



August 6, 2014



The Honourable Kathleen Wynne, M.P.P.  
Premier of Ontario  
Chair - Council of the Federation



By email: [premier@ontario.ca](mailto:premier@ontario.ca)



Dear Premier:

As you prepare to meet later this month in Charlottetown, we would like to impart the importance of responding collectively to the challenge issued by the federal Minister of Industry, and by many of you, that the time has come to reform the Agreement on Internal Trade.



We couldn't agree more.



Over the past decade, we, as representatives of business and professionals, have been working towards the common goal of strengthening Canada's economic union to improve the competitiveness of the Canadian economy and expand access to new business opportunities. These are shared, overarching priorities for businesses and governments alike.



We have developed the attached paper "A new vision for interprovincial trade in Canada" with the view that stakeholders are part of the solution and that debate and discussion amongst all is a necessary condition for a successful outcome. We propose that discussions on modernizing Canada's economic union should first focus on defining a common vision for interprovincial trade. We also believe negotiations should be as ambitious and comprehensive in opening internal trade as any other international trade agreement.

Our paper suggests a work plan should comprise measures that would enhance regulatory cooperation, provide for effective and efficient dispute resolution, and provide for an effective, transparent and inclusive structure to govern and manage internal trade.

We suggest First Ministers give their respective trade ministers the mandate, direction and support required to conclude negotiations and adopt an implementation plan by December 31, 2015.

The Honourable  
Kathleen Wynne,  
Premier of Ontario  
Chair, Council of  
the Federation

August 6, 2014

We look forward to working with you and your respective governments in this important endeavor.

Yours sincerely,

[Original signed by:]

The Hon. Perrin Beatty, P.C.  
President & Chief Executive Officer  
The Canadian Chamber of  
Commerce

Mr. Patrick Keller, CPA, FCGA  
Chair  
Certified General Accountants  
Association of Canada

The Hon. John Manley, O.C., P.C.  
President and Chief Executive Officer  
Canadian Council of Chief Executives

Mr. Don Jarvis  
President and CEO  
The Dairy Processors Association of Canada

Mr. Dan Kelly  
President and Chief Executive Officer  
Canadian Federation of  
Independent Business

Mr. Garth Whyte  
President and CEO  
Restaurants Canada

Mr. Jayson Myers  
President & CEO  
Canadian Manufacturers and  
Exporters

cc: Provincial and Territorial Premiers  
The Right Hon. Stephen Harper, P.C., M.P.

Att:

THE CANADIAN CHAMBER OF COMMERCE  
LA CHAMBRE DE COMMERCE DU CANADA

CANADIAN COUNCIL  
of CHIEF EXECUTIVES



CONSEIL CANADIEN  
des CHEFS D'ENTREPRISE

**CFIB**  
CANADIAN FEDERATION  
OF INDEPENDENT BUSINESS.

**Canadian  
Manufacturers &  
Exporters**

**CGA** CERTIFIED  
GENERAL  
ACCOUNTANTS

**DPAC-ATLC** Dairy Processors Association of Canada  
Association des Transformateurs Laitiers du Canada

**Restaurants  
Canada**  
The voice of foodservice | La voix des services alimentaires

# A new vision for interprovincial trade in Canada

A business agenda for  
strengthening Canada's  
economic union

**Discussion Paper**  
August 6, 2014

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## About us

Over the past decade, a number of organizations representing businesses and professionals have been working towards the common goal of strengthening Canada's economic union.

This paper has been developed with the shared idea that stakeholders are part of the solution, and that debate and discussion amongst all is necessary to ensure Canadian businesses and individuals are well positioned domestically to succeed globally.

This paper does not necessarily reflect the views of any one organization nor do organizations necessarily endorse all of its contents.

We welcome your feedback on this issue. If you have any comments, please contact:

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# 1. Improving Canada's competitiveness by modernizing our economic union

## **Improving Canada's competitiveness: a shared priority for Canadian businesses**

Improving the competitiveness of the Canadian economy and expanding access to new business opportunities are shared, overarching priorities for businesses in every sector of the Canadian economy. This is becoming increasingly critical as the Canadian economy is becoming more integrated with global markets, and as Canadian businesses face global competition for market shares, investment mandates, and skilled personnel. In that context, improving the governance and functioning of Canada's internal market so that goods, services, capital and labour can flow more freely across jurisdictions within Canada would help make the Canadian economy more competitive, and thereby help Canadian businesses succeed at home and abroad.

## **Businesses and governments working together to open markets**

The recent past has shown that by working together, Canadian governments and business leaders can accomplish ambitious outcomes in terms of removing barriers to trade and investment, and opening access to foreign market opportunities. While the business community has been actively advocating for and supporting governments in negotiating comprehensive trade agreements with some of the world's leading economies, governments at the federal and provincial levels have taken on this challenge, with impressive, unprecedented results. This business-government cooperation led to the conclusion of one of the most comprehensive and ambitious trade agreements in history, and the launch of other significant trade initiatives that will address both international trade barriers and open access to new opportunities.

Examples of such initiatives include:

- Alberta and British Columbia concluding a Trade, Investment and Labour Mobility Agreement (TILMA) in 2006, with Saskatchewan joining in 2010 in what became the New West Partnership;
- Quebec and Ontario concluding a Trade and Cooperation Agreement in 2009;
- New Brunswick and Nova Scotia signing the Partnership Agreement on Regulation and Economy in 2009 to improve regulatory cooperation between the two provinces.
- The conclusion of a Canada-U.S. Agreement on Government Procurement in 2010 by the federal government, with strong support and involvement from the provinces and territories who also agreed to join the World Trade Organization's (WTO) Government Procurement

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Agreement – this agreement resulted from a rapid mobilization of governments at the federal, provincial and territorial levels, along with Canadian exporters affected by the ‘Buy American’ restrictions inserted in U.S. stimulus spending;

- Canada and the U.S. launching a Perimeter Security and Economic Competitiveness initiative in 2011 that aimed to address key issues that add to the cost and complexity of conducting cross-border business, and developed a governance mechanism for improving regulatory compatibility. This initiative included two components: the Beyond the Border initiative aiming to accelerate the legitimate cross-border flow of goods, services and people, and a Regulatory Cooperation Council bringing together businesses and regulators in both countries to reduce red tape and make regulations more compatible;
- The federal government, with the full support of provincial governments and territories, reaching an Agreement in Principle with the European Union for a Comprehensive Economic and Trade Agreement (CETA), Canada’s most ambitious trade initiative;
- Canada entering the Trans-Pacific Partnership negotiations in 2012, which provides an opportunity to modernize Canada’s agreement with the U.S. and Mexico, strengthen economic relations with growing markets in the Asia Pacific region, and develop a new, more modern set of rules to govern and improve global trade in the 21st century.

### **Seizing the opportunity to strengthen Canada’s economic union**

While Canadian governments and businesses have succeeded at working together to enhance trade globally, we have yet to witness the same level of progress domestically.

We believe that now is the time for Canada’s business community and governments across the country to build a new, modern vision for interprovincial trade, and work together to significantly modernize and strengthen Canada’s economic union. Businesses and governments must build on those regional and international successes and apply the same principles and objectives that have guided their actions at the regional and international levels to modernizing the rules that govern our own domestic economy.

In fact, history shows that this can be done. The agreement currently governing Canada’s internal market – the Agreement on Internal Trade (AIT) – was concluded in 1994 in the wake of the coming into force of the North American Free Trade Agreement. Although the AIT has been amended 13 times since it was ratified, the process of eliminating barriers and reforming dispute resolution procedures has been slow and largely hindered by its inadequate architecture and governance.

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The more comprehensive and ambitious nature of these recent trade initiatives have made the AIT outdated, especially in terms of its scope, commitments and governance. In addition, while regional initiatives such as those mentioned earlier are better than the status quo, modernizing our domestic market through a patchwork approach remains suboptimal, especially in light of the fact that Canada has a relatively small economy.

The current approach of “fixing” the AIT on a case-by-case basis and dealing with issues on a “one-by-one” basis has shown its limits. The federal government has in fact acknowledged that “if we are to make real, timely progress, we need to fundamentally rethink the AIT.”<sup>1</sup> Saskatchewan Premier Brad Wall, Alberta Premier Dave Hancock and B.C. Premier Christy Clark have said it is time for a more modern approach and have suggested a Canada Free Trade Zone.

We share that assessment, and believe that we must reconsider how we address internal trade barriers to enhance the competitiveness and governance of our internal trade union. In doing so, we must aim for similar or higher levels of ambition than we have pursued (and are pursuing) in our international trade negotiations, and seize the unique opportunity before us to build on the same outcomes we accomplished at the international level to modernize Canada’s economic union.

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1 Statement by the Hon. James Moore, PC, MP, Minister of Industry posted online on December 17, 2013 and available at <http://www.jamesmoore.org/dec172013/>.



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## 2. A new vision for interprovincial trade

While we welcome governments' growing attention towards improving internal trade through a reformed agreement, and their willingness to work with businesses to find common solutions, we believe discussions on modernizing Canada's economic union should first focus on defining a common vision for interprovincial trade.

It is interesting to note that governments at the federal and provincial levels often embark on trade negotiations out of a shared and implicit understanding between parties that eliminating or reducing barriers to trade, investment and the movement of people delivers economic benefits, as does improving the rules that govern trade between countries or regions. While in some cases rigorous economic analysis and domestic consultations with industry were conducted prior to the launch of negotiations, this is not necessarily always the case.

Rather than focus on “why” and “how” we should improve how our domestic market functions, we want to first outline “what” we want our domestic market to do. In other words, we first want to define the principles, features and objectives that should govern our internal market.

### **New enhanced principles**

In 1994, governments agreed to a number of principles that would underpin the Agreement on Internal Trade.

Building on the ambition that drove the success of Canada's recent trade initiatives, we believe that our internal market should be strengthened by enhancing those principles. Most of those mutually-agreed principles were actually included in trade agreements recently negotiated by Canadian governments, while others are derived from other trade agreements that could be applied to Canada's context. Overall, we believe internal trade negotiations should at least be as ambitious and comprehensive as our international trade negotiations, if not more.

The modernization of the Agreement on Internal Trade should be guided by the following five principles and objectives:

#### **1. Being as ambitious and comprehensive as any trade agreement with a foreign country**

The AIT or any other agreement governing our domestic market should at a minimum be as comprehensive and ambitious in opening internal trade as any other international trade agreement negotiated by Canada.

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One means of applying this principle is to adopt a negative list approach to trade liberalization. Following this approach means that all sectors of the economy, or all entities, are covered by the agreement unless explicitly excluded. The AIT mostly uses a positive list approach (e.g. as it relates to government procurement), meaning that the agreement applies to only those sectors or entities that are explicitly listed.

A negative list approach is more comprehensive because it ensures that new sectors, entities or areas are automatically covered by the agreement. It is also more transparent because it explicitly states what the agreement does not cover, implying that everything else is by default included in the agreement.

Canadian governments have followed this approach in previous trade negotiations, most recently in their negotiations with the European Union where services and investment are being liberalized through a negative list. This is the 21st century approach to trade agreements.

The governance of our internal market should also have what is called a “ratchet mechanism”, meaning that any concession made to a foreign government in an international trade agreement, or to another province or territory in an interprovincial trade agreement (the New West Partnership and the Quebec-Ontario agreement being examples) should also automatically accrue to every Canadian jurisdiction in the internal trade context.

## **2. Adopting mutual recognition as the basis for Canada’s internal market**

We believe the principle of mutual recognition should be at the heart of Canada’s internal market. This means any product or service lawfully produced and/or delivered in one province or territory should be admitted into the market of any other province or territory, and can therefore not be banned for sale unless there is a justified reason for the exemption.

Mutual recognition is at the heart of how the European Union’s internal market operates. It was also the model used by Australia and Switzerland to further open trade between their states and cantons, and by Australia and New Zealand to enhance their economic relations, and ultimately improve their economic competitiveness.

Mutual recognition was the basis of the successful 2009 reform of Chapter 7 – Labour Mobility, where Premiers agreed to bring all regulated occupations into full AIT compliance. Reform also included the ability of a party to file a notice of exception justified by pursuing legitimate objectives.<sup>2</sup> These legitimate objectives would need to be substantiated as necessary to protect consumers.

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<sup>2</sup> Article 711 of the AIT defines as legitimate those objectives related to public security and safety; public order; protection of human, animal or plant, life or health; protection of the environment; consumer protection; protection of the health, safety and well-being of workers; provision of adequate social and health services to all its geographic regions; and programs for disadvantaged groups.

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Truly applying the principle of mutual recognition as had been done elsewhere would mean essentially the default position is that any good or service that can be legally sold in one province or territory can be sold in any other, regardless of whether different provinces and territories have different regulatory standards and requirements with evidence-based exceptions. It therefore removes the need to harmonize legislation and regulations between governments.

Mutual recognition is no longer a novel concept and could easily be applied to the full scope of Canada's internal market.

### **3. Enhancing regulatory cooperation and addressing technical barriers to trade**

Given that mutual recognition would facilitate the flow of goods and services, provinces and territories would have a greater incentive to work together in developing common standards and regulations, especially when regulators are pursuing similar policy objectives. This has been the early experience arising out of the reforms to the AIT chapter on labour mobility. An internal trade agreement should address non-tariff barriers such as regulatory red tape that does not serve a legitimate purpose and exists only to impede fair competition.

While Canada and the U.S. have recently launched a Regulatory Cooperation Council (RCC) to tackle some regulatory differences that impact cross-border business, and CETA will significantly enhance regulatory cooperation between the EU and Canada, such mechanisms only exist in the internal trade context on an ad hoc basis.

We expect the CETA will include a formal mechanism that will facilitate joint initiatives between Canadian and EU regulatory authorities, for example by comparing data collection and analysis practices, reviewing lessons learned, and conducting risk and regulatory impact assessments. The objective here is to achieve more compatible measures and fewer trade barriers, especially when regulators seek similar policy objectives. This should also exist in Canada's internal trade context, and should be done in a transparent manner to allow impacted businesses to participate in regulatory cooperation efforts (as is the case in the RCC).

We also expect the CETA will include rules and processes to address technical barriers to trade across all sectors of the economy. In comparison the AIT currently only provides such a mechanism in certain sectors. For example, the CETA proposes to establish a committee where trade irritants can be raised as they arise so that Canada and the EU can work on resolving them as soon as possible. Finally, governments could improve regulatory cooperation by taking steps such as aligning public comment periods and providing a central portal where planned technical regulations could be posted to increase transparency and facilitate business participation in the provincial and territorial rule-making process.

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#### **4. Providing for effective and efficient dispute resolution**

One of the AIT's main weaknesses is that it is difficult to enforce in a cost-effective and timely manner. Any trade agreement is only effective if breaches are punished. This is especially true when we compare the AIT with Canada's current and future external trade agreements as they provide individuals, organizations and governments with a greater scope to challenge a wider range of non-compliant measures, and include stiffer penalties for non-compliance.

A more effective and efficient dispute resolution mechanism should include two key features: a domestic equivalent of investor-state dispute settlement, and making compliance panel and appellate panel reports and decisions subject to judicial review.

Investor-state dispute settlement normally grants foreign investors the right to initiate dispute settlement proceedings against a foreign government. NAFTA contains such a provision, as will CETA once it comes into force. In the internal trade context, a domestic equivalent should at least provide businesses access to dispute resolution under the AIT (and could potentially be opened to individuals or other organizations). Currently, businesses and others must first go through their provincial government to resolve disputes under the AIT before initiating a dispute – an unnecessary and burdensome step.

As for opening access to the judicial review of compliance panel and appellate panel reports and decisions, this could either be done by amending Article 1707.4 of the AIT, or by replacing Chapter 17 of the AIT with a standing Internal Trade Tribunal. This tribunal should operate on the basis of consultation and mediation and, if necessary, binding arbitration to resolve internal trade disputes. The tribunal should be efficient and effective in terms of the timeliness and the binding nature of its decisions. It should determine if a specific measure constitutes a barrier and, if so, issue an order on how it is to be resolved, including removal or amendment of the measure.

#### **5. Ensuring an effective, transparent and inclusive structure to govern and manage internal trade**

Political leadership, expeditious decision-making and stakeholder buy-in are key conditions for a well-functioning, living agreement. Consideration must be given to the current consensus-based decision making model, where one party can significantly hinder the decision making and reform process. For example, while the latest revisions to the AIT (Part B of the dispute resolution process) were announced following the June 2012 Committee on Internal Trade meeting, they have not been made public nor have they been enacted. It is the practice in other trade agreements to make public draft text, negotiating proposals or

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technical summaries so that all those affected by these changes have some knowledge of the details of the negotiations to adapt to the new environment.

Moreover, greater continuity of leadership is needed within the Committee on Internal Trade to address new internal trade issues as they arise. Options for increasing that continuity include extending the current one-year term of the chairperson of the CIT, reinstating the role of federal government co-chair or appointing an eminent person as co-chair.

A well-resourced secretariat is necessary to support effective decision-making and greater cooperation between parties on an ongoing basis. In addition to planning meetings, a going forward agenda and supporting dispute resolution panels, the secretariat should facilitate the development of national standards, act as a clearing house for best practices in trade facilitation, be a centre of expertise on internal trade issues that can effectively respond to inquiries and provide useful advice, foster cooperation between business leaders, public officials and other key stakeholders, and have the power to table suggestions for enhancing Canada's domestic market.

A formal mechanism for stakeholder involvement in a significant capacity must be developed. This is first and of foremost importance for businesses and the organizations that represent them as they face the barriers and suffer injury as a result. Terms of reference for a private sector advisory committee could be patterned on the model built in The Trade and Cooperation Agreement between Ontario and Quebec.

Finally, the Committee on Internal Trade should publicly report annually on internal trade barriers and outstanding disputes.

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### 3. Moving forward towards fulfilling that vision

We urge governments to now turn their attention towards fulfilling that vision and enhancing the competitiveness of the Canadian economy.

This is especially critical today as businesses operate in an environment where they face growing competition at home and abroad, and where governments are seeking cost-effective solutions that help spur private-sector led growth without compromising their ability to curb spending and balance their budgets. It would also be a significant step to modernize Canada's economic union as we prepare to celebrate the 150th anniversary of Confederation.

The recent public debate has focused on how this can best be accomplished. While some advocate for negotiating a new agreement to enhance our domestic market, others believe the AIT is worth improving or reforming and discussions should take place within the existing context.

While governments should discuss the issue and come to an agreement, in partnership with business leaders, our priority is to ensure that regardless of whether negotiations take place within or outside the context of the AIT, they should focus on fulfilling the vision we outlined earlier.

Having said that, regardless of the context in which negotiations take place, we recommend that:

- First ministers give their respective trade ministers the mandate, direction and support required to take the lead on removing interprovincial trade barriers. This was also recommended by the Public Policy Forum in its October 2013 report on *Canada's Evolving Internal Market: An agenda for a more cohesive economic union*;
- Trade ministers adopt a work plan that leads to the principles we outlined earlier becoming defining features of Canada's internal market;
- Negotiations should start with everything on the table. More comprehensive negotiations increase the likelihood of a more ambitious outcome as they increase negotiating partners' ability to make concessions in areas where they are defensive in exchange for gains in areas where they have offensive interests;

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- Negotiations include a mechanism whereby local, provincial and national business associations can provide input on an ongoing basis; and,
  - Negotiations be concluded by December 31st, 2015.

We look forward to working with Ministers on this important endeavour.

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## Appendix – Examples of interprovincial trade barriers

Consumers and businesses face many non-tariff barriers to trade within Canada. These can take the form of production quotas, special licenses or standards, red tape or delays in regulatory approval. In many instances these barriers do not serve a legitimate purpose of protection of human health or public security but merely serve the economic interests of a particular jurisdiction.

Below are some examples of such barriers present in the Canadian economy.

- While professions are ensured a high degree of mobility through the 2009 changes to Chapter 7 of the AIT, red tape in having credentials accepted in an efficient and timely manner impedes mobility.
- Moreover, the AIT has no mechanism to address scope of practice issues. For example dental hygienists are not allowed to give injections in some provinces but are allowed to do so in others. Neither does the AIT have a mechanism to allow a worker from a profession that is unregulated to practice in a province where the profession is regulated. For example massage therapy is regulated in some provinces but not all, meaning that a professional would have to become certified in order to be allowed to practice.
- Different certification requirements for apprenticeship programs across the country impedes mobility.
- Corporate registration in every jurisdiction is a disincentive to growth and increases the cost of doing business in multiple jurisdictions.
- Different regulations and standards means that manufacturers may need to adapt their machinery in order to produce containers such as dairy creamers, butter and drinkable yogurts for sale nationally across all provincial jurisdictions.
- Different rules for truck weights and dimensions discourage firms from operating across provincial borders.



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- Wine cannot be sold directly to most consumers across provincial boundaries.
  - Manufacturers of food products certified by provincial authorities face interprovincial trade barriers because provinces do not recognize each other's food safety regimes.
  - Regional preferences for procurement opportunities prevent out of province companies from competing for government contracts.