
Chapter Fourteen

Transportation

Article 1400: Application of General Rules

1. Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit) and 403 (No Obstacles) do not apply to this Chapter.⁷⁰
2. For greater certainty, Articles 404 (Legitimate Objectives), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.
3. For the purposes of Articles 1406 and 1407, the reference in Article 404 (Legitimate Objectives) to "Article 401, 402 or 403" shall be construed as a reference to "Article 1406 or 1407".

Article 1401: Application of Other Chapters

Chapter Six (Investment) applies to this Chapter, except as otherwise provided in this Chapter.

Article 1402: Objectives

1. The objectives of this Chapter are:
 - (a) to ensure a seamless, integrated Canadian transportation system that:
 - (i) is safe, secure and efficient;
 - (ii) is responsive to the needs of shippers and travellers; and
 - (iii) promotes a competitive, productive and sustainable economy throughout Canada;
 - (b) to affirm competition and market forces, whenever possible, as the prime agents in providing viable and effective transportation services;
 - (c) to build on the progress already achieved by the Parties in reducing barriers to trade in transportation services through existing consultation mechanisms and agreements;
 - (d) to further eliminate obstacles to trade in transportation services in Canada and thereby facilitate internal trade in goods and services; and
 - (e) to create effective procedures for:
 - (i) the implementation and application of this Chapter; and

⁷⁰ This paragraph was amended by the Second Protocol of Amendment.

- (ii) consultations to cooperatively resolve issues related to the application of this Chapter and to expand and enhance its benefits.

2. The Parties shall interpret and apply this Chapter taking into account the objectives set out in paragraph 1.

Article 1403: Scope and Coverage

- 1. This Chapter applies to measures adopted or maintained:
 - (a) by the Federal Government, that relate to or affect trade in transportation services by carriers of a Province; and
 - (b) by a Province, that relate to or affect trade in transportation services by carriers of another Province.
- 2. Nothing in this Chapter shall be construed to prevent a Party from providing an essential public transportation service, either by means of a government enterprise or a contract with a private supplier, in a manner that is consistent with this Agreement.

Article 1404: Extent of Obligations⁷¹

- 1. Further to Article 102 (Extent of Obligations), each Party is responsible for compliance with this Chapter by its other governmental bodies, including Crown corporations, and by non-governmental bodies that exercise authority delegated by law.
- 2. Each Party is responsible for ensuring compliance with Article 1408(1) by its regional, local, district or other forms of municipal government.

Article 1405: Business Registration Requirements

- 1. A Party may adopt or maintain a measure requiring a carrier to designate an agent for service of notices of proceedings and other judicial documents within the territory of the Party.
- 2. For the purposes of the corporate registration requirements referred to in Article 606 (Corporate Registration and Reporting Requirements), a carrier that picks up or drops off a traveller or freight in, or travels through, a Province shall not be considered to be carrying on business in the Province by reason of that activity alone.

Article 1406: Reciprocal Non-Discrimination

- 1. Subject to Article 404 (Legitimate Objectives), the Federal Government shall accord to carriers of a Province treatment that:

⁷¹ This article was amended by the Second Protocol of Amendment.

- (a) is no less favourable than the best treatment that it accords to carriers of any other Province, or of a non-Party, that provide like, competitive or substitutable services; and
- (b) does not discriminate between carriers of any Province and carriers of any other Province, that provide like, competitive or substitutable services.

2. Subject to Article 404 (Legitimate Objectives), each Province shall accord to carriers of any other Province treatment that:

- (a) is no less favourable than the best treatment that the Province accords to its own carriers and carriers of a non-Party, that provide like, competitive or substitutable services; and
- (b) does not discriminate between carriers of any Province and carriers of any other Province, that provide like, competitive or substitutable services.

Article 1407: No Restrictions or Obstacles to Trade

Subject to Article 404 (Legitimate Objectives), no Party shall adopt or maintain any measure that restricts or prevents the movement of transportation services across provincial boundaries or that creates an obstacle to trade in transportation services.

Article 1408: Reconciliation

1. Further to Article 405 (Reconciliation), the Parties shall reconcile, by harmonization, mutual recognition or other means, their regulatory and standards-related measures in accordance with Annexes 405.1 and 405.2 and their measures listed in Annex 1408.1 in accordance with that Annex.

2. Article 1415 and Chapter Seventeen (Dispute Resolution Procedures) do not apply to disputes relating to compliance with this Article.

Article 1409: Transparency

A Party required to notify any other Party of a proposed measure under Article 406(2) (Transparency) shall also notify the Council.

Article 1410: Listed Measures

1. This Chapter and Chapter Six (Investment) do not apply to:

- (a) an existing measure maintained by a Party that is listed in Annex 1410.1;
- (b) the continuation or prompt renewal of any measure referred to in paragraph (a); and
- (c) an amendment to a measure referred to in paragraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with this Chapter.

2. The Parties shall, through the Council, periodically, but in any event at least every two years, endeavour to negotiate to liberalize or remove measures listed in Annex 1410.1.
3. Further to paragraph 2, the Council shall, within one year after being notified of an issue relating to any measure listed in Annex 1410.1, develop a plan by consensus to address that issue.
4. Where the Council has developed a plan referred to in paragraph 3, but that plan fails to resolve the issue within two years after the date on which the plan was agreed to, a Party may request the establishment of a panel under Article 1704 (Establishment of Panel) to determine whether the plan was properly implemented.⁷²

Article 1411: Phase Out of Non-Conforming Measures

Each Party shall liberalize or remove its non-conforming measures listed in Annex 1411 in accordance with that Annex.

Article 1412: Consultations and Dispute Resolution⁷³

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.

Article 1413: Assistance of Council⁷⁴

Article 1414: Request for Panel⁷⁵

Article 1415: Council of Ministers Responsible for Transportation and Highway Safety

1. The Council shall:
 - (a) monitor and facilitate the implementation of the reconciliation obligations set out in Article 1408(1);
 - (b) act as an effective forum for consultations toward further reconciliation of regulatory and standards-related measures; and
 - (c) prepare an annual report on its progress under paragraphs (a) and (b).

⁷² This article was amended by the Seventh Protocol of Amendment.

⁷³ This article was amended by the Seventh Protocol of Amendment.

⁷⁴ This article was deleted by the Seventh Protocol of Amendment.

⁷⁵ This article was deleted by the Seventh Protocol of Amendment.

2. The Council may:
- (a) consider and discuss matters relating to the implementation, operation and further elaboration of this Chapter;
 - (b) serve as a forum for the exchange of views of the Parties on the implications of proposed measures and for developing a consensus on common approaches to trade-related issues or problems to which this Chapter applies;
 - (c) establish any committees, working groups or expert groups that it considers necessary or advisable to fulfil the intent of this Chapter; and
 - (d) delegate any of its duties or responsibilities under this Chapter to a committee established by the Council.

Article 1416: Definitions

In this Chapter:

carrier means a person that seeks to provide or provides a transportation service;

carrier of a Province means, in relation to a Province, a carrier that is

- (a) a resident of the Province;
- (b) a business constituted or organized under the laws of the Province; or
- (c) a business constituted or organized under the laws of another Party that has substantial business activities in or a substantial connection to the Province;

Council means the Council of Ministers Responsible for Transportation and Highway Safety;

legitimate objective includes, in addition to the objectives set out in the definition "legitimate objective" in Article 200 (Definitions of General Application), an objective respecting:

- (a) the availability and quality of transportation services facilities and services;
- (b) the accessibility of transportation facilities and services to mobility disadvantaged persons; and
- (c) protection of public transportation infrastructure;

trade in transportation services means the provision of a transportation service by a carrier of a Province:

- (a) into, out of or through a Province;
- (b) within a Province, by a carrier of another Province; or
- (c) within a Province, for a traveller or shipper of another Province.

Annex 1408.1

Reconciliation

Motor Vehicle Weights and Dimensions

1. The Parties undertake to establish and maintain uniform rules governing the size and weight of commercial motor vehicles, building on the Memorandum of Understanding signed by the Parties in 1988, as amended in 1992.
2. The Council shall review the status of these rules at least every two years.

Extra-Provincial Truck Carrier Operating Authorities

3. In furtherance of Council direction, each Party shall eliminate its operating authority requirements for extra-provincial trucking operations no later than January 1, 1996.

Motor Carrier Safety Rules

4. Subject to paragraph 5, each Party shall implement the National Safety Code for Motor Carriers, as it exists on the date of entry into force of this Agreement, within six months after that date.
5. The Parties shall endeavour to resolve issues relating to the effective delivery of the National Safety Code program before the date of entry into force of this Agreement.

Bill of Lading

6. The Parties shall establish a uniform national bill of lading for transportation of goods by motor carriers before the date of the entry into force of this Agreement.

Fuel and Sales Tax and Vehicle Registration Administrative Harmonization

7. The Council shall establish a work plan for the creation of harmonized administrative mechanisms for the collection of fuel and sales taxes and vehicle registration fees before the date of entry into force of this Agreement.

Memorandum of Understanding on Regulatory Review

8. The Parties affirm their commitments to the guiding principles of regulatory policy and the criteria and process for regulatory review embodied in the "Memorandum of Understanding to Review Regulations Affecting Transportation", and will bring the process envisaged by that Memorandum of Understanding into operation.

Agents for Service

9. The Council shall establish a work plan for the creation of harmonized administrative arrangements for the designation of agents for service as referred to in Article 1405(1) before the date of entry into force of this Agreement.

Annex 1410.1

Listed Measures

NEWFOUNDLAND AND LABRADOR⁷⁶

Motor Carrier Act and Motor Carrier Regulations (Consolidated Newfoundland and Labrador Regulations, CNR 965/96 as amended) relating to the economic entry test (reverse onus), rate and service regulation for passenger bus service operating on the Trans Canada Highway, and the economic entry test (public convenience and necessity) and rate regulation for ambulance service.

Provisions of by-laws of municipalities within the Province relating to the economic entry, rate, and service regulation of taxicabs, liveries and buses operating within the municipality.

NOVA SCOTIA

Motor Vehicle Act, R.S.N.S., 1989, Chapter 293, Section 305, relating to the regulation and licensing of local taxis.

Motor Carrier Act, R.S.N.S., 1989, Chapter 292, Sections 11 to 14 inclusive, relating to the licensing of public passenger vehicles.

Railways Act, Chapter 11 of the Acts of 1993, Sections 14 to 21 inclusive, relating to the regulation and licensing of provincial railways.

PRINCE EDWARD ISLAND

Motor Carrier Act, R.S.P.E.I., 1988

Highway Traffic Act, R.S.P.E.I., 1988

NEW BRUNSWICK

NIL

QUEBEC⁷⁷

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), section 33: power of the Commission des transports du Québec to approve transfers or changes of ownership of taxi companies.

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), sections 59.2 and 59.5: power to seize the vehicle of a non-resident offender operating a taxi, limousine or minibus (less than ten (10) passengers) who could otherwise abscond.

⁷⁶ This listing was amended by the Fifth Protocol of Amendment.

⁷⁷ This listing was amended by the Sixth Protocol of Amendment.

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), and the *Transportation by Taxi Regulation* (O.C. 1763-85, dated August 28, 1985): limit of twenty (20) taxi permits per person.

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), and the *Transportation by Taxi Regulation* (O.C. 1763-85, dated August 28, 1985): public interest criteria for entry in the taxi sector without a reversal of proof; a moratorium on the issuance of permits, and the requirement that operators and drivers of taxis, limousines and minibuses (less than ten (10) passengers) reside or have a place of business in Quebec.

An Act respecting truck transportation (R.S.Q., c. C-5.1), sections 12 and 33: provision maintaining the requirement of an attorney for non-Quebec truck transportation undertakings.

An Act respecting intermunicipal boards of transport in the area of Montréal (R.S.Q., C-60.1), *Municipal Code of Québec* (R.S.Q., c. C-27.1) and *Cities and Towns Act* (R.S.Q., c. C-19).

Education Act (R.S.Q., c. I-13.3) and the *Regulation respecting student transportation* (O.C. 647-91, dated May 8, 1991).

General Order respecting the transport of passengers and goods by water (R.R.Q., 1981 c. T-12 r. 17), section 28: public interest criteria for entry in the local marine transportation sector.

Highway Safety Code (R.S.Q., c. C-24.2), section 92.1: prohibition on driving for non-residents who have failed to pay, within the prescribed time, a fine imposed for an infringement of this Code.

Railway Act (S.Q. 1993, c. 75), Division II: preservation of the certificate of competence issued by the Commission des transports du Québec as a prerequisite for carrying on rail transportation activities in Quebec.

Transport Act (R.S.Q., c. T-12), the *Regulation respecting bulk trucking* (R.R.Q. 1981, c.T-12, r. 3), and the *Regulation respecting foreign carriers* (R.R.Q., c. T-12, r. 24).

Transport Act (R.S.Q., c. T-12), paragraph 5(d), and the *Bus Transport Regulation* (O.C. 1991-86 dated December 19, 1986), section 12: public interest criteria for entry in the bus transportation sector.

Transport Act (R.S.Q., c. T-12), section 39, and the *Bus Transport Regulation* (O.C. 1991-86 dated December 19, 1986), sections 10 and 11: requirement of having a place of business or domicile in Quebec, in the bus sector.

Transport Act (R.S.Q., c. T-12), section 80, and an *Act respecting truck transportation* (R.S.Q., c. C-5.1), section 72: power to seize a vehicle of a (non-resident) offender, in the trucking and bus sectors, who could otherwise abscond.

ONTARIO

Public Vehicles Act, R.S.O. 1990, Chapter P. 54, Sections 5, 6, 7 and 8, relating to the public necessity and convenience test for the issuance and transfer of a public vehicle operating license.

Provisions of by-laws of local, regional, district and other forms of municipal governments within the province relating to the entry, service and local presence requirements for taxicabs, liveries and buses operating within the local, regional, district or municipal area.

MANITOBA

Provisions of the *Highway Traffic Act*, C.C.S.M. c.H60, relating to the economic entry, rate and service regulation of motor carriers, other than local truck undertakings as defined in the *Motor Vehicle Transport Act, 1987*, R.S.C., 3rd Supp., c. 29.

Provision of the *Provincial Railways Act*, C.C.S.M. c.R15, relating to the economic entry, rate and service regulation of provincial railways as defined in the legislation.

Provision of the *Taxicab Act*, C.C.S.M. c.T10, relating to the economic entry, rate and service regulation of taxicabs within the city of Winnipeg.

Provisions of by-laws, municipalities within the province, relating to the economic entry, rate, and service regulation of taxicabs, liveries and buses operating within the municipality.

Provisions of the *Highway Traffic Act*, C.C.S.M. c.H60, relating to the economic entry, rate and service regulation of local truck undertakings as defined in the *Motor Vehicle Transport Act, 1987*, R.S.C., 3rd Supp., c. 29, until January 1, 1998.

SASKATCHEWAN

Motor Carrier Act, Section 4, relating to the economic entry regulation of extra-and intra-provincial bus service.

Railway Act, Section 14, relating to the economic entry regulation of provincial railways.

ALBERTA

NIL

BRITISH COLUMBIA

The Motor Carrier Act.

NORTHWEST TERRITORIES

NIL

CANADA⁷⁸

Motor Vehicle Transport Act, 1987, R.S.C., 3rd Supp., c. 29, Part 1

⁷⁸ This listing was amended by the Fifth Protocol of Amendment.

Annex 1411

Phase Out of Non-Conforming Measures

NEWFOUNDLAND AND LABRADOR

NIL

NOVA SCOTIA

NIL

PRINCE EDWARD ISLAND

NIL

NEW BRUNSWICK

NIL

QUEBEC

Transport Act (R.S.Q., c. T-12), section 39, and the *Bus Transport Regulation*, (O.C. 1991-86, dated December 19, 1986), sections 9 and 10: from July 1, 1995, the requirement to have a place of business or a domicile in Quebec for bus operators will apply from the date on which the application for a permit is filed, and not six (6) months before that application.

Transport Act (R.S.Q., c. T-12), Government Aid Program for Public Transportation: the status quo is upheld until December 31, 1996, concerning procurement by municipalities in the field of bus transportation and, from January 1, 1997, the timetable for trade liberalization provided for in the Quebec-Ontario Agreement on government procurement and labour mobility in the construction industry will be upheld and applied in respect of all provinces.

ONTARIO

NIL

MANITOBA

Provisions of the *Highway Traffic Act*, C.C.S.M. c.H60, relating to the economic entry, rate and service regulation of local truck undertakings as defined in the *Motor Vehicle Transport Act 1987*, R.S.C., 3rd Supp., c. 29, effective January 1, 1998.

SASKATCHEWAN

Motor Carrier Act, section 4, relating to local truck regulation, effective January 1, 1998.

ALBERTA

NIL

BRITISH COLUMBIA⁷⁹

NIL

NORTHWEST TERRITORIES

NIL

CANADA⁸⁰

NIL

⁷⁹ This listing was amended by the Fifth Protocol of Amendment.

⁸⁰ This listing was amended by the Fifth Protocol of Amendment.

