-commerce to speed up interprovincial transportation.

c) **Review the Dispute Resolution Process**

The dispute resolution process of the *AIT* was the subject of a number of comments and discussions.

Although there were a few participants, primarily from the business sector, who favoured making panel recommendations legally binding, a larger number expressed dissatisfaction with the current dispute resolution process in the *AIT* because they considered it to be too slow, costly, and complex. A few participants also mentioned that the dispute resolution process should be more easily accessible to businesses or individuals. The only specific suggestions for changes to the *AIT* dispute resolution process were made by one or two panellists and are provided below.

A panellist from the Canadian International Trade Tribunal (CITT) was present and indicated that the tribunal was prepared to consider developing a pilot project for using the CITT to provide an additional alternative dispute resolution tool for *AIT* disputes. It is important to note that this mechanism need not replace Chapter 17, but simply provide an additional mechanism to resolve disputes. The Secretariat and the CITT have initiated discussion to further explore this proposal.

The following specific proposals for improving dispute resolution were made by one of the panellists:

- Establish a single dispute resolution process for all complaints under the *Agreement* except for procurement bid protests by removing the complaint procedures in the sector chapters and streamlining the general complaint process.
- Establish an internal trade “ombudsman” accessible to any person or business which would assess a complaint to determine if it had merit and then would try to resolve the problem with government involvement.
- Eliminate the “screener” requirement for complaints by businesses and individuals and the two-year time limitation;
- Eliminate the requirement for a reference to the Committee of Ministers and reduce the dispute resolution process to two stages; a consultation process and reference to a panel;
- Establish a standing panel.
- Make the time lines provided in the *AIT* for dispute resolution mandatory.
- Introduce a “code” in the *Agreement* setting out the rights and

obligations of businesses and individuals making complaints and the responsibility of governments to deal with them.

- Through some sort of legislative mechanism governments should allow themselves to be sued by an individual or a business if they don't implement panel findings or if they fail to follow the defined dispute process or withdraw from it. Courts could not oblige governments to implement panel findings but could only assess damages for the injury caused by a government's failure to honour its obligations under the *Agreement*.
- For government-to-government complaints the one-year waiting period for retaliation should be eliminated.
- Establish a national bid protest tribunal for provincial government procurement in Chapter Five based on the current model used by the CITT. The federal government would continue using the CITT to avoid duplication.

4. CONCLUDING REMARKS AND NEXT STEPS

The consultation process was a successful effort. Individuals, associations, interest groups and NGOs expended time, money and resources to participate in the various venues of the consultations.

In approving this project, the CIT was looking for “pragmatic and useful ways for improving internal trade, notably through the *AIT*.” More specifically, the following possible outcomes were envisaged:

- identify problems and issues to be addressed by governments;
- assess the effects of the *AIT*;
- identify gaps in, and structural improvements to the *AIT*;
- identify practical and pragmatic initiatives both within and outside the *AIT*.

As evidenced by the findings outlined earlier and although there were few examples of practical and pragmatic initiatives, the consultations process did identify problems and issues to be addressed by governments as well as some areas where structural changes could be further investigated. What the consultations process also most significantly brought to light was the lack of awareness about the *AIT* and issues related to internal trade, and the importance of internal trade and mobility to the Canadian economy. Now that the consultations process is complete, possible future actions resulting from that process will be considered by governments which are Parties to *AIT* in the very near future.

APPENDIX 1

Public Consultations Project - Format

Format

Regional Meetings

Regional meetings on internal trade were held in Saskatoon, Montreal, and Moncton, on October 2nd, October 24th, and November 6th, 2000 respectively.

Participants at the regional meetings were formally invited by the Internal Trade Secretariat based on lists prepared by each Party. These lists also assigned participants to the specific round table deemed most appropriate.

Participants from British Columbia, Alberta, Saskatchewan, Manitoba, Yukon and the Northwest Territories were invited to the Saskatoon Meeting. Participants from Quebec, Ontario and Nunavut were invited to the Montreal Meeting. The Moncton Meeting was comprised of participants from New Brunswick, Newfoundland, Prince Edward Island and Nova Scotia. Participants from national organizations were invited by Canada to attend each regional meetings.

Participants were drawn from business; labour, professional associations, consumer groups, environmental groups and other NGOs; and academia, research institutes and think tanks. They were then assigned respectively to one of the following three round tables: Business, Labour and NGOs, and Research Institutes.

The regional meetings began with a short plenary session which included a presentation by a keynote speaker. This was followed by a round table discussion which lasted the majority of the day. The meeting then concluded with a plenary session consisting of reports on the findings of the round tables and a brief introduction to the National Conference.

Participants were invited to voice their priorities, concerns, and recommendations with regard to internal trade, notably through the *AIT*. In order to ensure that participants were able to present their views freely, government representatives attended as observers only.

National Conference

A 1 ½ day open National Conference was held on May 31st and June 1st in Toronto. The attendees included a broad cross section of groups outside of government from all regions of Canada, together with government representatives.

As a significant part of the Public Consultation Project on internal trade, it was expected that the National Conference would build on the results of the regional round tables and help to:

- identify problems/issues which may need to be addressed by governments;
- assess the effect of the *Agreement on Internal Trade (AIT)*;
- identify structural improvements to, and gaps in the *AIT*; and
- identify practical and pragmatic initiatives both within and outside the scope of the *AIT*.

Furthermore, the National Conference was designed to generate more public awareness of internal trade and the *AIT*. The National Conference was also designed to be a forum where citizens, government representatives, businesses, associations, academics, NGOs, research institutions and labour groups could meet and discuss issues related to internal trade, including the *AIT*.

The National Conference included an opening plenary session, four panels, a keynote address and a closing panel. There were seventeen panellists in total and one keynote speaker. The panel topics were the following:

1. Canada's Internal Market - A Report Card
2. Protecting Regional and Social Programs and Environmental, Labour and Consumer Standards
3. Enhancing the Free Flow of People, Goods, Services, and Investments within Canada
4. Improving How the *AIT* Currently Works
5. Where Do We Go From Here?

The National Conference was structured in such a way as to encourage participants to ask questions, engage in debate, or to present concerns.

APPENDIX 2

Public Consultations Project - Participation

REGIONAL MEETINGS

Table of Participation

	Labour & NGOs	Business	Research Institutes	Total
Saskatoon	28 (48 invitees)	10 (52 invitees)	11 (31 invitees)	49
Montreal	23 (57 invitees)	11 (48 invitees)	4 (28 invitees)	38
Moncton	21 (54 invitees)	16 (35 invitees)	6 (22 invitees)	43

NATIONAL CONFERENCE

Participants By Province/Territory of Residence *

Province/Territory	TOTAL
Alberta	13
British Columbia	8
Manitoba	8
New Brunswick	5
Newfoundland	2
Nova Scotia	3
Northwest Territories	2
Ontario	54
Prince Edward Island	4
Quebec	13
Saskatchewan	4
Yukon Territory	2
Nunavut	0
Total Participants	118

*The number of participants has been broken down by province/territory of residence and not affiliation.