

Internal Trade Workplan

Progress Report

January 2006

Progress on Council of Federation Workplan on Internal Trade

Executive Summary

This progress report highlights the progress that has been achieved under the Council of the Federation Workplan on Internal Trade since the August 2004 Progress Report.

The August 2004 Progress Report identified engaging the Federal Government in the Workplan as an immediate priority. Premiers Lord and Doer wrote to Prime Minister Martin in August 2004 requesting the Government of Canada's participation in the initiative. A Federal-Provincial-Territorial Ministerial meeting of the Agreement on Internal Trade's Committee on Internal Trade was held on December 6, 2004 and served to confirm the full engagement of the Federal Government on all Workplan items, including participation in the coverage of procurement by Crown corporations already agreed to by Provinces and Territories.

Ministers of Internal Trade met again on June 6, 2005 in Quebec City to continue to make progress on all Workplan Items, including:

- Agreeing to recommendations to advance negotiations on an Energy Chapter towards their conclusion allowing for the finalization of market access and regional economic development provisions, and the engagement of the Council of Energy Ministers.
- Conducting a full review of the dispute resolution mechanism in the Agreement on Internal Trade (AIT) and identifying options on ways to address key issues of timing, fairness, certainty, consistency and implementation. Among other things, Ministers have agreed to: streamline the formal consultation requirements of the AIT into a single, general consultation mechanism; add a mechanism to allow original panels to determine if panel reports have been complied with; amend the AIT to provide more consistency, rigour and certainty into the dispute resolution process, including a provision that, should a Party fail to name a panellist, would direct the Internal Trade Secretariat (ITS) to choose a panellist by lot; and examine a range of issues respecting the costs of an AIT panel hearing.
- Directing officials to continue to study issues related to subsidy practices considered to be having an unduly negative impact on internal trade. Issues include: subsidies providing an unfair advantage to business in one province or territory, where subsidies provided by federal regional economic development agencies were identified as a concern; concerns that current disciplines requiring Parties to take into account the economic interests of other Parties are not subject to dispute settlement; and potential bidding wars related to attracting film productions and boat building.

- Reviewing a report released by the Forum of Labour Market Ministers (FLMM) identifying the efforts required to improve labour mobility both by individual governments as well as collectively, by Ministers. Ministers noted that labour mobility issues warrant a higher priority and agreed to contact the FLMM to request that they provide an action plan with specific targets and timelines for completion. Ministers are seeking the Council of the Federation's endorsement of their request that the FLMM provide such an action plan.
- Agreeing to review the AIT to provide recommendations for streamlining the AIT and for broadening the AIT. Private sector input will be sought to contribute to this review.
- Agreeing to further regulatory cooperation and harmonization by: examining external advisory boards and intergovernmental mechanisms that assist collaboration and decision-making; exploring more intensive collaborative efforts to resolve certain areas of regulatory overlap, duplication, or conflict in areas such as agri-food, environmental protection, securities regulation and the regulation of oil and gas development; and exploring options for strengthening the AIT's rules affecting regulatory accountability and reconciliation.
- Encouraging F/P/T Agriculture Ministers to provide clear direction to officials on at their annual meeting in July 2005. At their July 2005 meeting, Ministers of Agriculture agreed to complete the review of the scope and coverage of the Agriculture and Food Goods Chapter of the Agreement on Internal Trade by October 31, 2005. At a November 25, 2005 meeting of F/P/T Agriculture Ministers, Ministers approved in principle the inclusion of all technical measures within the scope of the Agriculture and Food Goods Chapter of the Agreement on Internal Trade and instructed officials to complete further detailed work by April 2006.
- Undertaking a full review of the Procurement Chapter in the AIT and directing officials to continue work to expand coverage.

While significant progress continues to be made, a great deal of work remains to be completed to successfully deliver on all of the priority areas identified in the Workplan. Ministers of Internal Trade have agreed to meet again in Halifax, Nova Scotia, in 2006 to review further recommendations on Workplan items. The success of these efforts would benefit from the continued close involvement of the Council of the Federation, which is critical to ensuring there is continued momentum on difficult issues.

At the August 2005 Meeting of the Council of the Federation, Premiers reviewed and approved this progress report. Premiers noted the progress on the dispute resolution mechanism of the Agreement on Internal Trade and agreement to conclude a review of the scope and coverage of Agriculture and Food Goods Chapter by December 2005.

Premiers also endorsed the efforts of Internal Trade Ministers to advance the Energy Chapter negotiations towards a successful conclusion and requested the Forum of Labour Market Ministers to develop an action plan on labour mobility that addresses specific targets and timelines for completion. Premiers instructed Ministers of Internal Trade to meet regularly and provide regular progress reports on the work plan to the Council of the Federation.

Introduction

The Workplan on Internal Trade, approved by the Council of the Federation at their February 24, 2004 meeting, contains a series of priority actions identified under Immediate Actions, Short-Term Objectives and Longer-Term Objectives. The Progress Report released by the Council in August 2004 focused on the movement achieved on priority action areas related to Immediate Actions and Short-Term Objectives.

The August 2004 Progress Report also identified as a priority, engaging the Federal Government in the process to further support the implementation of the Workplan. Upon release of the Progress Report, Premiers Lord and Doer wrote to Prime Minister Martin requesting the Government of Canada's participation in the initiative. A Ministerial meeting of the Agreement on Internal Trade's Committee on Internal Trade was held on December 6, 2004, and served to confirm the full engagement of the Federal Government on all Workplan items, including participation in the coverage of procurement by Crown corporations already agreed to by Provinces and Territories.

The Committee on Internal Trade (CIT) met in Quebec City on June 6, 2005, to review progress on the Workplan and to provide direction on further work. Ministers made specific progress in a number of areas, as detailed in this Progress Report.

This Progress Report provides a brief review of the status of those Immediate Actions and Short-Term Objectives where activities continue and a more detailed update on the work of Internal Trade Ministers on the Longer-Term Objectives.

1. Immediate Actions and Short-Term Objectives

1.1 Re-commit to honour all obligations under the current AIT

Lead Jurisdictions: Manitoba/New Brunswick

There continues to be progress by Parties in completing their outstanding obligations. Specifically, New Brunswick reported its recent nomination of three bilingual panellists to the AIT's roster of panellists, and Ontario stated its intent to make roster appointments in an effort to meet their obligations.

1.2 Complete the Provincial/Territorial negotiations on Crown Procurement

Lead Jurisdiction: British Columbia

At the December 2004 meeting of ministers, the federal government agreed to join the P/T Agreement on Crown Corporation procurement, with the obligations to enter into force on January 1, 2005 for Provinces/Territories, and on April 1, 2005 for Canada. All Parties have now signed the Protocol of Amendment incorporating this into the Agreement on Internal Trade.

2.4 Develop a comprehensive communications plan

Lead Jurisdiction: New Brunswick/Yukon Territory

Internal Trade Ministers have approved in-principle a comprehensive communications plan and directed the Internal Trade Secretariat to undertake its further development. A final version of the communications plan will be reviewed at the next CIT meeting.

An integral part of the communications strategy is the AIT website. The website has been redesigned and is currently on the internet at <http://www.ait-aci.ca/>. The revised website has been well received by businesses, associations, and organizations using the site.

3 Longer-Term Objectives

3.2 Energy Chapter

Lead Jurisdiction: Alberta

Negotiations on the completion of an Energy Chapter have advanced significantly and Parties appear to have overcome the major hurdles that previously prevented the implementation of an Energy Chapter under the AIT. The incorporation of an Energy Chapter within the AIT would close a significant gap, and would represent a major step forward in expanding coverage of the Agreement.

- Trade and energy officials have completed a review of the 1998 Draft Energy Chapter text agreed to at that time by Energy Ministers, for relevance. There is agreement that the AIT Energy Chapter should focus on market access provisions for all energy goods and services, providing broader coverage than the more electricity-focused 1998 Draft.
- Parties have made significant progress in efforts to find a mutually acceptable resolution to the issue of regional development measures. Trade and energy officials have developed a proposal to address the desire of those Parties wishing to maintain existing or adopt future regional development measures relating to petroleum oil and petroleum gas goods and services while at the same time satisfying the conditions and requirements of the regional economic development provisions of the AIT. At the June 6, 2005 CIT meeting, some Parties have requested additional time for their justice officials to review the proposal.
- At the June 6 meeting, Ministers also agreed with recommendations to advance energy negotiations through the engagement of the Council of Energy Ministers, and hope to give approval to a draft energy chapter in the near future, pending the completion of legal reviews of the regional development measures proposal by some Parties.

3.3 Improving the AIT dispute settlement mechanism

Lead Jurisdiction: Saskatchewan

Provincial and territorial internal trade officials have conducted a full review of the dispute resolution mechanism in the AIT and developed options on ways to address key issues including timing, fairness, certainty, consistency and implementation.

Important progress was made at the June 6, 2005 meeting. Ministers approved the terms of an in-depth revision of the AIT's dispute settlement procedures. Key areas of improvement to the AIT dispute settlement provisions are:

- That the formal consultation requirements of the AIT's sectoral chapters (with the exception of procurement bid protest procedures) be streamlined into a single, general consultation mechanism in the AIT's Dispute Resolution Chapter in an effort to make consultation simpler, clearer and more consistent. This provision will retain the current ability for sectoral working groups to be involved in dispute avoidance and would allow for the assistance of relevant Ministers.
- That the AIT be amended to provide that if a Party fails to name a panellist, a panellist will be chosen by lot by the Secretariat.
- That discussions be completed within 1 year on a mechanism enabling a Party to argue that a dispute is not within the scope of the AIT.
- That the AIT be amended to provide that within 10 days of the issuance of a panel report, a participant may request that the panel:
 - a) provide an interpretation of one or more aspects of its report; or
 - b) correct in its report any errors in computation, any clerical or typographical errors, or any errors of a similar nature.
- That there be a mechanism added that would allow original panels to determine the question of whether panel reports have been complied with.
- That to the AIT be amended to introduce more consistency, rigour and certainty into the dispute resolution process. . Options to be explored further include: reliance on the renewed good faith of Parties; enhancement of retaliatory measures under the Dispute Resolution Chapter; the removal of dispute resolution privileges from non-compliant Parties; and potential imposition of monetary consequences and/or enforceability in the courts.
- In order to attract and retain quality candidates for dispute panels, the per diem rate for AIT panel members be increased to \$800 per day.
- That work continue to address a range of issues respecting the costs of an AIT panel hearing. These include what costs disputants should be responsible for, how costs should be apportioned among Parties and how to enforce cost awards.

Parties recognized that it is important to comply with AIT obligations to pay their annual contributions to the Secretariat budget, in a timely fashion, recognizing that in doing so, would assist the Secretariat in managing the costs associated with establishing panels.

3.4 Assess and address issues related to business subsidies

Lead Jurisdiction: Manitoba

Parties have identified subsidies that are considered to be having an unduly negative impact on their economic interests. These subsidies fall into three broad categories:

1) **Unfair Advantage:** Subsidies that provide an advantage to a business in one province or territory that competes directly with businesses in other provinces or territories. Of particular concern are subsidies provided by federal regional economic development agencies. At their June 2005 meeting, Ministers noted that the current Code of Conduct on Incentives in the AIT already includes an obligation for all Parties to take into account the economic interests of other Parties in developing and applying their incentive measures. Ministers agreed to study this matter further.

The current disciplines in the AIT requiring Parties to take into account the economic interests of other Parties are not subject to the dispute settlement provisions of the AIT. At their June 2005 meeting, Ministers deferred examining a proposal to make these provisions subject to the AIT dispute settlement provisions until the review of the AIT dispute settlement provisions is completed.

2) **Bidding Wars:** There remain concerns regarding pressures on governments by business to raise subsidies in order to maintain or attract investment. Some Parties identified incentive programs in the area of tax credit programs aimed at attracting film productions and boat building to provinces/territories as a concern. On the issue of tax credit programs aimed at attracting film productions to provinces, several Parties indicated a willingness to discuss the issue with their Ministers of Culture and Finance at the June 2005 meeting. At this time, the issue has been deferred pending further study by officials.

3) **Collateral Impact:** Subsidies provided by one or more Parties that may trigger international trade remedy actions (i.e. countervailing duty investigations) by other countries, principally the United States, that then impact upon a Party that is not providing such subsidies.

All Parties are aware of the linkages between domestic incentive programs and international trade obligations related to subsidies and the work under the Workplan item has served as a reminder of the need to take such sensitivities into account in developing and applying their incentive measures.

3.5 *Address labour mobility issues, including but not limited to mutual recognition of foreign credentials*

Lead Jurisdiction: Ontario

The Forum of Labour Market Ministers (FLMM) recently prepared an assessment of the effectiveness of the Labour Mobility Chapter of the AIT. As part of this review, the FLMM conducted a survey of occupational regulatory bodies.

- The survey results demonstrate that important progress has been made in removing barriers to labour mobility across Canada. However, the survey results also suggest that further efforts are necessary to secure greater compliance by regulatory bodies with the obligations of the AIT.
- The FLMM report indicates that improving the level of compliance and the recognition rate for workers will require efforts on two fronts: by individual governments; and, collectively, by the FLMM.

Individual governments need to:

- address issues identified through the survey such as residency requirements and the need for legislative change; and
- follow-up with their regulators to make sure they are aware of the national report.

The FLMM needs to:

- Work with consortia to address issues related to the development and maintenance of mutual recognition agreements as well as to identify any alternative registration processes to ensure complete transparency regarding registration for applicants from other provinces. These activities fall within the current workplan for labour mobility officials.
- Develop specific activities to address occupational issues identified as a result of the survey, for inclusion in future workplans and follow-up with occupational consortia.

At their June 2005 meeting, Ministers Responsible for Internal Trade commended the FLMM report and stressed the importance of addressing the foreign credential aspect as well as the issue of mobility of labour trades. There was agreement that labour mobility issues merit higher priority and Ministers agreed to request that the FLMM provide them with an action plan as the next step.

Ontario has contacted the Forum of Labour Ministers (FLMM) to request that they provide an action plan with specific targets and timelines. The FLMM is exploring development of a more ambitious agenda and has requested officials conduct additional work in preparation for a follow up meeting in the spring of 2006 to consider a broader agenda relating to an action plan.

3.6 Address gaps between the AIT and issues outside the scope of the current Agreement

Lead Jurisdictions: Alberta/British Columbia

The Workplan directs Ministers to agree on an approach, with clear timelines, to address gaps and exemptions identified for action and to consider options for streamlining the AIT.

At their December 6, 2004 meeting, ministers directed officials to present recommendations for addressing a list of priority issues through: (1) simplification of the AIT's architecture and expanding its scope and coverage; and (2) seeking improvements through a sector-specific approach.

At their June 6, 2005 meeting, Ministers directed officials to conduct a review of the AIT's General Rules (Chapter Four) and existing sector chapters and forward recommendations to both streamline and broaden the AIT. Private sector input will contribute to this review.

BC and AB are currently negotiating a bilateral agreement that applies a set of general rules to all measures affecting trade, investment and labour mobility to eliminate remaining barriers not currently addressed under the existing AIT. The target for BC and AB is to have a presentation on this accord prepared for the next CIT meeting for consideration by other Parties.

3.7 Accelerate the harmonization of regulations and standards

Lead Jurisdiction: Nova Scotia

Given that many perceived internal trade barriers stem from differing regulations and standards, the Internal Trade Workplan directs officials to report to Ministers on the status of harmonization efforts and to identify options for ministerial review on accelerating the process and preventing new barriers.

A status report was provided to Ministers at their June 6, 2005 meeting. It noted that, since the issuance of the COF Workplan, the federal Smart Regulation report was released, challenging federal departments to be more effective, responsive, cost-efficient, transparent and accountable in their regulation-making.

At the June 6, 2005 meeting, Ministers agreed:

- To explore expert advisory groups and intergovernmental mechanisms that could assist collaboration and decision-making.
- To explore more intensive collaborative efforts to resolve certain areas of regulatory overlap, duplication, or conflict such as agri-food; environmental protection; securities; and the regulation of oil and gas development.

- To direct officials to develop a report for Ministers with options and recommendations for the expanded coverage of regulatory fields now outside the AIT and accelerating the harmonization/reconciliation activities currently mandated under the AIT.

Ministers also agreed that the Federal Government would share the lead on this Workplan item.

A Working Group session was held in October 2005 bringing together F/P/T stakeholders involved in the standards/regulation areas to develop proposed actions. The target is to develop recommendations as per the Ministers directions for consideration at their 2006 meeting.

3.8 Review of the scope and coverage of the Agriculture Chapter

Lead Jurisdiction: Prince Edward Island

A review of the AIT Agriculture Chapter is ongoing under the direction of Federal/Provincial/Territorial Agriculture Ministers by a working group of officials of the Federal/Provincial Agriculture Trade Policy Committee (FPATPC).

At their July 2005 meeting, Ministers of Agriculture agreed to complete the review of the scope and coverage of the Agriculture and Food Goods Chapter of the Agreement on Internal Trade by October 31, 2005.

At a November 25, 2005 meeting of F/P/T Agriculture Ministers, Ministers approved in principle the inclusion of all technical measures within the scope of the Agriculture and Food Goods Chapter of the Agreement on Internal Trade and instructed officials to complete further detailed work by April 2006.

3.9 Improvements to the Procurement Chapter

Lead Jurisdiction: Newfoundland and Labrador

Procurement by governments, crown corporations and the MASH sector (Municipalities, Academic Institutions, Schools and Hospitals) is presently valued at \$65 billion per year. The Workplan directs officials to undertake a full review of the Procurement Chapter in the AIT. At the June 6, 2005 meeting, Ministers agreed to adopt wording changes related to:

- Article 504 (reciprocal non-discrimination);
- Article 506 (procedures for procurement);
- Article 507 (non- application);
- Article 508 (regional and economic development);
- Article 518 (definitions).

These wording changes will help to clarify the obligations included in the Procurement Chapter of the AIT and will be included in the next AIT Protocol of Amendment.

Ministers also agreed to continue discussions on three specific issues remain to achieve consensus: 1) the reduction of the thresholds that currently apply under the Agreement, 2) expansion of the Chapter's coverage to include professional services with an emphasis on public relations and advertising and services provided by architects and engineers and 3) access to tender calls by way of a unique gateway.