

CANADA'S
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DES POLITIQUES PUBLIQUES
DU CANADA

Canada's Evolving Internal Market

An agenda for a more cohesive economic union



Final Report
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The Public Policy Forum is an independent, not-for-profit organization dedicated to improving the quality of government in Canada through enhanced dialogue among the public, private and voluntary sectors. The Forum's members, drawn from business, federal, provincial and territorial governments, the voluntary sector and organized labour, share a belief that an efficient and effective public service is important in ensuring Canada's competitiveness abroad and quality of life at home.

Established in 1987, the Forum has earned a reputation as a trusted, nonpartisan facilitator, capable of bringing together a wide range of stakeholders in productive dialogue. Its research program provides a neutral base to inform collective decision making. By promoting information sharing and greater links between governments and other sectors, the Forum helps ensure public policy in our country is dynamic, coordinated and responsive to future challenges and opportunities.

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**INTERNAL
TRADE
SECRETARIAT**



**SECRETARIAT DU
COMMERCE
INTÉRIEUR**

The Agreement on Internal Trade (AIT) is an intergovernmental trade agreement signed by Canadian First Ministers that came into force in 1995. Its purpose is to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investment within Canada and to establish an open, efficient, and stable domestic market.

L'Accord sur le commerce intérieur est un accord intergouvernemental commercial signé par les premiers ministres canadiens et qui est entré en vigueur en 1995. Son but est de favoriser un commerce interprovincial amélioré en traitant des obstacles liés à la libre circulation des personnes, des produits, des services et des investissements à l'intérieur du Canada, et d'établir un marché intérieur ouvert, performant et stable.

http://www.ait-aci.ca/index_en/ait.htm



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A LETTER FROM THE EXECUTIVE VICE-PRESIDENT

On May 21, 2013, Mark Carney, the Governor of the Bank of Canada, delivered an address in Montreal that underlined the importance of free trade flow to our national economy. “Trade brings innovation, growth and jobs,” he said. “In the immediate aftermath of the [2008 financial] crisis, the broad economic strategy in Canada has been to grow domestic demand and to encourage Canadian businesses to retool and reorient to the new global economy.”¹

In an era of global economic uncertainty, it is paramount that Canada’s domestic economy remains competitive and vibrant. Enhanced internal trade helps businesses expand across regions, strengthens productivity, facilitates labour mobility, lowers costs and attracts investment. Today, as Canada considers new approaches for driving economic performance, it is increasingly important to evaluate how trade across provinces and territories can be more efficient.

This report highlights the key findings from *the Symposium on the Agreement on Internal Trade*, a multi-sector conference convened on June 13, 2013 in Ottawa to explore the challenges and potential solutions to interprovincial trade in Canada. During the *Symposium*, over 100 public, private, non-profit, association and labour leaders examine the most pressing issues around internal trade, and suggested that strong leadership, alignment and governance mechanisms could help remove our country’s remaining trade barriers.

While improvements to internal trade have been made under the AIT, eliminating the remaining impediments will require focused leadership as well as a collaborative governance approach that engages all sectors. A growing number of leaders agree that we can no longer afford to ignore this critical economic issue, and that concerted action is needed.



Paul Ledwell
Executive Vice President
Canada’s Public Policy Forum

¹ Carney, Mark. (2013). *Canada Works*. Bank of Canada. Speech. Accessed online at: <http://www.bankofcanada.ca/wp-content/uploads/2013/05/remarks-210513.pdf>, p. 11 & 13

EXECUTIVE SUMMARY

Differences and duplication in regulation across Canadian jurisdictions have historically created barriers that limit trade across our country. The Agreement on Internal Trade (AIT) came into force in 1995 with the intent of reducing or eliminating domestic trade barriers.

Over the past two decades, federal, provincial and territorial (FPT) governments have taken steps to improve the AIT to reflect the changing needs of businesses, workers and consumers. Through the adoption of 13 Protocols of Amendment, the Agreement has tackled issues as varied as labour mobility, agriculture and dispute resolution.

Provincial governments have also made strides to remove trade barriers at the regional level, outside of the AIT. For example, the *New West Partnership Trade Agreement (NWPTA)* and *The Trade, Investment, and Labor Mobility Agreement (TILMA)* were created over the past decade to increase the flow of trade, investment and labour mobility across western provincial borders, a region that represents over \$500 billion in combined GDP and is home to 9 million Canadians.² NWPTA and TILMA have helped facilitate the flow of trade by harmonizing regulation and streamlining processes, and they are now regarded as potential templates for future initiatives. Similar agreements, including the Ontario-Quebec Trade and Cooperation Agreement (TCA), the New Brunswick-Nova Scotia Partnership Agreement on Regulation and the Economy (PARE) and the Atlantic Procurement Agreement (APA), are also helping to open trade among provinces.

These agreements represent promising steps towards greater liberalization. However, a number of significant challenges continue to restrict our country's internal market. They include:

- The inability of policymakers, economists and researchers to truly understand the economic impact of internal trade barriers, due to the lack of data and research;
 - The lack of vision, leadership and governance mechanisms that promote ambitious, inclusive action on internal trade issues;
 - Key systemic challenges inherent within the AIT, such as fractured harmonization efforts; and
 - The failure to resolve sector-specific challenges, especially around corporate registration and reporting.
- Given that these issues place a considerable burden on the Canadian economy, we believe the time is right for a discussion on the AIT's successes and limitations, as a means to establish a path for future work under this vital framework.
- To help focus the policy agenda around improving internal trade, this report identifies policy options that FPT governments should consider. Each of these prescriptions were identified and explored throughout five papers that were commissioned for this project, as well as among representatives of all Canadian governments at a symposium discussion that was convened in June 2013 in Ottawa. Their implementation will be essential for providing the evidence, leadership, governance and tools that will help drive change. These prescriptions include:
1. Governments, businesses and academic institutions need to allocate the necessary resources to expand data sets as well as research capacity around internal trade issues.
 2. Committee on Internal Trade (CIT) ministers, with the support of first ministers, should create a work plan that outlines a common approach for improving trade in Canada generally, and strengthening the AIT specifically.
 3. First ministers should give CIT ministers the mandate, direction and support required to take the lead on removing interprovincial trade barriers.
 4. Provincial and territorial governments should play a "champion" role to help drive the internal trade agenda forward.
 5. Governments should strengthen the CIT Chair position through longer term limits and an enhanced ability to set the agenda.
 6. Leaders should make the process of amending the AIT more open and more inclusive of non-government stakeholders.
 7. Governments should allocate more resources to the AIT Secretariat to provide research and coordination on internal trade issues.

² Paradis, Christian. (2013) *Committee on Internal Trade Symposium*. Canada News Centre. Accessed online at: <http://news.gc.ca/web/article-eng.do?nid=749519>

8. Regulatory processes should be aligned by establishing an AIT chapter on technical barriers to trade.
9. Where possible, policymakers should adopt the negative list approach in the AIT, bilateral trade agreements and other internal trade initiatives.
10. Canada's internal and international trade agreements and regulatory processes should be aligned by establishing a pan-Canadian regulatory alignment council.
11. Policymakers should develop a roadmap for reducing the burden of corporate registration and reporting practices.

12. Create a corporate "registry of registries" and a "one-stop shop" for corporate registration.

Together, these policy options provide a compelling basis for the CIT ministers, business leaders and other stakeholders to work together to improve trade flow across Canadian borders. It is the Public Policy Forum's belief that, if implemented, these steps could help facilitate greater trade and mobility in the Canadian economy.



INTRODUCTION AND OUTLINE

The free flow of goods, services and labour across provincial and territorial borders is essential for a strong national economy. Indeed, greater economic interconnectedness generates business opportunities, creates jobs and makes our country more globally competitive. In Canada, internal trade contributed \$319 billion to the national economy in 2008, and provided one sixth of all private sector jobs in our country.³

Over the past decade, Canada has expanded its external trade arrangements but has failed to resolve the numerous internal barriers that continue to inhibit trade here at home. These obstacles are estimated to cost the Canadian economy billions of dollars, and reduce our country's productivity, innovation capacity and competitiveness.

When trying to address these challenges, government leaders have found an absence of literature and data that clearly demonstrate the impact of internal trade barriers. More specifically, the following policy questions have proven especially difficult for governments to resolve:

- How much do internal trade barriers cost the Canadian economy?
- As Canada seeks to liberalize its international trade arrangements, what impact might this have on internal trade flow?
- How have changes to the AIT affected internal trade flow?
- What lessons, if any, might policymakers take from interprovincial trade agreements that could help improve the AIT?
- What are the potential benefits and obstacles of coordinating corporate registration and reporting?
- Are other countries handling internal trade more efficiently than Canada, and what might we learn from their example?

In an effort to provide greater clarity around these and other trade questions, the Internal Trade Secretariat (ITSC), in collaboration with Canada's Public Policy Forum (PPF), launched a project to explore the key issues around the AIT, Canada's national framework for the interprovincial trade of goods, services, labour and capital.

Our first step in this multi-faceted initiative was to invite experts to prepare "deep dive papers" on the questions outlined above, with a focus on quantifying the impact of internal trade barriers in Canada and identifying potential best practices and next steps for improving the AIT. These deep dive papers are:

- **The costs of internal barriers to trade**

James Anderson, Professor, Boston College; Yoto Yotov, Professor, Drexel University, and Delina Agnosteva, Ph.D. student, Drexel University

The authors propose novel and comprehensive theoretical and econometric procedures based on the gravity model to construct bilateral intra-national trade costs. The authors use methods that deliver estimates of the effects of observable and unobservable intra-provincial and inter-provincial Canadian trade costs. Some key findings of this paper include: there are large internal trade costs, even after accounting for the role of

distance and contiguity; there exists a suggestive internal border tax equivalent for aggregate manufacturing of 37%; the tariff-equivalent indexes vary widely across provincial pairs for a given sector and across sectors, and; Yukon, Northwest Territories, and Saskatchewan face the largest trade barriers in Canada. Together, the authors suggest, these issues are areas where policymakers could intervene with specific policy solutions.

- **The impact of external versus internal trade**

Serge Coulombe, Professor, University of Ottawa

In his deep dive paper, Professor Coulombe revisits the work he completed in 2004 that explored the relationship between interprovincial and international trade linkages in Canada, by utilizing more up-to-date Canadian data. Interestingly, this paper demonstrates through the "L-Curve" that international trade is not a substitute for internal trade, in that increases in the former would negatively impact the latter. On the contrary, Coulombe's work demonstrates that increases in international trade either leaves internal trade unaffected, or can actually *increase* trade between provinces and territories. This is partially explained by the fact that as demand for Canadian manufactures increases, products, labour and people must move across our country's pan-Canadian supply chain.

³ Statistics Canada (2010). *Interprovincial trade, by province and territory, 2008*. Accessed online at: <http://www.statcan.gc.ca/pub/11-402-x/2010000/chap/retail-detail/tbl/tbl02-eng.htm>

- **Corporate registration and reporting**

Daniel Schwanen, Assistant Vice President, C.D. Howe Institute

In an analysis of Canada’s decentralized corporate registration and reporting regime, Daniel Schwanen shows how divergent approaches taken by FPT governments are driving up costs for business leaders seeking to expand their enterprises across the country. To help resolve the regulatory misalignment across the 14 jurisdictions, Schwanen proposes adopting a series of policy solutions, including: harmonizing legislative and information requirements; creating a registry of registries, and; instituting a “pay and register once” system that will cut down on time and bureaucracy costs.

- **Canadian comparative modeling**

Christopher Kukucha, Professor, University of Lethbridge

Christopher Kukucha’s paper attempts to shed light on the impact that technical language has on Canada’s interprovincial trade agreements. By looking at the AIT, New West Partnership Trade Agreement (NWPTA), Ontario-Québec Trade and Cooperation Agreement (TCA), New Brunswick-Nova Scotia Partnership Agreement on Regulation and the Economy (PARE) and the Atlantic Procurement Agreement (APA), Kukucha demonstrates the variability and similarities on key trade provisions between each agreement, and evaluates their overall purpose, scope and use of negative and positive lists.

- **International comparative modeling**

Kathleen Macmillan, President, International Trade Policy Consultants

In her analysis of international best practices, Macmillan highlights some key policy options that four different federations have taken to improve the flow of trade

across internal borders. This deep dive paper considers the examples of the United States, European Union, Australia and Switzerland in the context of providing lessons for Canadian policymakers, specifically in the areas of: trade regime architecture; technical barriers to trade; labour mobility; public procurement; investment, and; dispute resolution.

The second aspect of this initiative sought to provide an opportunity for policymakers and individuals affected by internal trade barriers to discuss the key challenges surrounding internal trade in Canada and how they might be resolved. On June 13, 2013, ITSC and PPF convened a *Symposium on the Agreement on Internal Trade* in Ottawa. The meeting brought together close to 100 stakeholders representing private, public, non-profit, labour, association and academic communities to explore the successes, challenges and opportunities of the AIT. Structured as a series of panel discussions featuring the deep dive authors as well as stakeholders, the Symposium explored key themes, including: AIT governance, the absence of recent trade data, and the need to identify best practices from internal and international agreements.

This report presents the key issues that emerged from the Symposium and from the deep dive papers to help inform the meeting of the CIT in the fall of 2013. Our objective is to provide CIT ministers, internal trade representatives and non-government stakeholders with a better understanding of the key issues around the AIT, and to propose policy options that could improve the flow of goods, services, investment and labour across Canada’s provincial and territorial boundaries.



CHAPTER 1: AIT HISTORY AND PROGRESS TO DATE

In the lead up to the 1994 AIT negotiations, Canada's elected officials had a number of political incentives for proving that our country's economic union could function effectively. The failed Meech Lake and Charlottetown Accords had sewn discord and distrust among the provincial and federal governments. The recently concluded North American Free Trade Agreement (NAFTA) as well as the successful completion of the GATT Uruguay Round trade negotiations, raised questions around whether it was easier for Canadians to trade with foreign countries than among ourselves. Meanwhile, the 1995 Québec Referendum, looming less than a year away, threatened Confederation.

There were also important economic considerations that helped pave the way for an accord on internal trade. The 1985 *Royal Commission on the Economic Union and Development Prospects for Canada* (colloquially known as "The MacDonald Commission") and the 1986 Whalley and Trela report helped provide evidence that existing trade barriers affect all provinces, territories and sectors, needlessly costing the Canadian economy billions of dollars each year.

In response, Canada's first ministers met in 1994 to create a comprehensive framework upon which to facilitate greater trade flows. The resulting Agreement on Internal Trade came into force in 1995 based on six guiding principles⁴:

- **Reciprocal non-discrimination:** A principle that ensures free trade practices between P-T jurisdictions;
- **Right of entry and exit:** The right of Canadians to travel and work in any province or territory;
- **No obstacles:** Requiring that governments refrain from creating policies or programs that create barriers to trade.
- **Legitimate objectives:** An enumerated list that provides exceptions to the full implementation of trade measures under AIT.
- **Reconciliation:** A principle that allows governments to eliminate barriers to trade that result from differences in regulation and legislation.
- **Transparency:** Ensuring that governments provide publicly accessible information on trade-related issues to businesses, governments and the general public.

Over the past two decades, Canadian governments have implemented 13 Protocols of Amendment to update the AIT. Measures have been taken to liberalize labour mobility (Chapter 7) and agriculture (Chapter 9), improving the flow of people and goods across borders⁵. Strengthening the AIT dispute resolution process (Chapter 17) was also cited among Symposium participants as providing greater accountability within Canada's trade regime.

In addition to the AIT amendments, governments have adopted a series of interprovincial agreements to spur trade within regions. Each agreement differs in terms of the parties engaged and the barriers removed. Yet all have helped increase the flow of interprovincial trade⁶, and provide some helpful ideas for how we might improve the AIT.

For example, the New West Partnership Trade Agreement (NWPTA), the 2010 accord between Alberta, British Columbia and Saskatchewan, commits each government "to full mutual recognition or reconciliation of their rules affecting trade, investment or labour mobility so as to remove barriers to the free movement of goods, services, investment, and people within and between the three provinces."⁷ Perhaps the most innovative aspect of the NWPTA is the sheer scope of the agreement, and the commitments it places on the three signatory provinces. These include "a longer list of regulated professions, lower bidding thresholds for procurement (albeit not as low as some sections of the Atlantic Procurement Agreement), broader provisions addressing investment (especially incentives), a more streamlined dispute settlement process with a range of criteria to address monetary penalties (although the Ontario-Québec agreement also includes similar language, and a higher threshold for potential costs), and arguably a clearer commitment to environmental management, outside the scope of emissions trading and standards."⁸

Other regional trade agreements, including the Ontario-Quebec Trade and Cooperation Agreement (TCA), the New Brunswick-Nova Scotia Partnership Agreement on Regulation and the Economy (PARE) and the Atlantic Procurement Agreement (APA), also strengthen internal trade, and offer "practical next steps for the AIT."⁹ The Kukucha deep dive paper points to the TCA, which employs a streamlined, straightforward dispute settlement process as a template for the AIT's recently reformed dispute settlement mechanism. Similarly, a key strength of the APA is its lowest bidding thresholds for government procurement, specifically around municipalities, school boards, and publicly funded academic and social service institutions.

⁴ Industry Canada. (2012). *Summary of the Agreement*. Accessed online at: http://www.ic.gc.ca/eic/site/ait-aci.nsf/eng/h_000064.html#general_rules

⁵ For further discussion on some of the most recent, and influential AIT Amendments of Protocol, please see Appendix III.

⁶ Macmillan and Grady, 2007.

⁷ http://www.newwestpartnershiptrade.ca/the_agreement.asp

⁸ Kukucha, 21.

⁹ Kukucha, 1.

Although the AIT, Protocols of Amendment, and bilateral agreements represent encouraging steps towards a more efficient internal trade regime, numerous irritants continue to restrict the flow of goods, services, and people across Canada's internal borders. These barriers are the result of four interconnected challenges:

- The failure of policymakers, economists and researchers to understand the economic impact of internal trade barriers due to the lack of data and research;
- The lack of vision, leadership and governance mechanisms that promote ambitious, inclusive action on internal trade issues;
- The failure to resolve sector-specific challenges, especially around corporate registration and reporting;
- The persistent, systemic inefficiencies relating to the AIT and internal trade generally, such as fractured harmonization efforts.

Each of these challenges has contributed to making trade in Canada a cumbersome process that is characterized by a lack of common direction among FPT governments to improve the flow of goods across internal borders.

Over the past two decades international trade discussions have moved away from the elimination of tariffs and focused instead on regulatory harmonization. This has created an environment that has spurred a number of innovative policy options and trade agreements that remove obstacles within markets. For Canada, this shift represents an important opportunity to identify and incorporate a growing list of international best practices into our own regulatory framework. It also provides an opening for our leaders to participate in this global movement towards greater alignment by, for example, creating a pan-Canadian vision that is supported by robust policy tools.

Unfortunately, with the exception of Canada's regional trade agreements, our country has not kept pace with some of our international peers in charting a common path or adopting innovative policies that enhance trade flows across our country. For example, in the preamble to the Treaty of the European Union, member states declare their collective determination to "promote economic and social progress for their peoples, taking into account the principle of sustainable development within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields."¹⁰

To help support this declaration, the EU has implemented a mutual recognition system to bridge the technical barriers between member states. The European Commission also provides an important oversight role by reviewing and providing feedback on proposed legislative and regulatory changes prior to their ratification in national and subnational legislatures.

Similarly, Australia has sought to realize its common vision of "promoting the goal of freedom of movement of goods and service providers in a national market in Australia" through the adoption of the *Mutual Recognition Accord* (MRA), an innovative agreement that removes technical barriers to trade and improves labour mobility across states.¹¹ According to Kathleen Macmillan, the EU and Australia's creation of a common vision, supported by policies that harmonize regulation (e.g. mutual recognition), have allowed both jurisdictions to improve the flow of trade and labour across their internal borders.¹²

To move Canada towards its full economic potential, it is essential that policymakers, private sector leaders, academics, and labour representatives work together to determine whether these and other international best practices can be applied here at home. As in the EU and Australia, Canada's ability to effectively update the 20-year-old AIT will require a clear vision that is reinforced by policy tools that encourage more liberalized trade. The vision and policies that are adopted must be pliable enough to respond to the changing demands in trade and the global economy. And they should seek to foster a culture of collaboration among all stakeholders.

Symposium participants agreed that Canada stands to benefit greatly from modernizing its internal trade regime. A more cohesive economic union could generate billions of dollars in additional economic activity, spur job creation and make our country more attractive to foreign investors. However, realizing these potential future benefits will depend upon our governments' ability to chart a common path that is inclusive of outside stakeholders and embraces innovative policy solutions.

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0001:01:EN:HTML>

¹¹ Mutual Recognition Act, 1992:C:2012:326:0001:01:EN:HTML

¹² Macmillan deep dive paper, 16.

CHAPTER 2: KEY CHALLENGES, POLICY OPTIONS AND OBSERVATIONS

Having outlined the current context around internal trade in Canada and, to some extent, globally, this section identifies key challenges facing our country’s internal trade regime, offers some observations provided through the Symposium and deep dive papers, and shares policy options that government leaders may need to consider. We believe that implementing these 12 policy options could help create a more open, transparent internal trading system. As FPT governments consider the issues outlined in this section, it would be beneficial to consult with leaders in the private, labour and academic sectors to best determine how they might be addressed in ways that meet the needs of all stakeholders.

SECTION 1: DATA & ANALYSIS

1.1. Challenge:	Policymakers, economists and researchers are unable to gauge the economic impact of internal trade barriers due to the lack of data and research.
1.2. Policy option:	Governments, businesses and academic institutions need to allocate resources to expand data sets as well as research capacity around internal trade issue
1.3 Observations:	<p>The lack of current research on best practices has meant that policymakers have been unable to accurately quantify the impact that non-tariff trade barriers have on the Canadian economy. Policymakers have often had to rely on anecdotal evidence that is often misinformed, biased and dated. As a result, it has been difficult to clearly identify solutions or accurately evaluate the impact that policies are having on internal trade flows. It has also meant that developing evidence-based policy solutions to address these issues has been made significantly more difficult. As one Symposium participant noted, “it is hard to understand the challenge of internal trade barriers when the cost estimates range from \$3 billion to \$49 billion.”</p> <p>In order to both understand the impact that trade barriers place on the Canadian economy and develop more effective policy responses, leaders require data analysis and research that is clear, reliable and far-reaching.</p> <p>Although Canada has some of the most comprehensive data sets in the world, compiling additional information, specifically around firm statistics, could provide a clearer picture of the costs of internal trade barriers. Expanding the available data would allow economists and academics to better assess how changes in trade flows (e.g. due to new Protocols of Amendment and bilateral agreements) affect productivity, competitiveness, job creation and other economic measures. It could also provide a more reliable “benchmark” upon which to measure and compare past and future changes in the economy.</p> <p>Finally, an enhanced research and analysis capacity would provide a more accurate picture of the current trade environment, allowing researchers to better determine how existing barriers, and changes to the AIT are affecting trade in Canada.</p>

SECTION 2: LEADERSHIP & GOVERNANCE

2.1. Challenge:	There is a lack of vision among governments on how to improve the AIT and move forward with addressing internal trade issues.
2.2 Policy option:	CIT Ministers, with the support of First Ministers, should create a work plan that outlines a common approach for improving trade in Canada generally, and strengthening the AIT specifically.
2.3. Observations:	<p>Updating and expanding the 20-year-old AIT requires leaders who can move beyond parochial concerns and carry the political will to unify governments and private sector stakeholders. Since many of the AIT's unresolved trade files are politically sensitive, sustained and far-sighted leadership is needed to move these issues forward. This will require a common vision and goals to resolve minor issues and increase momentum towards addressing the trade challenges.</p> <p>Some participants noted that what is needed is a practical, multi-year work plan that could act as a “call to action” for CIT Ministers and other government leaders to outline a common approach for future progress.</p> <p>In order to provide a framework for actionable change, it will be important for the work plan to lay out a common vision statement, a number of ambitious, yet attainable, goals, and some potential methods for removing trade barriers, including: expanding the New West Partnership Agreement to include additional jurisdictions; adopting the negative list approach to trade, and creating a pan-Canadian regulatory alignment council (these policy options are explored in more detail in the next section).</p> <p>Some participants also agreed that such a work plan or framework should encourage collaboration among government leaders and non-government stakeholders, while outlining specific roles, focus areas and next steps. When outlining the goals of the work plan, it will be important to focus attention on specific areas where progress can be made, particularly around institutional and trade provisions.</p> <p>Such a framework for future collaboration will help generate the type of support among stakeholders and the general public that will be necessary to drive real change.</p>
2.4. Challenge:	There is a lack of leadership among FPT leaders that promotes ambitious policy solutions for internal trade issues.
2.5. Policy option:	First ministers should give CIT ministers the mandate, direction and support to take the lead on removing interprovincial trade barriers.
2.6. Policy option:	Provincial and territorial governments should play a “champion” role to help drive the internal trade agenda forward.

<p>2.7. Observations:</p>	<p>Through both interprovincial trade agreements and the work completed under the Council of the Federation (COF), provincial and territorial leaders have demonstrated a willingness to take on and resolve sensitive trade issues. Their leadership, support and resources will be essential for pushing through the required changes to further improve trade within Canada.</p> <p>Unfortunately, the CIT ministers’ mandate and authority within their respective cabinets is neither clear, nor consistent across governments. Since issues around internal trade span many different portfolios, CIT ministers’ ability to elicit support from their ministerial peers is crucial for removing trade barriers.</p> <p>Therefore, an essential next step will be for Canada’s first ministers to provide CIT and other ministers involved in key trade issues with the mandate and authority to drive change. The objective would be to bestow relevant ministers within each FPT government with the ability to discuss, negotiate and make meaningful changes to regulation and standards. Crucially, CIT ministers will need to be encouraged to act as leaders within their own governments by, for example, encouraging their peers in cabinet to make changes within their departments and ministries.</p> <p>First ministers should also encourage their trade ministers to work together in ways that make consistent and meaningful progress on the internal trade file.</p> <p style="text-align: center;">***</p> <p>In addition to the need for clear leadership, particularly among CIT ministers, internal trade requires “champions” to help move the policy dialogue forward.</p> <p>While the flow of goods and services across internal borders is a federal responsibility, the provinces and territories may be in the best position to enhance internal trade and improve the AIT. Since many unresolved regulatory and trade issues fall under section 92 of the Constitution, having provincial and territorial leaders at the vanguard of any major internal trade initiative would help ensure that the leaders who will be responsible for implementing these policy changes have an opportunity to consider and modify them.</p> <p>Jurisdictions that are the most active in interprovincial trade and have facilitated intergovernmental dialogue might be best positioned play this “champion” role. For example, the Government of Ontario, traditionally regarded as a champion for pan-Canadian collaboration, could be more active in promoting trade discussions between jurisdictions. Having demonstrated through the NWPTA that interprovincial trade can work efficiently, the Western provinces may also be well suited for a leadership role.</p> <p>The federal government should also play a central role in convening trade meetings, encouraging inter-jurisdictional discussions, unilaterally removing barriers under its control and helping to facilitate a more open common market.</p>
<p>2.8. Challenge:</p>	<p>Within the AIT framework, the absence of a consistent leader or agenda makes it difficult to make progress on unresolved trade challenges.</p>
<p>2.9. Policy option:</p>	<p>Governments should strengthen the Secretariat Chair position through longer term limits and an enhanced ability to set the agenda.</p>

<p>2.10. Observations:</p>	<p>A key discussion point from some participants was that there is a need to establish a greater degree of leadership within the AIT governance process itself. Some participants considered that the AIT’s 12-month chairmanship term is too short and makes it difficult for the lead government to set out goals beyond the short-term.</p> <p>Further, due to the AIT’s use of consensus-based decision-making, the Chair also has limited authority to set the agenda or drive policy discussions on important trade issues. This form of decision-making is more vulnerable to political considerations, can make trade negotiations more time consuming, and could potentially lead to the adoption of less ambitious Protocols of Amendment.</p> <p>Over the past decade the EU has shifted away from consensus decision-making in favour of qualified majority voting. This process has been implemented in successive waves and now requires “a favourable vote from the majority of Member States (i.e. at least 14 Member States)...that comprise up to 62% of the European Union’s population.”¹³ The net result has been to make the removal of trade barriers and the passing of legislation much easier to accomplish. This is an approach that FPT governments may want to consider.</p> <p>Further, some participants suggested that creating longer term limits for the CIT Chair and establishing the Government of Canada as a permanent co-Chair would also increase institutional and decision-making continuity, and imbue within the Chair more authority to set the agenda. This would represent a longer-term approach towards internal trade.</p>
<p>2.11. Challenge:</p>	<p>The AIT does not have a formal and permanent mechanism by which non-government experts and stakeholders can participate in AIT consultations and decision-making processes.</p>
<p>2.12. Policy option:</p>	<p>Leaders should make the process of amending the AIT more open and more inclusive of non-government stakeholders.</p>
<p>2.13. Observations:</p>	<p>Another prominent governance issue that was raised centres on what some consider the closed nature of the AIT. Under the current arrangement, non-government stakeholders are not included. Although experts and practitioners may be invited to share their views to ITRs and other government representatives, their exclusion from discussions and decision-making processes means that the practitioners who are most affected by trade rules and regulations do not have a voice at the table. This has led to concerns that changes adopted by FPT governments will not reflect the needs or desires of private sector stakeholders.</p> <p>Government leaders should consider providing additional opportunities to engage with the private sector and other stakeholders to build trust and gain a deeper appreciation for the issues that practitioners face. This could be achieved by formally including business, labour, academic and association leaders in the AIT decision-making process. Although additional actors could complicate trade discussions, their involvement will be essential for ensuring that all concerns are shared and understood. As one Symposium participant noted, this will be especially important for small-medium enterprises (SMEs), which are often underrepresented in trade discussions.</p> <p>In addition, CIT ministers and the Secretariat may wish to consult non-government trade leaders who can provide expert advice on various trade issues. This could happen in person through multi-sector roundtables or town hall discussions, or virtually through technology.</p> <p>A more engaged and understanding environment will be essential for establishing good will among governments, business leaders and other experts to help drive positive change on the internal trade file.</p>

¹³ European Commission (2012). *Glossary. European Commission*. Accessed online at: http://ec.europa.eu/codecision/stepbystep/glossary_en.htm

2.14. Challenge:	Due to the lack of funding and resources, the AIT Secretariat is unable to provide the research, coordination and encouragement on internal trade issues that may be necessary to spur change.
2.15. Policy option:	Governments should allocate more resources and authority to the AIT Secretariat to provide research and coordination on internal trade issues.
2.16. Observations:	<p>As discussed in the Kukucha deep dive paper, policymakers should strive towards the goal of “ultimate liberalization” at the national level, which is not possible without a vibrant Internal Trade Secretariat. This is crucial for coordinating collaboration and dialogue, vital for any future pan-Canadian negotiations, but also for avoiding a “spaghetti bowl” of overlapping and conflicting technical language in regional agreements.</p> <p>Leaders could improve the Secretariat by allocating more resources and authority to provide research, support and to encourage the removal of internal trade barriers.</p>

SECTION 3: SYSTEMIC ISSUES WITHIN CANADA’S INTERNAL TRADE REGIME

3.1. Challenge:	Efforts among governments to harmonize legislation, standards and regulation are fractured, inconsistent and often misaligned.
3.2. Policy option:	Regulatory processes should be aligned by establishing an AIT chapter on technical barriers to trade.
3.3. Observations:	<p>As discussed throughout this report, burdensome regulation, standards and legislation continue to inhibit the flow of trade in Canada. However, it is not altogether clear what steps policymakers should take to harmonize and address these issues.</p> <p>Some governments have taken unilateral steps to remove red tape. For example the federal government is streamlining a complicated review process for big projects that span many different departments and agencies.¹⁴ The government is focusing on areas that will help improve the review process of major projects, including “making the review process for major projects more predictable and timely, and reducing duplication and regulatory burden.”¹⁵</p> <p>However, there is little evidence that this is a consistent practice across all 13 FPT jurisdictions. In the absence of a common approach, it is unclear whether many of the technical issues that inhibit trade in our country can ever fully be addressed.</p> <p>One policy option that has proven effective in other jurisdictions is mutual recognition. Over the past 60 years, the trade relationship between EU countries evolved gradually through the extension of mutual recognition to the food sector and later to other products and services, such as electrical machinery. The mutual recognition principle was codified across the Eurozone through the Single European Act (1986) and later, the Maastricht Treaty, obliging member states to admit “goods and services of other member states in spite of differences in technical or quality specifications.”¹⁶</p> <p>In her deep dive paper, Ms. Macmillan suggests that, in an effort to achieve greater access to the Eurozone market, Switzerland adopted the “EU’s mutual recognition regime as a way of fostering internal trade despite divergent professional labour standards and regulatory requirements between regions.”¹⁷ According to Ms. Macmillan, the advantage of mutual recognition is that it is a pragmatic mechanism for overcoming incompatible regulatory regimes and yet does not require a major bureaucracy to oversee.¹⁸</p>

¹⁴ Government of Canada (2012). *Budget Plan*. Accessed online at: <http://www.budget.gc.ca/2012/plan/pdf/Plan2012-eng.pdf>, 91-92.

¹⁵ Ibid.

¹⁶ Macmillan, 4.

¹⁷ Macmillan paper, 15.

¹⁸ Ibid.

	<p>While Canadian policymakers may have different options for implementing the mutual recognition principal, perhaps the most effective means would be to create a new chapter in the AIT on technical barriers to trade. As in the EU, the proposed new AIT chapter could commit FPT governments to notify each other and the Secretariat on all technical measures they are planning to introduce, providing opportunities for comment and greater harmonization.</p> <p>Additionally, the NWPTA may provide some guidance for creating a chapter on removing technical barriers to trade through mutual recognition. As discussed in Chapter 1 of this report, the NWPTA commits B.C., Alberta and Saskatchewan to “full mutual recognition or reconciliation of their rules affecting trade, investment or labour...between the three provinces.”¹⁹ When reviewing all of Canada’s internal trade initiatives, this provision goes the furthest in terms of scope and the number of covered trade issues, and could provide a useful template for an AIT chapter on technical barriers to trade.</p> <p>Policymakers should consider whether and how the lessons and frameworks used in the EU, Australia, Switzerland and NWPTA can be adopted in future agreements and, potentially, negotiated into the AIT.</p>
<p>3.4. Challenge:</p>	<p>The use of positive lists in many of Canada’s trade agreements, including the AIT, forces politicians to negotiate over every trade provision not included, making it difficult and time consuming to liberalize trade.</p>
<p>3.5. Policy option:</p>	<p>Where possible, policymakers should adopt the negative list approach in the AIT, bilateral trade agreements and other internal trade initiatives.</p>
<p>3.6. Observations:</p>	<p>One tool that is of central importance to the success of the NWPTA is the negative list approach, which stipulates that all sectors fall under the obligations of the trade agreement unless specifically excluded. According to Christopher Kukucha’s deep dive paper, the NWPTA also has “a streamlined and enhanced dispute settlement mechanism, which includes tougher enforcement mechanisms and monetary damages...[as well as] confidence-building measures, designed to increase the likelihood of liberalization in future negotiations is also evident, as are normative issues related to labour standards, the environment, and social policy...[and] an easier to understand document for entrepreneurs, employers and workers.”²⁰</p> <p>Although negative lists include exclusions, they also transparently list barriers, allowing specific restrictions to be targeted in future negotiations. Negative lists also provide clearer interpretation of language, and more room for negotiation, especially regarding trade disputes. As a rule, positive lists should be avoided since they include only what is specifically listed, limiting the flexibility of officials to infer and negotiate specific terms of reference.</p> <p>Any new internal trade agreement will need to acknowledge regional economies and interests. According to the Kukucha deep dive paper, “the NWPTA, PARE, and Ontario-Quebec TCA were possible, in part, due to the similar political objectives and economies of the provinces involved. As a result, it will be difficult to exclude certain protectionist issues, such as regional economic development, as noted in both the AIT and Part V of the NWPTA, in potential future agreements.”²¹</p> <p>Nevertheless, adopting the negative list approach within the AIT, as well as in government-to-government agreements and other internal trade initiatives will ensure that future agreements are more conducive to liberalized trade. Policymakers should also seek to improve existing positive lists within the AIT, APA and NWTPA.</p>

¹⁹ Governments of Alberta, British Columbia and Saskatchewan (2010). *The NWPTA – The Agreement*. Accessed online at: http://www.newwestpartnershiptrade.ca/the_agreement.asp

²⁰ Christopher Kukucha deep dive paper

²¹ Ibid, 22.

3.7. Challenge:	There is no established process for aligning Canada’s internal trade agreements and regulatory processes with our international trade agreements and regulatory processes.
3.8. Policy option:	Canada’s internal and international trade agreements and regulatory processes should be aligned by establishing a pan-Canadian regulatory alignment council.
3.9. Observations:	<p>Governments should ensure that the terms of trade between Canadian jurisdictions are as generous as those outlined in our country’s international trade arrangements. It will be important to align the terms of forthcoming agreements, such as the Comprehensive Economic Trade Agreement (CETA) and the Trans-Pacific Partnership (TPP), with the AIT and other internal agreements in order to guarantee that Canadian jurisdictions and companies enjoy the most favourable trade terms possible.</p> <p>One interesting policy innovation that could help harmonize FPT regulation with international trade terms is the cooperation council approach.</p> <p>Again, Australia offers a useful case study. Over the past decade, the Council of Australian Governments (COAG) has worked to identify sectors and industries that continue to be affected by duplication, misalignment and other regulatory burdens. According to the Macmillan deep dive paper, after creating a list of key areas for reform, “the COAG has since formed the Business Regulation and Competition Working Group and different levels of government in Australia have begun to take concrete steps to deliver on the agenda” of regulatory alignment.²²</p> <p>Interestingly, while Canada has helped create a regulatory cooperation council with the U.S., no such institution formally exists for internal trade. In 2011, Prime Minister Harper and President Obama implemented the <i>Action Plan on Regulatory Cooperation</i>, an agreement that outlines 29 specific initiatives “where Canada and the U.S. will align their regulatory approaches in the areas of agriculture and food, transportation, health and personal care products, chemical management, the environment and other cross-sectoral areas, while not compromising our health, safety or environmental protection standards.”²³ By the end of its first year, this international regulatory council had helped launch a number of pilot projects and regulatory reviews, and explored common policy principles that will help establish a more harmonized approach to nanotechnology regulation.</p> <p>Based on the success of the Canada-USA Regulatory Cooperation Council, it may be desirable for Canadian governments to establish an <i>internal</i> regulatory cooperation council with a mandate to harmonize regulation across provinces and territories. Symposium participants suggested that Canadian regulators need to establish a forum to meet and discuss areas where mutual recognition can be achieved. To some extent this is already happening. However, establishing a formal body to oversee this process could help facilitate greater process standardization and momentum towards the alignment of regulation and legislation.</p>

Section 4: Sector-specific challenges

4.1. Challenge:	The failure to harmonize corporate registration and reporting.
4.2. Policy option:	Policymakers should develop a roadmap for harmonizing corporate registries and reporting practices.

²² Ibid, 9.

²³ Government of Canada. (2011). *Canada and the U.S. agree on Joint Action Plans to boost security, trade and travel*. Accessed online at: <http://actionplan.gc.ca/news/bap-paf/canada-and-us-agree-joint-action-plans-boost-security-trade-and-travel>

<p>4.3. Policy option:</p> <p>4.4. Observations:</p>	<p>A corporate registry of registries and a “one-stop shop” for corporate registration should be created.</p> <p>A major trade issue is the patchwork of requirements that companies must fulfill to operate across the country. In general, the rules that govern corporate registration and reporting across the FPT governments are not aligned, making it both time consuming and costly for businesses to expand their operations across provincial and territorial borders.</p> <p>One of the most important trade challenges facing private sector leaders is that there are 14 separate processes for registering a business in Canada. Creating a more coherent extra-provincial registration and reporting system, or “one stop shop,” creates incentives for entrepreneurs to expand into new Canadian markets, facilitates transparency and the elimination of waste, creates new jobs and helps to attract international investors. There was agreement at the Symposium that there is growing support – within both the political and business communities – for changing the current system.</p> <p>To help address this issue, Canada’s premiers announced in 2010 that governments would begin the process of reconciling extra-provincial requirements by sharing information and coordinating measures to help reduce the administrative burden around registration and reporting.</p> <p>Despite some advances, most notably through the NWPTA, many FPT governments continue to maintain dissimilar requirements on the information and fees that corporations must submit, leading businesses to incur higher costs and greater administrative burdens.</p> <p>According to Daniel Schwanen’s deep dive paper, integrating regulations and programs would first need a “bottom up” approach that works through existing systems, focusing on harmonizing legislation and administrative systems. At the same time, there is also a need for a “top-down” approach from the federal government, which will be an essential player in providing the necessary impetus, resources and infrastructure support to the provinces and territories. The federal government could also play the valuable role of helping to transfer corporate information between jurisdictions.</p> <p>Government leaders will also need to determine whether some or all of the 14 different technical systems can be made compatible and, if not, how information could be shared efficiently. One potential resolution to this challenge would be to establish a “registry of registries”, which would allow centralized access to information, potentially through a business identifier such as a Canada Revenue Agency number.</p> <p>A first step in moving towards a more coherent registration and reporting system would be for FPT governments to develop a roadmap for harmonizing legislation and corporate information requirements. With similar requirements and standards, provincial and territorial governments will be better positioned to share similar information across jurisdictions.</p> <p>Governments should create a system where businesses only have to register and pay once to operate in Canada. To compensate provinces and territories for the resultant lost fees, a revenue-sharing formula could be established, with the federal government potentially providing logistical support.</p>
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CONCLUSION

The AIT was introduced to provide a common framework for FPT governments to eliminate trade barriers. Over the past 18 years, there have been a number of key achievements towards these ends, both inside the AIT and through interprovincial trade agreements. TILMA, NWPTA, TCA, PARE and APA are all innovative policy frameworks that have helped to increase the flow of goods, services, investment and labour across provincial and territorial borders. As stakeholders consider how internal trade can be improved, these areas of success will serve as a solid foundation upon which to build.

This report is meant to provide an impetus for public, private, academic, labour and association leaders to expand on work already undertaken under the AIT and the bilateral agreements. Eliminating the remaining trade barriers will require bold leadership, a clear vision, comprehensive data collection, innovative policy approaches and closer collaboration among all sectors. It will also be important for leaders to be realistic about the barriers that remain and the potential solutions that could be used to move past them.

At the Symposium on the Agreement on Internal Trade, it was clear that more needs to be done to improve how Canada conducts business at home. As discussed, governments and regulators should make approval processes simpler and timelier, and take a concerted approach towards removing burdensome regulation. Many of these steps can be taken unilaterally, as is currently being done by the federal government through the *Economic Action Plan*. Innovative options, such as creating a pan-Canadian regulatory alignment council and instituting mutual recognition, should also be considered and implemented.

Further, government leaders should work closely to ensure that Canadian jurisdictions and companies enjoy the same favourable trade terms that are negotiated through international trade agreements.

While it may be technically challenging, the time is also right for stakeholders to begin the process of developing a common approach to extraprovincial registration and reporting. A more streamlined pan-Canadian system would encourage businesses to expand their operations, reduce waste, and create jobs.

It is our intent that the policy options outlined in this report will help initiate both a call to action for stakeholders *and* a broader discussion around how internal trade can be improved. The outcome of such an exercise would improve the quality of life of all Canadians and advance our country's goal of fostering a strong, open and transparent economic union.



APPENDIX I: A BACKGROUND ON THE AIT

- Created in 1995, the AIT is an intergovernmental trade agreement between the FPT governments that seeks to remove, where possible, all restrictions to the free flow of goods, services, labour and capital across provincial and territorial borders.
- As of 2013, the AIT has been updated through 13 different Protocols of Amendment to reflect new and emerging trade considerations.
- Parties to the AIT agreed to six general rules, established to prevent governments from establishing new trade barriers and to reduce existing barriers:²⁴
 - **Non-discrimination:** Establishing equal treatment for all Canadian persons, goods, services and investments.
 - **Right of entry and exit:** Prohibiting measures that restrict the movement of persons, goods, services or investments across provincial or territorial boundaries.
 - **No obstacles:** Ensuring provincial/territorial government policies and practices do not create obstacles to trade.
 - **Legitimate objectives:** Ensuring provincial/territorial non-trade objectives which may cause some deviation from the above guidelines have a minimal adverse impact on interprovincial trade.
 - **Reconciliation:** Providing the basis for eliminating trade barriers caused by differences in standards and regulations across Canada.
 - **Transparency:** Ensuring information is accessible to interested businesses, individuals and governments.
- The AIT focuses on reducing trade barriers within 11 specific economic sectors:²⁵
 1. **Procurement:** Eliminating local price preferences, biased technical specifications, unfair registration requirements and other discriminatory practices for non-resident suppliers in order to ensure equal access to procurement for all interested Canadian suppliers.
 2. **Investment:** Ensuring Canadian businesses can make investment decisions based on market conditions by eliminating barriers to investment based on head-office location, prohibiting local content and purchasing conditions, reducing local residency requirements and standardizing corporate registration requirements.
 3. **Labour Mobility:** Enabling qualified workers to practice their occupation anywhere in Canada by eliminating residency requirements, requiring licensing, certification and registration of workers to be based primarily on competence, committing to recognizing a worker's occupational qualifications and reconciling differences in occupational standards.
 4. **Consumer-Related Measures and Standards:** Reconciling the consumer protection requirements of different provinces and territories which act as non-tariff barriers in order to allow Canadian firms to capitalize on economies of scale by servicing larger markets with the same products.
 5. **Agricultural and Food Products:** Examining supply management systems for dairy, poultry and eggs; removing technical barriers between provinces, such as differing product and grade standards, and plant and animal health regulations.
 6. **Alcoholic Beverages:** Prohibiting discriminatory practices in areas such as product listing, pricing, distribution and merchandising between the liquor control boards and retail outlets of the provinces and territories.
 7. **Natural Resources Processing:** Prohibiting the introduction of new barriers to the processing of forestry, fisheries and mineral resource products.
 8. **Energy:** Harmonizing the treatment of energy goods and energy services.
 9. **Communications:** Ensuring equal access to public telecommunications networks and the use of public telecommunications services.
 10. **Transportation:** Harmonizing the regulations applicable to commercial vehicles such as safety standards and weights and dimension rules. '
 11. **Environmental Protection:** Ensuring that federal, provincial or territorial environmental protection measures do not become a non-tariff trade barrier.
- **Dispute Resolution Procedures:** The AIT features a formal dispute settlement mechanism to deal with complaints. It is accessible to governments, individuals and the private sector.

For more information, please visit the AIT Secretariat website at: <http://www.ait-aci.ca>

²⁴ Internal Trade Secretariat. (2013). *Overview of the Agreement on Internal Trade*. Accessed online at: http://www.ait-aci.ca/index_en/ait.htm

²⁵ Ibid.

APPENDIX II: KEY PROTOCOLS OF AMENDMENT AND BILATERAL TRADE DEVELOPMENTS

AIT PROTOCOLS OF AMENDMENT

AIT Chapter 7: Labour mobility

In 2009, the AIT further liberalized interprovincial labour mobility under a new Labour Mobility Chapter. This eliminated residency requirements (Article 705) and streamlined practices and processes around the licensing, certification and registration of workers (Article 706), while recognizing the right of parties to adopt or maintain non-material jurisdictional requirements around occupational qualifications, standards and requirements (Articles 706 and 707).²⁶

These changes represented a positive step towards the facilitation of greater interprovincial labour mobility in Canada. However, some challenges still remain. The current focus is on fine-tuning implementation of the new Chapter's provisions across more than 100 occupations in 12 different jurisdictions.

In addition, according to a 2013 Bank of Canada study, labour mobility barriers continue to be a significant consideration among Canadian professionals seeking to relocate to a different province or territory, suggesting that gross migration could increase by a factor of 63% if these barriers were eliminated.²⁷

At the same time, others have underlined caution in relaxing labour standards. Trade expert and labour lawyer Steven Shrybman has warned that changes to labour mobility could actually "impose a lowest common-denominator approach on provincial-territorial training and occupational standards" which could lead to an overall weakening of "training, certification and apprenticeship standards."²⁸

AIT Chapter 9: Agriculture and food goods

The interprovincial trade of agricultural and agri-food products is highly regulated in Canada. Restrictions to the marketing of agricultural products under the federal *Agricultural Products Marketing Act*, and differences

between meat inspection programs, sanitary and phytosanitary regulations and labelling criteria have all restricted the flow of interprovincial trade in the agricultural sector.²⁹

Prior to 2010, the AIT rules applicable to agriculture and food goods were very limited. In 2009, the Council of the Federation agreed on new provisions to further liberalize trade in agri-food products in Canada. In 2010, the FPT governments approved a new Agriculture and Food Goods Chapter. In the new Chapter, the trade obligations of the AIT apply to all technical measures in this sector and prevent the unreasonable use of technical measures to reduce open trade in agricultural and food goods across Canada. The amendments do not apply to non-technical measures relating to supply management systems regulated by federal and/or provincial governments or to provincially-regulated marketing boards.

Notwithstanding these important advances, some economists have suggested that agricultural marketing boards continue to play a role in distorting the flow of agricultural and agri-food products across provincial and territorial borders.³¹

AIT Chapter 17: Dispute resolution

The resolution of disputes through an independent, impartial panel is critical for an open trading system. Following a series of public consultations in the early 2000s, business leaders made it clear that the AIT's dispute resolution mechanism was "too slow, costly and complex," making it difficult for stakeholders to access and enforce.

In response to these concerns, provincial and territorial premiers, with the support of the CIT ministers, helped drive the process to improve the government-to-government dispute resolution rules (2004) and the person-to-government rules (2009). Through these changes, policymakers helped create a more legitimate enforcement mechanism through a number of key provisions, including:

- The streamlining of many processes;
- Greater procedural fairness and the introduction of an appeal process;
- monetary penalties of up to \$5 million for "non-compliance with panel reports, as currently applies to government-to-government disputes, as well as changes resulting from a review to ensure procedural fairness and consistency."

²⁶ Agreement on Internal Trade, Ninth Protocol

²⁷ Bank of Canada. (2013). *Explaining Canada's Regional Migration Patterns*. Retrieved May 22, 2013 from <http://www.bankofcanada.ca/wp-content/uploads/2013/05/boc-review-spring13-amirault.pdf>, p.25

²⁸ Shrybman, 2009, p. iv

²⁹ Coulibaly, 2010

³⁰ Ibid.

³¹ Busby, Colin and Daniel Schwanen. (2013). *Commentary: Putting the Market Back in Dairy Marketing*. C.D. Howe Institute, No. 374. Accessed online at: http://www.cdhowe.org/pdf/Commentary_374.pdf

³² Internal Trade Secretariat Corporation. (2002). *Report on the Public Consultations Project*. Accessed online at: http://www.international.alberta.ca/documents/About_Us/ITS-Rpt_on_public_consultations02.pdf, p. 13; CGA-Canada. (2006). *Making Trade Dispute Resolution in Canada Work*. Accessed online at: http://www.cga-canada.org/en-CA/ResearchReports/ca_rep_2006-05_ait.pdf

Together these Amendments have helped make our economy more accessible to Canadians. Due to the absence of data the true economic effects of these changes are difficult to assess. Nevertheless, it is fair to conclude that some of the \$319 billion in interprovincial trade that occurred in 2008³⁴ was made possible by improvements to the AIT and the bilateral trade agreements.

INTERPROVINCIAL TRADE AGREEMENTS

The Trade, Investment, and Labor Mobility Agreement (TILMA): In 2006, the governments of B.C. and Alberta signed a bilateral agreement to facilitate greater trade, investment, and labour mobility across their provincial borders. The TILMA allowed B.C. and Alberta to eliminate barriers and mutually recognize and reconcile rules that impeded the free movement of people, goods, and services within and across the two provinces. Unlike the AIT, which covers only the specific sectors listed in that agreement, the TILMA covered all sectors of the economy that relate to trade, investment and labour mobility. It achieved this comprehensive coverage by using a “negative list” approach, meaning that everything is covered unless specifically exempted. The TILMA called for the reconciliation of regulations and standards between the two provinces. Under the TILMA, an integrated corporate registration and reporting system was put in place to allow businesses in one province to seamlessly register in the other province. Furthermore, it provided a three-step dispute resolution process in order to resolve disputes in an efficient, inexpensive, and timely manner. The dispute resolution process was accessible by businesses, NGOs, and individuals as well as governments. In addition, the process was enforceable, providing the possibility of monetary penalties up to \$5 million should a government refuse to bring itself into compliance following a ruling of an impartial dispute panel.

The Ontario-Quebec Trade and Cooperation Agreement (TCA): In 2009, Ontario and Quebec built upon several existing agreements with the creation of the TCA, which aims to improve the region’s existing interprovincial trade framework and enhance Ontario and Quebec’s economic relationship.

The agreement’s structure consists of:

- Chapters on economic, regulatory and energy cooperation that provide for joint initiatives that extend beyond traditional trade commitments;
- A set of liberalizing general rules that oversee the agreement;

- Six sector-specific chapters that address major trade barriers and curtail the adoption of new trade irritants, and;
- A mechanism that will encourage a cooperative, conciliatory approach to ensure that both governments adhere to the Agreement’s commitments.

The TCA also allows both provincial governments to grant certain exceptions around a select group of policy issues, and provides a dispute settlement mechanism that can award up to \$10 million in penalties if it is determined that one of the provinces is inhibiting trade through the use of non-tariff barriers.³⁵ Unlike TILMA, the TCA follows a positive approach to trade, in which issues are only covered if specifically outlined in the agreement.

Although the TCA has made some important advances in liberalizing trade between Ontario and Quebec, the scope of the agreement is limited by its inclusion of only a select group of sectors and industries.

The New West Partnership Trade Agreement (NWPTA): The NWPTA is a comprehensive agreement that removes barriers in all sectors of the economy that relate to trade, investment or labour mobility. Signed in 2010, the NWPTA between B.C., Alberta and Saskatchewan has four key components:

- A comprehensive economic agreement that removes remaining barriers to trade, investment and labour mobility, further enhancing the competitiveness of Canada’s Western Provinces;
- An international co-operation agreement that sees the three provinces co-operate on trade and investment missions to international markets, and share foreign market intelligence to advance joint interests and increase business competitiveness;
- An innovation agreement that enables provincial innovation efforts to be co-coordinated to better attract investment and talent, helping build critical mass of innovation activities in the West; and
- A procurement agreement that enables the provinces to capitalize on their combined buying power through the joint procurement of goods and services.

Based on the strength and thoroughness of these four components, the NWPTA has been identified as an effective framework and potential template for conducting trade within Canada.

³³ Committee on Internal Trade. (2012). *Meeting of the Federal-Provincial-Territorial Committee of Ministers on Internal Trade*. Accessed online at: http://www.ait-aci.ca/index_en/news.htm

³⁴ Statistics Canada (2010). *Interprovincial trade, by province and territory, 2008*. Accessed online at: <http://www.statcan.gc.ca/pub/11-402-x/2010000/chap/retail-detail/tbl/tbl02-eng.htm>

³⁵ Descôteaux, David. (2012). *The Ontario-Quebec Trade and Cooperation Agreement*. Montreal Economic Institute. Accessed online at: http://www.iedm.org/files/sept09_en.pdf

Further, the agreement employs a negative listing approach in that applies to all measures with only the exceptions listed. Regulations and standards have been reconciled between the three provinces and the integrated corporate registration and reporting system established between B.C. and Alberta has been extended to include Saskatchewan.

The NWPTA also possesses an enforceable and accessible dispute resolution mechanism with the potential for monetary penalties of up to \$5 million to be awarded against non-compliant governments. The dispute resolution process is available to businesses, NGOs, individuals and governments.

Partnership Agreement on Regulation and Economy (PARE):

In 2009, the Governments of New Brunswick and Nova Scotia signed the Partnership Agreement on Regulation and Economy (PARE) to liberalize trade through the harmonization of regulation, licenses and qualifications. Much like TILMA, NWP and TCA, PARE was designed to foster a more cohesive trade and economic block to improve the region's competitiveness, and commits New Brunswick and Nova Scotia to cooperate on a range of areas, including:

- Workforce mobility
- Workforce transformation
- Energy
- Financial services
- Transportation
- Health and safety
- Non-sectoral regulatory cooperation.³⁶

One of the agreement's first initiatives was to improve the flow of commercial truck traffic between the two signatory provinces. By harmonizing permit conditions, coordinating regulation enforcement and developing a "regional permitting system," the agreement helped remove duplication of requirements and resources that were expensive and burdensome.³⁷

Unlike other interprovincial trade agreements, PARE lacks an independent and enforceable dispute settlement mechanism. Instead, affected parties are required to refer unresolved issues to a Management Committee composed of four deputy ministers and, in the case of further disagreement, to the Committee of Ministers.



³⁶ <http://pare-eper.ca/pdf/NB-NSagreement-e.pdf>

³⁷ <http://www.atlanticgateway.gc.ca/strategy/chapter10.html>

APPENDIX III: ANNOTATED BIBLIOGRAPHY OF KEY REFERENCES

Alberta Chambers of Commerce. (2012). *Elimination of Interprovincial Trade Barriers*. Accessed online at: http://www.abchamber.ca/wp-content/uploads/2012/02/Elimination_Interprovincial_Trade_Barriers.pdf

In this short document, the Alberta Chambers of Commerce outlines the progresses made to date to eliminate interprovincial trade barriers and provides recommendations to the Government of Alberta to further liberalize trade between Canadian provinces.

Bank of Canada. (2013). *Explaining Canada's Regional Migration Patterns*. Accessed online at: <http://www.bankofcanada.ca/wp-content/uploads/2013/05/boc-review-spring13-amirault.pdf>

Understanding the factors that determine the migration of labour between regions is crucial for assessing the economy's response to macroeconomic shocks and identifying policies that will encourage an efficient reallocation of labour. By examining the determinants of migration within Canada from 1991 to 2006, this article provides evidence that regional differences in employment rates and household incomes tend to increase labour migration, and that provincial borders and language differences are barriers to migration.

Busby, Colin and Daniel Schwanen. (2013). *Commentary: Putting the Market Back in Dairy Marketing*. C.D. Howe Institute, No. 374. Accessed online at: http://www.cdhowe.org/pdf/Commentary_374.pdf

This report suggests that restrictions on milk production to enforce prices do not necessarily correspond to the objectives of the Canadian Dairy Commission (CDC) as laid out in the *Dairy Commission Act*. The authors recommend changes to the governance of the CDC "that would bring consumer and industrial users' interests into decision-making," as well as a cap on CDC-set support prices and a recommendation that the federal government should reclaim the powers over export and interprovincial trade that it delegated to the provinces to increase the flow of Canadian milk products internally and globally.

Canadian Chamber of Commerce. (2012). *Top 10 Barriers to Competitiveness: Tackling the Top 10 Barriers to Competitiveness*. Accessed online at: http://www.chamber.ca/images/uploads/Top10/2013/Booklet_Top_10_Barriers_2013.pdf

The Top 10 Barriers to Competitiveness was launched in 2012 by the Canadian Chamber of Commerce in consultation with its members. This ongoing initiative aims to direct attention to the key impediments holding back Canada's progress and to urge all levels of government to act more swiftly in increasing our country's ability to compete globally. The 2013 edition highlighted internal trade barriers as one of the major impediment to Canada's competitiveness. According to the Canadian Chamber of Commerce, Canada is still far from being a barrier-free internal market and it needs a new agreement that will deliver a single, unimpeded marketplace for internal trade, labour mobility and investment.

Canadian Chamber of Commerce. (2004). *Obstacles to Free Trade in Canada: A Study on Internal Trade Barriers*. Accessed online at: <http://www.chamber.ca/images/uploads/Reports/internal-trade-barriers081104.pdf>

This document presents the findings of an information gathering exercise that the Canadian Chamber of Commerce conducted with its members over the summer of 2004 to identify barriers to trade. Based on the input received from the questionnaire, barriers to trade do exist within Canada, costing Canadian businesses time and money, hampering productivity and ultimately the competitiveness of the Canadian economy. Most common barriers include complying with multiple sets of regulations, different licensing requirements, labour mobility barriers, local preferences for procurement, and local presence requirements.

Carney, Mark. (2013). *Canada Works*. Bank of Canada. Speech. Accessed online at: <http://www.bankofcanada.ca/wp-content/uploads/2013/05/remarks-210513.pdf>

In his March 21, 2013 speech in Montreal, Mark Carney, then Governor of the Bank of Canada, provides insight on the challenges and successes of the Canadian economy, in light of the 2008 global financial crisis and issues in the U.S. and Europe.

CGA-Canada. (2006). *Making Trade Dispute Resolution in Canada Work*. Accessed online at: http://www.cga-canada.org/en-CA/ResearchReports/ca_rep_2006-05_ait.pdf

In this 2006 report, the CGA conveys its support for the AIT and its desire to see the AIT dispute resolution process work more effectively. Based on their experience, CGA-Canada identifies the key issues that they believe government must address and makes a series of recommendations for improving the AIT and its dispute resolution mechanism.

Committee on Internal Trade. (2012). *Meeting of the Federal-Provincial-Territorial Committee of Ministers on Internal Trade*. Accessed online at: http://www.ait-aci.ca/index_en/news.htm

This June 15, 2012 media release outlines the results of the Meeting of the Federal-Provincial-Territorial Committee of Ministers on Internal Trade. The release explains that the Ministers approved amendments to the AIT to “ensure a more effective Person-to-Government dispute settlement process” as well as an “interpretive note” on the Agricultural and Food Goods Chapter. Additional issues discussed include the recognition that further work is needed on corporate registration and reporting, that a new AIT Chapter may be necessary to address technical barriers to trade and that Ministers will continue to work together to address “situations where foreign interests may receive more favourable treatment under an international agreement than domestic interests receive under the AIT.”

Coulibaly, Aïcha L. (2010). *Does the Agreement on Internal Trade Do Enough to Liberalize Canada’s Domestic Trade in Agri-food Products?* Ottawa, ON, Canada: Parliamentary Information and Research Service, 2010. Accessed online at: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/2010-25-e.pdf>

This paper begins with a statistical overview of interprovincial trade in Canada and describes the types of trade barriers in this market. It then presents the AIT and its protocol of amendment for the chapter on agricultural and food goods. Finally, it raises questions about the possibility of truly achieving the objectives of the amendment protocol, in view of the bilateral and multilateral trade accords among the provinces and territories.

Coulombe, Serge. (2004). *Intranational Trade Diversion, the Canada-United States Free Trade Agreement and the L Curve*. Topics in Economic Analysis & Policy. Vol. 4, Iss. 1

In this paper, Mr. Coulombe demonstrates that the hypothesis of substitutability between interprovincial trade and international trade was rejected by facts. To the contrary, the analysis of the data (L curve) suggests that interprovincial appear to be complementary, i.e., when international trade expands, interprovincial trade also tends to expand.

Descôteaux, David. (2012). *The Ontario-Québec Trade and Cooperation Agreement*. Montreal Economic Institute. Accessed online at: http://www.iedm.org/files/sept09_en.pdf

This note provides a brief background on the Ontario-Quebec Trade and Cooperation Agreement with a focus on the costs of trade barriers in Canada, the liberalization of interprovincial trade under the AIT, and the strengths of the TCA (e.g. greater labour mobility between the two provinces, a “more stringent dispute mechanism,” etc.).

European Court. (1974). *Judgment of the Court of 11 July 1974*. Euro-Lex. Accessed online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61974J0008:EN:HTML>

In its July 11, 1974 decision, the European Court provides clarity that the Treaty of Rome forbids EU Member States from instituting non-tariff trade barriers. In its ruling, the Court declared that “All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade are to be considered as measures having an effect equivalent to quantitative restrictions,” such as quotas and import restrictions, as forbidden under the Treaty of Rome.

Government of Alberta. *FAQs on the Agreement on Internal Trade (AIT)*. 2008. Accessed online at: <http://www.international.alberta.ca/658.cfm>

This Frequently Asked Questions page is maintained by the Government of Alberta’s International and Intergovernmental Relations Ministry to help provide facts and greater clarity on the AIT

Governments of Alberta, British Columbia and Saskatchewan. (2010). *B.C., Saskatchewan, Alberta Launch New West Partnership*. Accessed online at: http://www2.news.gov.bc.ca/news_releases_2009-2013/2010PREM0093-000508.htm

In this April 30, 2010, news release, the Governments of B.C., Saskatchewan and Alberta announce the launch of the New West Partnership. The news release explains the shared goal of facilitating more opportunities in the three signatory provinces and outlines the four components of the NWP (a comprehensive economic agreement, an international co-operation agreement, an innovation agreement and a procurement agreement).

Internal Trade Secretariat Corporation. (2002). *Report on the Public Consultations Project*. Accessed online at: http://www.international.alberta.ca/documents/About_Us/ITS-Rpt_on_public_consultations02.pdf

This Public Consultations Project Report outlines the background, process and outcomes of a consultation project that was “intended to engage a broad cross-section of Canadians in dialogue concerning the state of the domestic

market and internal trade” in Canada. The Report identifies problems to be addressed by governments, such as the lack of awareness about the AIT and issues related to internal trade.

Internal Trade Secretariat. (2011) *Agreement on Internal Trade Annual Report 2010/2011*. Accessed online at: http://www.ait-aci.ca/en/reports/pdf/annual/2010-2011_en.pdf

This Annual Report highlights progress made to the AIT in 2010 and steps for future improvement, including the CIT’s call to develop an action plan on business registration, reporting and licensing; direction to explore monetary and non-monetary enforcement options for the Person-to-Government dispute process, and; instructions to continue discussions on achieving greater openness and transparency around public procurement.

Internal Trade Secretariat. (2010). *Eleventh Protocol of Amendment*. Accessed online at: http://www.ait-aci.ca/index_en/ait.htm

This page outlines the Eleventh Protocol of Amendment made to Chapter 9 (Agricultural and Food Goods) of the AIT.

Internal Trade Secretariat. (2009). *Ninth Protocol of Amendment*. Accessed online at: http://www.ait-aci.ca/en/ait/9_en.pdf

This page outlines the Ninth Protocol of Amendment made to Chapter 7 (Labour Mobility) of the AIT.

Internal Trade Secretariat. (2013). *Overview of the Agreement on Internal Trade*. Accessed online at: http://www.ait-aci.ca/index_en/ait.htm

This page provides a thorough background on the AIT, focusing on key facts and tenets of the Agreement. It is being included in the Appendix of this document and will be made available at the *Symposium* in order to provide the participants with a better understanding of the AIT.

Knox, R. and Amela Karabegović. (2009). *Canada’s problem with interprovincial trade barriers*. Fraser Forum (Jul/Aug 2009): 20-21,4.

In this short note, the authors discuss Canada’s interprovincial trade barriers and their impacts on the Canadian economy. They also provide recommendations to further eliminate these barriers.

Lejour and Jan-Willem De Paiva Verheijden. (2007). *The Tradability of Services within Canada and the European Union*. The Service Industries Journal, Vol.27, No.4, June 2007, pp.389–409

This paper analyses bilateral trade flows between the provinces of Canada and between the member states of the European Union using a gravity model. On average, distance is less a hindrance for services trade than for goods trade. Language and regulation differences hamper intra-EU trade significantly. Services trade, in contrast to goods trade, is also hampered by the level of regulation in the importing country. Services trade within Canada as a share of GDP is twice the intra-EU level, and estimates suggest that intra-EU services trade could more than double if the internal market functioned like the Canadian services market.

Macmillan, Kathleen E. and Patrick Grady. (2007). *Backgrounder: A New Prescription: Can the BC-Alberta TILMA Resuscitate Internal Trade in Canada?* C.D. Howe Institute. Accessed online at: http://www.cdhowe.org/pdf/backgrounder_106.pdf

In this backgrounder, the authors argue that interprovincial trade barriers are a drag on Canadian productivity and “send an embarrassing message to international investors.” Despite some past progress in reducing them, they remain an irritant to our economic union. The authors suggest that greater trade openness, “as pursued by Alberta and British Columbia in the TILMA is a model that Ottawa and the provinces should pursue.”

Public Interest Advocacy Centre (PIAC). (2009). *The Consumer Perspective of Trade and Commerce Power*, Ottawa. Retrieved May 14, 2013 from <http://www.piac.ca/interprovincialtrade.pdf>

This paper begins by explaining the history of “trade and commerce” powers in Canada and their use to determine the constitutionality of legislative provisions. As well, the paper discusses the challenges of defining “barriers to interprovincial trade” and reviews various efforts to eliminate interprovincial trade barriers in Canada. The paper also examines the consumer interest in interprovincial trade in Canada and explains the difficulty of clearly identifying the consumer interest in interprovincial trade. It then takes a brief look at the various interprovincial trade agreements that have been signed in attempt to remove interprovincial trade barriers and concludes with potential solutions and recommendations for the future.

Sands, Christopher. (2007). *Canada's Problem: Domestic Trade Barriers*. American Enterprise Institute. Accessed online at: <http://www.american.com/archive/2007/may-0507/canada2019s-problem-domestic-trade-barriers/>

In this article, Christopher Sands, writing for the American Enterprise Institute's *The American* online magazine, explains the political, historical and constitutional reasons for why Canada continues to have internal trade barriers. The author lauds the adoption of TILMA as a "promising sign of change" for internal trade in Canada, but suggests that the federal government should do more to dismantle trade barriers that have become a drag on the country's productivity.

Shrybman, Steven. (2009). *State of Play: Canada's Internal Free Trade Agenda*. Ottawa, ON: Council of Canadians.

This report provides an overview of the current state of FPT efforts to complete a framework of internal agreements concerning trade, investment and labour mobility. The author argues that agreements like TILMA serve to dismantle local control of municipalities and force labour, environmental and social policy standards to harmonize to the lowest level. It highlights the role the federal government has played in encouraging the implementation of new agreements and notes that it has even threatened to use its constitutional powers to force their implementation. The report also investigates the connection between TILMA and other trade deals under consideration, both interprovincially and with the European Union (from <http://cupe.ca/trade/internal-trade-shrybman-state-of-play>).

Whalley, J. (2006). *Interprovincial Trade Barriers Towards Goods and Services in Canada: An Issues Paper for Industry Canada*.

This issues paper discusses interprovincial flows of goods and services in Canada. It argues that recent heightened concern over this issue, in part based on surveys of business opinion, needs to be counterbalanced against earlier assessments in the 1980's of the issue as a tempest in a teacup. Three themes emerge from existing work. One is that the direct trade effects of interprovincial barriers seem small. A second is that for the 1970's and 1980's the impacts of federal government policies on interprovincial trade flows substantially outweigh those of provincial

barriers. A third is that the costs implied by regulation seem to be large, but little regulation (with the exception of trucking) explicitly differentiates by province. Earlier work also provided inventories of interprovincial barriers and empirically based calculations to support their position, which seems to be missing in more recent commentary. The need is to update this work and assess its applicability to present circumstances. The paper also reviews experience involving other federal states (Australia, Brazil, the United States, Russia). It also comments on the AIT and TILMA, setting out further possible approaches for enhancing the impacts of these agreements over the next decade or so. Key knowledge gaps and priorities for future research are highlighted.