



True North In Canadian Public Policy

Commentary

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What Has Gone Wrong on Interprovincial Trade

Distrust, competing regional loyalties and lack of national leadership all contributed to the failure of the *Agreement on Internal Trade*. Canadians need to maximize the potential for doing business among ourselves if we are to compete globally.

Anna Maria Magnifico

I have no doubt most of the original drafters of the *Agreement on Internal Trade* (AIT) in 1994, not to mention the founders of Confederation, were strongly committed to the goal of creating a single, unified, open economic union within Canada which could better compete globally. At the time I was working outside Canada and was unaware of the AIT until recruited as its Executive Director in late 2004, tasked with implementing an agreement by First Ministers to liberalize interprovincial trade. But working with both Ontario and Manitoba offices in Europe, I learned first-hand of the various barriers in the Canadian economy through the eyes of foreign firms – savvy investors who do their homework and are aware of the multiplicity of laws, regulations and policies across Canada.

As an international trade jurist, I embraced the AIT and devoted all my talents and energy to making it succeed. I viewed the AIT as the very essence of the Canadian economic union with the aim of improving conditions for doing business within Canada and enabling both white collar and blue collar workers, once certified, to live and work in any part of the country – moreover, that freer movement of goods, services, capital and peoples results in more wealth generation and income distribution with a consequent sense of greater economic and social justice inside Canada. At the same time, I also understood that a single united open Canadian economy made for a strong competitive position in the global marketplace.

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In my experience, the term “internal trade” remains unclear to the public and often confused with international trade, so I much prefer and use the term “interprovincial trade”.

As a principal “insider” for nearly eight years, I maintain that however flawed the AIT, what has always been most needed is for all Parties to respect their obligations under the existing accord, including enforcement of panel dispute reports.

Certain anomalies do exist: for instance, Nunavut is still not a signatory to the AIT – how a member of the Canadian political union is not a member of the economic union is strange to say the least, especially when Nunavut is very much at the international trade table.

Also, the consensus rule for decision-making is not based on true consensus – when Parties interpret/practise consensus as unanimity, and not general agreement, small wonder decisions are almost impossible to reach.

The single Party chairmanship of the Committee on Internal Trade (CIT) happened rather by accident at a CIT meeting in late 2004 – dual CIT chairmanship by the federal government and rotating provincial/territorial (PT) government should be restored to pre-2005 status.

Finally, there are far too many exclusions and Party exceptions under the AIT.

That said, I recall early on in my tenure presenting to both the OECD/IMF, that ten years on, the AIT was alive and kicking: there had been some momentum of late – Premiers had launched a new dialogue among themselves and with the federal government, with a renewed commitment by all Parties to improving interprovincial trade. There were more meetings/consultations/negotiations – with interprovincial trade on the rise. The higher profile of interprovincial trade in Canada was evident with the designation of the first two Ministers of Internal Trade (Canada/Quebec and later the New Brunswick Premier took on this title) – long-standing panel disputes were being resolved – the dispute resolution enforcement mechanism being strengthened – a new labour mobility chapter was nearing conclusion.

Given that Parties are charged with removing barriers that affect business, labour and consumers, taking a best practice from the OECD, I introduced CIT ministerial consultations with key stakeholders in the AIT – a “no brainer” in my view, and although it took three years to persuade officials, it happened in 2007 with the Canadian Chamber of Commerce at the ministerial table. Ministers almost achieved an Energy Chapter – the great gap in the AIT (a blank page literally) – in 2007: only one Party objected and even that Party said it would not hold up agreement by the other twelve.

But then having taken a few steps forward, it became more and more apparent the commitment and co-operation required for the AIT to succeed withered away – underlying distrust, regional loyalties, even rivalries, not to mention personality clashes among officials surfaced. Deputy Ministers were not very engaged and Premiers/Ministers came and went – middle ranking officials were in charge of the dossier and aggressively asserted their local interests and personal ambitions – seemingly unaccountable. Bilateral accords started to emerge as a result of frustration over the pace of reform. There was a lack of national leadership, on the part of all governments to try to unite Parties on the higher collective mission of a single united open Canadian economic market.

Parties started spinning wheels and reforms stalled, bogged down in minutiae and wrangling and unproductive even acrimonious marathon conference calls. So much time and precious resources were squandered in failing to make the AIT work in the national economic interest. Indeed I came to regard my post as a post in “international relations” given the rather “sovereign” attitudes and behaviour of virtually all Provinces and Territories (PTs), and asked myself almost daily: are we not one country?

It was even a struggle to maintain what had been envisioned as a permanent consultative process with external stakeholders at Ministerial meetings: Ministers liked the practice – officials not so much!

Complicating this picture was that Parties became distracted by various bilateral international trade negotiations launched by Ottawa. Many of the same officials, especially of smaller PTs had their energies stretched and diverted to international negotiations which had more allure – AIT played second fiddle.

In my view Provinces and Territories should *not* be at the international negotiating table despite a legitimate need to ensure their interests are fully considered. PTs are not nation states. As a country we are in a stronger position at the negotiating table when we speak with a single voice – and a strong national government should and must be able to represent and balance regional interests. A relevant best practice is that of the European Union (EU) which developed a formula for negotiating international accords using a dual-headed delegation, representing the Commission as well as the rotating head of the EU Council. This approach translates into a joint federal/Premiers Council Chair delegation at international negotiations.

On the dispute resolution mechanism, despite the huge amount of time invested, it remains cumbersome and now perhaps overly legalized for what is essentially a political accord. It is also not so inclusive, favouring private persons such as associations or firms who have the financial means to file a complaint, versus the individual. Under my watch, the first case filed by an individual against a government went to panel. The individual was successful in his complaint, but his very right to file a complaint can be jeopardized due to lack of financial ability to pay the customary share of panel costs. This said, the enduring weakness of AIT dispute resolution is that, unlike federal quasi-judicial tribunals, panel decisions are not binding.

As to the revised chapter on labour mobility, who would think there could be thirteen different interpretations of a so-called common chapter? As one former Premier was fond of remarking: “a nurse is a nurse is a nurse” – well, not quite: while mutual recognition is the underlying principle, Parties have posted a long list of exceptions at the behest of regulatory bodies. Surely the greatest priority at present has to be labour mobility given the chronic shortage of skilled workers across Canada. Some of our companies are underperforming because they cannot get workers in part due to the myriad of differing standards of our regulated professions and trades. Indeed, a former federal Labour Minister called for an “attitudinal adjustment” by many of the self-governing professions in this country.

As a consequence, today we have a deeply fragmented Canadian economic union and marketplace, and it has often been said that it is easier to do business in the EU than in Canada.

Trust has broken down and regional interests carry the day. The patchwork of regional trade accords that now co-exist alongside the AIT, undermine the national accord; they have not yet proved to serve as templates for reform toward a bolder national accord.

Today, Ottawa and the premiers are still talking past each other. The premiers’ communiqué from their meetings this past August speaks of comprehensive renewal of AIT with an update in six months and negotiations on the AIT to be concluded by March 2016. Such pronouncements however do not mask the ongoing interprovincial tension: for example, one province has warned it would retaliate against another on construction procurement bidding. Such language is not helpful – indeed there is a visible west/east divide on several issues (currently the Energy East Pipeline project), manifested also in AIT disputes brought by the west against the east.

Likewise, in its proposal released in August, the federal government speaks of 2017 as target date for reform. Both sides appear to be competing to lead reform. Action plans/targets/timelines – I have seen this movie before.

As stated at the outset, interprovincial and international trade are interconnected. Global markets do present a wealth of opportunity but they are not without risk and Canadian business has shown a lack of entrepreneurial ambition in the past. The very least we must do is maximize our potential for doing business among ourselves if we are to survive and thrive as a single united economic union. We owe our citizens and taxpayers no less. We need to be open for business domestically and globally, and the “horse before the cart” ought to be interprovincial trade.

There is a new initiative at the moment in Canada for a New Partnership with the aboriginal community – likewise we need a New Economic Partnership between Ottawa and provincial and territorial governments. Industry Minister James Moore should seize the moment and host a federal-provincial-territorial meeting as soon as possible to launch negotiations which should be chaired by a non-partisan neutral official as was done for the original AIT negotiations.

The time for baby steps is long past in my view. We need some giant steps forward or Canada as a marketplace, only the combined size of the Benelux nations after all, risks falling even further behind. Time waits for no man – the global economy will not wait for Canada to get its economic act together.



About the Author

ANNA MARIA MAGNIFICO

Anna Maria Magnifico is an accomplished national/international senior executive, board director, entrepreneur, and jurist in EU and international law.

A dual Canadian/EU national, she has extensive international experience in bilateral/ multilateral trade relations. A former federal public servant, she has worked with the United Nations Secretariat, the European Commission, and the Organization of Economic Cooperation and Development. She also represented Manitoba and Ontario in trade and investment activity in Europe.

Magnifico has held several executive posts and led a conference organization in Europe which hosted an annual forum on global issues for world leaders.

From 2004-2012 she was Executive Director of the Internal Trade Secretariat responsible for implementing an agreement by First Ministers to liberalize interprovincial trade, including a tribunal process to resolve trade disputes among federal/provincial/territorial governments as well as between private persons and governments.



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True North in Canadian Public Policy

CONTACT US: Macdonald-Laurier Institute
8 York Street, Suite 200
Ottawa, Ontario, Canada K1N 5S6

TELEPHONE: (613) 482-8327

WEBSITE: www.MacdonaldLaurier.ca

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PETER NICHOLSON, FORMER SENIOR POLICY
ADVISOR TO PRIME MINISTER PAUL MARTIN

I saw your paper on Senate reform [Beyond Scandal and Patronage] and liked it very much. It was a remarkable and coherent insight – so lacking in this partisan and anger-driven, data-free, a historical debate – and very welcome.

SENATOR HUGH SEGAL, NOVEMBER 25, 2013

Very much enjoyed your presentation this morning. It was first-rate and an excellent way of presenting the options which Canada faces during this period of "choice"... Best regards and keep up the good work.

PRESTON MANNING, PRESIDENT AND CEO,
MANNING CENTRE FOR BUILDING DEMOCRACY