



# **Internal Trade Workplan**

## **Progress Report**

**August 11, 2004**

## **Progress on Council of the Federation Workplan on Internal Trade**

### **Executive Summary:**

In December of 2003, the Premiers of Canada established the Council of the Federation as an institution for collaborative intergovernmental relations. The Premiers view the Council as a vehicle to improve the quality of life of Canadians by exercising leadership on issues of importance to Canadians and by improving federal-provincial-territorial relations. The Council identified strengthening the economic union, including enhancing internal trade as a priority area for cooperative intergovernmental action.

The Council has made a concerted effort to renew their commitment to, and to rejuvenate their efforts under, the Agreement on Internal Trade (AIT). At the February 23-24, 2004 meeting of the Council of the Federation, Premiers approved a Workplan to guide Ministers responsible for Internal Trade in efforts to address internal trade barriers, including agreement on priority actions and the timeframes for their completion. Premiers Bernard Lord and Gary Doer agreed to lead this initiative and to provide ongoing progress reports to their colleagues.

This first progress report highlights the significant progress achieved in a short period of time, including:

- Ministers have met three times, twice in person, over the last six months after having not convened on internal trade issues in over two years;
- successful completion of negotiations among Provinces and Territories on procurement by Crown corporations, which had been stalled for years;
- improvements to the Agreement on Internal Trade (dispute settlement, decision-making, gaps and exemptions in coverage);
- progress towards addressing barriers in a wide range of areas in which progress had been stalled (agriculture, energy, labour mobility);
- approval of actions to improve procedural fairness in the AIT dispute settlement mechanism;
- approval of a communications plan on internal trade;
- completion of AIT obligations to establish a roster for future provincial chairs (or co-chairs) of the Committee on Internal Trade; and
- decision to retain the consensus decision-making under the AIT but building on the AIT provisions that provide flexibility for bilateral or plurilateral agreements;

While significant progress has been made, a great deal of work remains to be completed to successfully deliver on all of the priority areas identified in the Workplan. The continued close involvement of the Council of the Federation will be critical to ensuring there is continued momentum.

In addition, in many areas discussions have reached a stage where the involvement of the Federal Government, both as a Party to the Agreement on Internal Trade and as an order of government with important jurisdictional responsibilities in areas such as agriculture, energy and labour mobility, is critical to future progress. Ministers Responsible for Internal Trade recommend that the Council move to engage the Federal Government in the activities under the Workplan as soon as possible.

## **Introduction**

This report summarizes progress achieved to date on the Workplan on Internal Trade approved by the Council of the Federation at their February 24, 2004 meeting in Vancouver. The Workplan contains a series of priority actions identified under Immediate Actions, Short-Term Objectives and Longer-Term Objectives.

The first section of this report summarizes progress achieved on the priority action areas identified as Immediate Actions and Short-term Objectives. Ministers provided further direction at an April 28, 2004 meeting and during a June 23, 2004 conference call of Provincial and Territorial Ministers.

The second section of this progress report provides an update on progress achieved in moving ahead on priority actions identified as Longer-Term Objectives. Detailed reports on the progress of all of the priority items in the Workplan provided by each of the lead jurisdictions are available for reference under Appendix A.

### **1. Immediate Actions and Short-Term Objectives**

The Workplan called for Premiers to take immediate actions to reinvigorate the process of addressing internal trade barriers, including:

#### ***1.1 Re-commit to honour all obligations under the current Agreement on Internal Trade (AIT)***

Lead Jurisdiction: New Brunswick and Manitoba

- i. Reinstitute annual meetings of the Committee on Internal Trade<sup>1</sup>*
  - Provincial and territorial ministers responsible for internal trade met in Toronto on April 28, 2004 to make progress on the Workplan. Progress achieved by Ministers at this meeting and a subsequent conference call on June 23, 2004 have been summarized under each applicable workplan item in this report.
  - At the April 28 meeting, Ministers also noted that the AIT provisions call for a single chair of the Committee of Ministers, to be rotated annually among the Parties to the AIT. A drawing of lots, from those Provinces and Territories that are Party to the AIT but have yet to serve as Co-Chair, was conducted to determine the future order of chairs. Chairs beyond this list would then revert to the order of the remaining Parties since the entry into force of the AIT. This drawing will serve to determine the order either of future single chairs or

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<sup>1</sup> All items in the Workplan requiring decision by the full Committee on Internal Trade will be formally addressed after decision by the Council of the Federation process to re-engage the federal government.

of future provincial Co-Chairs if accepted by Canada upon their reengagement by the COF. The results of the draw were:

<b>Year</b>	<b>Party to AIT</b>
1995-2004	Canada
1995-98	Manitoba
1998-2000	Ontario
2000-02	Alberta
2002-04	New Brunswick
2004-05	Quebec
2005-06	Nova Scotia
2006-07	Newfoundland & Labrador
2007-08	British Columbia
2008-09	Yukon
2009-10	Saskatchewan
2010-11	Prince Edward Island
2011-12	Northwest Territories
2012-13	[Nunavut]
2013-14	Canada
2014-15	Manitoba
2015-16	Ontario
2016-17	Alberta
2017-18	New Brunswick
2018-19	Quebec

- Nunavut is not a party to the AIT. Section 1811.1 of the Agreement provides for accession “on the terms as are agreed to by all Parties”, therefore the term of chairmanship would be part of accession negotiations.

*ii & iii Immediate action to complete all Party-specific outstanding obligations*

- Seven provinces and territories have completed all outstanding obligations with the exception of various reporting requirements on procurement and incentive programs. All provinces and territories with outstanding reporting obligations are in the process of completing these reports and it is expected that most, if not all, of these obligations will be completed by the end of the summer of 2004 at the latest.
- Of note, Saskatchewan, the Yukon Territory, the Northwest Territories have indicated that they are taking action to complete obligations to nominate members to rosters of panelists under the AIT. Saskatchewan has indicated that they are taking action to complete their obligations to appoint a Screener under Chapter 17 of the AIT. These steps will complete the full implementation of AIT obligations required to support full and proper functioning of the Agreement’s Chapter 17 dispute settlement mechanism.

- iv. *Communicate the plan to provincial and territorial ministers and officials responsible for the various areas under the Workplan*
- At the April 28, 2004 meeting ministers acknowledged the need to effectively communicate the COF Workplan and ensure that their provincial and territorial colleagues were engaged on this file. Ministers reaffirmed the need for strong communication on the Workplan within governments and decided to defer to respective jurisdictions the decision on how best to ensure a “whole of government approach” is communicated internally.

### ***1.2 Complete the Provincial/Territorial negotiations on Crown Procurement***

Lead Jurisdiction: British Columbia

- i.& ii. *Premiers commit to include procurement by Crown Corporations and P/T Ministers to finalize details at their April 2004 meeting*
- At their April meeting, Ministers agreed to the details regarding coverage of procurement by Crown Corporations, including adoption of a proposed new Article 517 and a revised Annex 502.3. These provisions call for Provinces and Territories to direct their Crown Corporations subject to this annex to comply with the Annex by January 1, 2005.
- ii. *Results will be communicated to the Government of Canada upon the re-engagement of the federal government.*
- The agreement among Provinces and Territories on this issue provides an opportunity to invite the Federal Government to cover procurement by its own Crown corporations, expanding the scope of procurement open to Canadian suppliers.

### ***1.3 Report to the Council of the Federation on Progress***

Lead Jurisdiction: New Brunswick and Manitoba

- i. *Premiers direct P/T Ministers responsible for Internal Trade to prepare a progress report, intended for public release at the Premiers July 2004 meeting, summarizing achievements to date and progress on workplan items.*
- At their April 2004 meeting, Ministers agreed to a process for development of their progress report. The lead jurisdiction for each item in the Internal Trade Workplan has provided a short report on progress on their workplan item. These individual reports are provided in Appendix A of this report.

## **2.0 Short-Term Objectives**

***The short-term Objectives to be completed by Provincial/Territorial Ministers responsible for Internal Trade and for report to the Council of the Federation in July 2004 are:***

### ***2.1 Provide flexibility in decision-making***

Lead Jurisdiction: Quebec

- i. Provincial and territorial ministers to examine options at their April 2004 meeting.*
  - Ministers examined a number of proposals designed to provide greater flexibility in decision-making in the AIT. During the June 23, 2004 conference call, Ministers reached consensus on a proposal that builds upon the current provisions in the Agreement on Internal Trade that allow for trade liberalizing agreements among some provinces and territories outside of the AIT. Changes could include appending any such arrangements to the AIT to ensure transparency for the business community and working to permit subsequent integration within the Agreement. This approach would eliminate the need for consensus among all Parties to the AIT in order to move forward among some Parties

### ***2.2 Improve the AIT dispute resolution mechanism (procedural fairness)***

Lead Jurisdiction: Ontario

- i. Take action to appoint panelists in any outstanding disputes*
  - Alberta, B.C. and Ontario have recently appointed panelists to the AIT dispute concerning Ontario's Edible Oils Product act.
  - Quebec has yet to appoint a panelist in the outstanding AIT dispute with Ontario over the colour of margarine.
  - Ontario has yet to appoint a panelist in the outstanding AIT dispute with Quebec over construction labour mobility.
- ii. At the April 28, 2004 meeting of ministers, Quebec proposed that both Quebec and Ontario, who have outstanding obligations to appoint panelists, agree to designate members to these panels by June 2004. Ontario noted that the issue is the subject of bilateral negotiations, but agreed to confer with Ontario's Minister of Labour regarding this proposal.*
- iii. Assess the issue of procedural fairness and impartial process*

- Ministers reviewed a report prepared by Ontario that summarized the findings and recommendations made by a working group including solicitors from Provinces and Territories. The recommendations contained in the report were reviewed by trade officials and consensus recommendations were endorsed by Ministers during the conference call in June.
  - Recommendations have been divided into three categories: Immediate Action by Provinces and Territories; Short-Term Action by all Parties to the AIT; and Considerations for the Longer-Term. To address procedural fairness issues the recommended immediate action by Provinces and Territories is that P/Ts endeavor to ensure that panelists who are nominated to the AIT roster or selected for dispute panels have expertise, experience or working knowledge of administrative law or dispute resolution.
  - Issues that have been recommended for action in either the short or longer-term involve making formal changes to the AIT, which will require the engagement and approval of the federal government.
- iv. *Provide a status report on any unresolved disputes to Premiers for their July 2004 meeting*
- A status report on unresolved disputes under Chapter 17 of the AIT is provided in the Appendix entry for Workplan Item 2.2.

### ***2.3 Assess gaps between the AIT and issues outside the scope of the current Agreement***

Lead Jurisdiction: Alberta and British Columbia

- i & ii*      *Officials to prepare a report for Ministers outlining gaps or exemptions in coverage and options for addressing them. Ministers to review preliminary report at their April 2004 meeting and develop a workplan by their Annual 2005 meeting to address gaps and exemptions.*
- At their April meeting, Ministers reviewed a report on gaps and exemptions that included a detailed and exhaustive inventory of gaps and exemptions. Officials were instructed to prepare a prioritized list of gaps and exemptions and, on their June 23 conference call, Ministers directed officials to examine each of these priority gaps and exemptions with a view to developing options to address these, noting that in some cases the gaps were already the subject of work being done under other Workplan Items.
- iii*      *Officials to review and make recommendations to Ministers regarding the streamlining of the AIT.*

- Officials examining options to address the priority gaps and exemptions will also review and make recommendations to Ministers on proposals to streamline the AIT.

#### ***2.4 Develop a comprehensive communications plan***

Lead Jurisdiction: New Brunswick and Yukon

- i. Officials to develop a communications plan for review by Ministers at their April 2004 meeting.*
  - At their April meeting, Ministers approved a draft communications plan and directed further and full development of the plan. Ministers noted the need for communications on this initiative to be driven by the Council of the Federation. Ministers directed New Brunswick and the Yukon to complete development of the plan, including cost estimates.
- ii. Intra-governmental communications plans to be developed to ensure jurisdictions maintain a “whole of government” approach.*
  - At their April meeting, Ministers decided to defer to respective jurisdictions the decision on how to ensure a whole of government approach is communicated internally within their jurisdiction.

### **3. Longer-Term Objectives**

The Workplan on Internal Trade identifies a series of objectives for longer-term action. At this point, work on these longer-term objectives is mostly in the organizational stage. Lead jurisdictions have developed “Terms of Reference” describing the process that is envisaged in addressing each objective. A brief summary of the status of efforts, based on these Terms of Reference, is provided below.

#### ***3.1 Re-Commit to honour all obligations under the AIT***

Lead Jurisdiction: Quebec

The Workplan calls for Ministers to communicate the workplan to provincial and territorial colleagues responsible for various areas under the AIT. Sectoral ministers are to provide a workplan to address any outstanding obligations in their areas.

The proposed communications plan (Workplan item 2.4) calls for efforts to communicate the workplan within governments, including to sectoral ministers. The existing collective outstanding obligations under the current AIT are being addressed through specific undertakings under other initiatives of the Workplan, each one having its own terms of

reference and its own requirements to report to either Ministers or the Council of the Federation. Provinces and Territories have all taken action to comply with the “whole of government” aspect of this initiative and to communicate the Workplan within their own administrations. Accordingly, the objectives underlying this particular Workplan item are considered to have either been met or are currently being addressed by virtue of other initiatives of the Workplan.

### **3.2 *Energy Chapter***

Lead Jurisdiction: Alberta

The Terms of Reference envisage a three staged approach to completing negotiation of an Energy Chapter. The first stage involves a review of changes in structure of energy markets since the development of the October 8, 1998 draft energy chapter text, and review of the 1998 text itself. The second stage calls for identification of existing and proposed Regional Development initiatives that may also affect the free movement of energy goods and energy services. The final stage calls for an all-party negotiation process incorporating all issues for debate. P/T Internal Trade Ministers will review the status of negotiations at their 2005 meeting.

### **3.3 *Improving the AIT dispute settlement mechanism***

Lead Jurisdiction: Saskatchewan

Issues that have been identified for review under this Workplan Item include:

- Inconsistencies within the chapter-specific dispute resolution processes including the length of time for completion of consultations, transparency/notification, and structure of the consultation processes.
- Efficacy of the chapter-specific and Chapter 17 dispute resolution mechanisms.
- Role of the Committee on Internal Trade in resolving disputes.
- Role of the Internal Trade Secretariat in the AIT dispute resolution mechanism.
- Review of the Screener stage in person-to-government disputes.
- ‘Gaps’ in the panel hearing provisions that can lead to definite or indefinite delays in Panel proceedings.
- Potential for ‘alternative’ methods of resolving disputes, including mediation and/or arbitration.
- Review of potentially relevant dispute resolution mechanisms in international trade agreements.

In addition, this review will build upon the work done by officials on procedural fairness issues in Workplan Item 2.2, where several issues relating to procedural fairness have been referred to the longer-term review of the dispute settlement mechanism.

### **3.4 *Assess and address issues related to business subsidies***

Lead Jurisdiction: Manitoba

The Terms of Reference envisage a two-staged process with the first stage involving an issue identification exercise where Provinces and Territories identify real life situations in which subsidy practices are considered to have had an unduly negative impact on their economic interests. Research by a neutral body would be conducted to verify the validity of these issues. The second-stage would involve developing options for consideration by Ministers to address each of the issues identified.

In addition, the Terms of Reference call for a review and evaluation of the data collected to date as part of the required reporting under the AIT's Code of Conduct on Incentives

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

Lead Jurisdiction: Ontario

The Forum of Labour Market Ministers (FLMM) is currently working on labour mobility issues, including the issue of foreign credential recognition. P/T officials are preparing a national survey of regulatory bodies to assess removal of barriers to labour mobility in professions and trade. The survey will determine whether regulatory bodies are working together to ensure consistent treatment and mutual recognition of foreign trained workers in Canada. Survey results should be available for a report to the Council of the Federation by April 2005.

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

Lead Jurisdiction: Alberta and British Columbia

Further action to address gaps will depend upon the results of the exercise in Workplan Item 2.3. It is anticipated that Ministers will identify priorities related to existing gaps and the Terms of Reference will identify the process to move forward to address these gaps.

**3.7 *Accelerate the harmonization of regulations and standards***

Lead Jurisdiction: Nova Scotia

The Terms of Reference call for the development of a report by the end of 2004 on the current status of reconciliation, harmonization and mutual recognition activities, with an assessment of overall progress and shortfalls. Officials will review past discussions within Canada on this issue, as well as the experience and approaches in other jurisdictions (e.g. EU, Australia) and analysis by international organizations (e.g. OECD)

and academics, to lay the groundwork for development of options for consideration by Ministers in 2005.

### ***3.8 Review of the scope and coverage of the Agriculture Chapter***

Lead Jurisdiction: Prince Edward Island

Provincial and territorial Ministers of Agriculture are expected to have this issue on the agenda for their October 2004 Meeting. Discussions have commenced on this issue among officials with a view to development recommendations for consideration by Ministers at their annual meeting in 2005.

### ***3.9 Improvements to the Procurement Chapter***

Lead Jurisdiction: Newfoundland and Labrador

Officials from all governments (i.e. including federal officials) have been working for some time now in reviewing the AIT Procurement Chapter with a view to improving the Chapter. A meeting involving all jurisdictions was held June 17-18, to decide on the recommendations in a wide range of areas.

Aspects of the Chapter under review include:

- reduction of the thresholds relating to government procurement in Canada;
- expansion of the Chapter's coverage to include professional services or in other words elimination of the exclusions in the Chapter;
- access to tender calls by way of a unique gateway for all suppliers in the country.
- improving clarity of the provisions of the bid protest procedures;
- clarification of certain anomalies in Article 504 (Reciprocal Non-Discrimination) of the Procurement Chapter;
- development of guidelines on how and when to use the Regional Economic Development Exemption under the Chapter

## **Conclusion**

The Council of the Federation approved an ambitious and comprehensive workplan on internal trade in February in order to reinvigorate efforts to address barriers to trade within Canada. The political momentum generated by the Council's commitment has generated significant progress in a short period of time:

- successful completion of negotiations among Provinces and Territories on procurement by Crown corporations, which had been stalled for years;
- progress towards addressing barriers in a wide range of areas in which progress had been stalled (agriculture, energy, labour mobility)

- improvements to the Agreement on Internal Trade (dispute settlement, decision-making, gaps and exemptions in coverage);
- Ministers have met three times, twice in person, over the last six months after having not convened on internal trade issues in over two years; and
- virtually every Province and Territory has taken on leadership responsibilities for individual priority areas under the Workplan.

While significant progress has been made, a great deal of work remains to be completed to successfully deliver on all of the priority areas identified in the Workplan. The continued close involvement of the Council of the Federation will be critical to ensuring there is continued momentum.

In addition, in many areas discussions have reached a stage where the involvement of the Federal Government, both as a Party to the Agreement on Internal Trade and as an order of government with important jurisdictional responsibilities in areas such as agriculture, energy and labour mobility, is critical to future progress. Ministers Responsible for Internal Trade recommend that the Council move to engage the Federal Government in the activities under the Workplan as soon as possible.

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## **Workplan Item 1.1: Re-commit to Honour all Obligations Under the Current Agreement on Internal Trade**

### **Mandate**

- i. Premiers commit to reinstitute annual meetings of the Committee on Internal Trade [<sup>2</sup>] (CIT) Ministers; adherence to the first principles of the agreement, and rules of the agreement.
- ii. Premiers direct their Ministers responsible for internal trade to take immediate action to complete all Party-specific outstanding obligations.
- iii. Premiers commit to have their Ministers responsible for internal trade report at the meeting of P/T Ministers in April on progress achieved in meeting all outstanding obligations and outline steps being taken and date for completion of any remaining obligations.
- iv. Premiers commit to communicate the workplan agreed to by the Council of the Federation to their provincial and territorial Ministers and officials responsible for various areas under the AIT so as to ensure an immediate “whole of government” approach.

### **Background**

- The requirement for annual meetings of the Committee on Internal trade (CIT) has been ignored ;
- Negotiations scheduled to last one or two years remain unresolved ten years later;
- AIT Article 1601.4 prescribes one chair, creating a roster of all parties. Current practice is a co-chair arrangement with Canada permanently in the chair;
- Parties have failed to nominate panelists to dispute panels;
- Slow implementation of the results of dispute panels, partially as CIT refuses to meet annually to consider the matters.

### **Current Status**

At their meeting in April 2004, Provincial and Territorial Ministers responsible for internal trade made the following progress:

- AIT provisions call for a single chair of the Committee of Ministers, to be rotated annually among the Parties to the AIT. A drawing of lots, from those Provinces and Territories that are Party to the AIT but have yet to serve as Co-Chair, was conducted to determine the future order of chairs.
- Ministers reaffirmed the need for strong communication on the Workplan within governments and decided to defer to respective jurisdictions the decision on how best to ensure a “whole of government approach” is communicated internally.
- Ministers received and accepted an “outstanding obligations report”. All provinces and territories with outstanding reporting obligations are in the process of completing these reports and it is expected that most, if not all, of these obligations will be

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<sup>2</sup> All items in the workplan requiring decision by the full Committee on Internal Trade will be formally addressed after decision by the Council of the Federation process to re-engage the federal government.

completed by the end of the summer of 2004 at the latest. A summary of the most recent status of outstanding obligations is provided below.

**Alberta** - has met all party specific obligations.

**British Columbia** - has met all party specific obligations.

**Manitoba** - has met all party specific obligations.

**New Brunswick** - has met all party specific obligations.

**Newfoundland and Labrador** - has met all party specific obligations.

**Northwest Territories** – is taking action to fulfill the following obligations; nominate members to a roster of Chapter 17 panellists; review of non-conforming procurement measures; and reporting requirements on procurement and incentives programs.

**Nova Scotia** – is taking action to fulfill the following obligations: reporting requirements on procurement and incentives programs.

**Ontario** - is taking action to fulfill the following obligations; nominate members to a roster of Chapter 17 panellists; nominate members to a roster of procurement panellists; and reporting requirements on procurement and incentives programs. The nomination of panellist in Quebec/Ontario Construction dispute remains outstanding.

**Prince Edward Island** – is taking action to fulfill the following outstanding obligations: a review of non-conforming procurement measures; and reporting requirements on procurement and incentives programs.

**Quebec** – is taking action to fulfill reporting requirements on procurement and incentives programs. The nomination of a panellist in the Ontario/Quebec Margarine Colouring dispute remains outstanding

**Saskatchewan** - is taking action to fulfill the following obligations; nominate members to a roster of Chapter 17 panellists; nominate members to a roster of procurement panellists; appointing a screener under Chapter 17; and reporting requirements on procurement and incentives programs.

**Yukon** - is taking action to fulfill the following obligations; nominate members to a roster of Chapter 17 panellists and reporting requirements on procurement and incentives programs.

### **Recommendation**

On their conference call of June 23, 2004 Ministers agreed that significant progress had been made under the COF Internal Trade Workplan and recommended Premiers re-engage the federal government.

## **Workplan Item 1.2: Complete Negotiations on Crown Procurement**

### **Mandate**

At its meeting on February 23, 2004, the Council of the Federation committed to include procurement by Crown Corporations within the Procurement Chapter of the Agreement on Internal Trade (AIT). Provincial/Territorial Internal Trade Ministers were directed to finalize details on Crown Procurement at their April 2004 meeting. British Columbia was asked to lead the work required to meet this commitment. The results of the exercise are to be communicated to the Government of Canada.

### **Background**

Further to the Council of the Federation's direction, Trade Ministers agreed at their April 28, 2004 meeting to adopt the text of Annex 502.3 (commonly referred to as the "Crown Procurement Annex) effective January 1, 2005.

This Annex removes several exclusions which had been sought by the federal government relative to the Canada Post Corporation, the Royal Canadian Mint, Pilotage Authorities and the Canadian Broadcasting Corporation. The removal of these exclusions was in response to a June 2002 commitment by the Honourable Alan Rock, former federal Minister of Industry, to bring all federal Crowns into conformity with the Crown Procurement Annex.

In addition to the federal government, some provinces indicated their intent to retain exclusions from the obligation to provide non-discriminatory and transparent access to the procurement of all their Crown Corporations. As a means to address this inequity, Trade Ministers also approved an amendment to the AIT. The new provision provides a reciprocity mechanism to address discriminatory procurement practices of entities that remain excluded from full coverage under the Procurement Chapter.

### **Current status**

All provinces and territories have agreed to complete the necessary work required to implement the Crown Procurement Annex in their jurisdiction by January 1, 2005. As part of the implementation process, Parties are to confirm as soon as possible which of their crown corporations will be covered by the new annex.

Federal government internal trade officials have been provided with copies of the Crown Procurement Annex and the reciprocity provision.

It is proposed that British Columbia's trade minister invite his federal counterpart to adopt the Crown Procurement Annex and associated reciprocity provisions. If, as expected, the federal government agrees, this would allow the Crown Procurement Annex to be incorporated into the Agreement on Internal Trade.

British Columbia, July 2004

## **Workplan Item 1.3: Report to the Council of the Federation on Progress**

### **Mandate**

P/T Ministers responsible for Internal Trade are to prepare a progress report, intended for public release at the July 2004 meeting of the Council of the Federation. This progress report is to summarize achievements to date and progress on all remaining workplan items.

### **Background**

The Workplan calls for a Progress Report, intended for public release, to be prepared for the July 2004 meeting of the Council of the Federation. This progress report will enable the Council to remain closely involved in activities to address internal trade barriers to ensure continued political momentum.

### **Current Status**

Provincial/Territorial (P/T) Ministers Responsible for Internal Trade have been actively engaged in moving ahead on the priority items in the Workplan.

The political momentum generated by the Council's commitment has generated significant progress in a short period of time with all of the immediate and short-term actions acted upon. Achievements include:

- successful completion of negotiations among Provinces and Territories on procurement by Crown corporations, which had been stalled for years;
- progress towards addressing barriers in a wide range of areas in which progress had been stalled (agriculture, energy, labour mobility)
- improvements to the Agreement on Internal Trade (dispute settlement, decision-making, gaps and exemptions in coverage);
- Ministers have met three times, twice in person, over the last six months after having not convened on internal trade issues in over two years; and
- virtually every Province and Territory has taken on leadership responsibilities for individual priority areas under the Workplan.

This Progress Report provides details on progress to date on each of the Workplan items.

### **Recommendation**

While significant progress has been made, a great deal of work remains to be completed to successfully deliver on all of the priority areas identified in the Workplan. The continued close involvement of the Council of the Federation will be critical to ensuring there is continued momentum.

Manitoba and New Brunswick, July 2004

## **Workplan Item 2.1: Provide flexibility in decision-making**

### **Mandate**

Provincial and Territorial ministers responsible for Internal Trade to examine options to provide greater flexibility in decision-making under the AIT.

### **Background**

The Agreement on Internal Trade (AIT) decision-making process is based on consensus, i.e. unanimity of the 13 parties.

This rule has stalled negotiations in delaying or blocking progress where a majority of Parties were in agreement.

### **Current Status**

Ministers have examined a certain number of scenarios in order to complete the mandate set out by the Council of the Federation. Ministers more specifically studied the possibility that a critical mass of Parties (to be defined) could conclude, on a pre-established list of subjects, a multilateral agreement within the AIT framework. They also contemplated the possibility that one or several Parties avail themselves of a right to refrain, permitting the others to conclude agreements and allowing for the future adherence of the refraining Parties. Keeping the rule of unanimity as is and inviting Parties that so wish to use Article 1800 was also considered. This article enables Parties to conclude bilateral or multilateral trade arrangements, but outside the AIT framework. During these discussions, a certain number of Parties expressed the opinion that problems associated with the decision-making process were rather caused by a differing degree of commitment by the Parties to implement and improve the AIT.

### **Recommendation**

Following a review of possible options, Provincial and Territorial Internal Trade Ministers recommend that the Council of the Federation approve the maintenance of the rule of unanimity as is, in conjunction with the use of current Article 1800, it being understood that Parties will endeavour to extend to all parties any arrangements concluded thereby and will consider periodically the possibility of integrating them into the framework of the AIT.

Québec, July 2004

## **Workplan Item 2.2: Improve the AIT dispute resolution mechanism (Procedural Fairness)**

### **Mandate:**

Provinces and Territories to appoint a committee of solicitors to assess the issue of procedural fairness and impartial process under the dispute resolution process of the Agreement on Internal Trade (AIT).

### **Background:**

The committee found that the AIT dispute resolution process is generally consistent with the requirements of procedural fairness. However, some concerns have been raised about the process in the context of the AIT cases heard to date. The attached background report provides more detail on the recommendations and the committee's analysis of the issues.

### **Recommendations:**

Ministers recommend that the Council of the Federation approve the following immediate actions aimed at strengthening procedural fairness in the AIT:

- in nominating new members to the roster of potential AIT panellists, Provinces and Territories should endeavour to ensure that two of their five nominees have expertise, experience or working knowledge of administrative law and/or dispute resolution.
- in selecting panellists to hear disputes under the AIT, Provinces and Territories should endeavour to ensure that at least one member of each panel has expertise, experience or working knowledge of administrative law and/or dispute resolution.

Ministers recommend that the Council of the Federation direct that the following proposals be presented to the federal government for short term action when Internal Trade Ministers re-engage with their federal counterpart:

- the AIT Code of Conduct should be amended to require panellists to sign a declaration stating that they have read the Code of Conduct and the Panel Rules of Procedure and that they understand both documents.
- the AIT should be amended to require that in all cases, one member of the panel should have expertise, experience or working knowledge in administrative law.
- the Rules of Interpretation should be amended to clarify that the burden of proof rests with the person or Party bringing a case against a Party.
- the Internal Trade Secretariat staff should be given practical training in the general principles of administrative justice, and specialized training in case management with regard to dispute resolution procedures.

Ontario, July 2004

## Status Report on Unresolved Disputes

### **CGA Manitoba/Ontario**

On December 11, 2001 a panel report was released stating that Ontario's Public Accountancy Act contravened Chapter 7. Ontario has announced that it will make changes to its' public accountant licensing system, including changes to the Public Accountancy Act and new regulations. These reforms have not been completed to date.

### **Quebec/Ontario - Construction Dispute**

Quebec requested a panel on Ontario's "Fairness is a Two Way Street Act" on May 3, 2002. Quebec has nominated a panelist, but Ontario has yet to do so.

### **Ontario/Quebec - Margarine Colouration Dispute**

On August 2, 2002 Ontario requested a panel on this issue. Ontario appointed a panelist within the timelines prescribed by the AIT and Manitoba, Alberta and Saskatchewan declared Intervener status in the dispute and filed briefs. To date, Quebec has not named a panelist in this matter.

### **Farmers' Dairy/New Brunswick**

A Panel report was released on November 12, 2002 finding that New Brunswick's measures were in contravention with Chapter 9 of the AIT. New Brunswick has announced that it has initiated a review of the *Natural Products Act* and Regulations to ensure, to the extent possible, that the Act is consistent with the AIT. Changes to the Act and the Regulations have yet to be made.

### **Alberta/Canada - Cost of Credit**

On November 7, 2003 Alberta requested the establishment of a panel regarding Federal Government measures on cost of credit disclosure requirements under Article 1704. A panel held a public hearing in Ottawa on March 15-16, 2004. The Panel report has been issued to the Parties to the dispute but has not been made public yet.

### **Alberta and British Columbia / Ontario Edible Oil Products Act**

On May 13, 2004 Alberta made a joint request with British Columbia for a panel hearing under 1704. Manitoba and Saskatchewan have declared Intervener status in this dispute. Panelists have been appointed by both Parties to the dispute.

### **Alberta / Quebec Margarine Colouration**

On July 2, 2004, Alberta requested a panel hearing under 1704. On July 14, 2004, Quebec issued a press release stating its intention to meet its obligations by appointing a panelist in this matter.

## **Workplan Items 2.3 and 3.6 “Launch an Assessment of Gaps in the AIT and Issues Outside the Scope of the Current Agreement”**

### **Mandate**

Provincial/Territorial Internal Trade Ministers have been directed by Premiers, through the Council of Federation initiative, to launch an assessment of gaps in the *Agreement on Internal Trade* (AIT) and issues outside of its scope. This assessment is to: (1) take account of trade barriers resulting from such gaps; (2) develop options and a workplan to achieve the removal of these barriers; and (3) simplify and streamline the AIT.

### **Background**

At its February 23, 2004 meeting, the Council of the Federation directed Provincial and Territorial internal trade officials to prepare a preliminary report for P/T Internal Trade Ministers on gaps and exemptions in coverage of the AIT, outlining the specific gaps or exemptions, the nature and extent of internal trade barriers in these areas and options for addressing these trade barriers.

At the April 28, 2004 meeting of P/T Internal Trade Ministers, the co-leads, Alberta and British Columbia, presented an initial assessment of gaps and exemptions in coverage of the AIT. Ministers agreed that officials had identified the current gaps and directed officials to prioritize these gaps and exemptions, develop a framework to address them and report back to Ministers in June 2004.

At the conference call of Ministers on June 23, 2004, Ministers approved the prioritized list and recommendation for next steps.

### **Current Status**

Discussions among the Parties on how to address the gaps and exemptions in coverage of the AIT have identified two distinctly different approaches to addressing the gaps in AIT coverage. The first is to simplify the architecture of the AIT and extend coverage of the general rules to those areas not currently covered. The second is to focus on eliminating specific barriers identified under existing sector-specific chapters of the AIT.

P/T Internal Trade Ministers have agreed that, by November 2004, the co-leads will provide Ministers with an assessment of the options and impacts of approaching the exercise by addressing the gaps through each of these approaches.

At that time, Ministers will be asked to provide direction to officials in terms of what their priority gaps are, how to proceed with addressing them, and ways to streamline the AIT. A final report will be presented to the Council of the Federation at its Annual 2005 meeting.

Alberta and British Columbia, July 2004

## **Workplan Item 2.4: Develop a Comprehensive Communications Plan**

### **Background**

Provincial/Territorial Internal Trade Ministers have been directed by Premiers, through the Council of the Federation initiative, to develop a communications plan for review by Ministers at their April 2004 meeting.

At their April meeting, Ministers approved a draft communications plan and directed further and full development of the plan. Ministers noted the need for the communications on this initiative to be driven by the Council of the Federation. Ministers directed New Brunswick and Yukon, the lead jurisdictions, to complete development of the plan, including cost estimates.

Intra-governmental communications plans are to be developed to ensure jurisdictions maintain a “whole of government” approach. Ministers then decided to defer to respective jurisdictions the decision to how to ensure a whole of government approach is communicated internally within jurisdictions. [The proposed national communications plan can easily be used to enhance an internal “whole of government” approach to Internal Trade in all jurisdictions.]

### **Current Status**

The draft communications plan has been further developed by a Yukon communications organization and cost estimates for a national plan have been produced.

Ministers will review the concept and theme of the proposed national communication plan at their next opportunity and decide if they wish to proceed with this proposal. As part of this review, Ministers will consider the estimated cost of a national Communications Plan and decide whether the cost estimate is acceptable, and, if so, from what source the resources for the implementation of the communications plan will be forthcoming.

New Brunswick and Yukon, July 2004

## **Workplan Item 3.1: Re-commit to honour all obligations under current AIT**

### **Mandate**

Provincial and territorial Ministers responsible for Internal Trade, in conjunction with their Premiers, communicate the Workplan agreed to by the Council of the Federation (CoF) to their provincial and territorial colleagues responsible for various areas under the AIT.

Sectoral ministers will provide Ministers responsible for Internal Trade with a Workplan to address any outstanding obligations in their area.

### **Background**

In addition to Party-specific obligations, there are a number of outstanding obligations of a collective nature under the AIT.

Ministers responsible for Internal Trade often do not have direct responsibility (neither within their jurisdiction nor under the AIT) for areas covered under these outstanding obligations.

Ministers responsible for Internal Trade, working through the CoF, need to take a “whole of government” approach to ensuring that the obligations of the AIT are honoured.

### **Current status**

A complete review of existing collective outstanding obligations under the current AIT, reveals that these obligations are otherwise being addressed through specific undertakings under other initiatives of the Workplan, each one having its own terms of reference and its own requirements to report to either Ministers or the Council of the Federation.

Furthermore, when they met in Toronto last April, the Ministers recognised that most of the jurisdictions had already complied with the “whole of government” aspect of this initiative and, where not achieved, each government should determine how best to communicate the Workplan within its own administration.

### **Recommendation**

The objectives underlying this particular initiative are either met or currently being addressed by virtue of other initiatives of the Workplan.

Québec, July 2004

## **Workplan Item 3.2: Complete Negotiation of the Energy Chapter**

### **Mandate**

P/T Internal Trade Ministers have been directed by Premiers, through the Council of Federation initiative, to complete negotiations for an AIT Energy Chapter. Negotiations are to address provisions covering electricity as well as oil and gas. A report on the status of negotiations is to be prepared for Premiers for the July 2005 meeting of the Council.

### **Background**

The 1995 *Agreement on Internal Trade* (AIT) called for negotiations on an Energy Chapter to be concluded by July 1, 1995. However, Parties were unable to reach agreement and the AIT's Chapter Twelve Energy was not completed.

In 1998, Energy Ministers agreed on the text of a draft Energy Chapter with the exception of two issues on which they could not reach consensus. These issues included provisions on hydraulic rights and on exemptions related to regional development measures for oil and gas activities, both in shore and offshore.

In 2002, Internal Trade Ministers agreed on wording on hydraulic rights but there remains no consensus on how to deal with regional development exemptions.

### **Current status**

At the request of P/T Internal Trade Ministers, officials have developed terms of reference for a workplan which includes: a review of the potential scope and coverage of a proposed Energy Chapter; a jurisdictional review of the 1998 draft Energy Chapter text for relevance; identification of existing and proposed regional development programs; identification of common ground respecting mutually acceptable resolutions; and a subsequent detailed workplan for the negotiating process.

A working group comprised of internal trade and energy officials has been established and work has commenced on the development of a workplan to guide the negotiating process.

A status report on negotiations is to be completed for the 2005 annual meeting of P/T Internal Trade Ministers.

Alberta, July 2004

### **Workplan Item 3.3: Full Review of the Agreement on Internal Trade (AIT) Dispute Resolution Mechanism**

#### **Mandate:**

Provincial and territorial officials directed to undertake a full review of the dispute resolution mechanism in the AIT and prepare an options paper on ways to address key issues including timing, fairness, certainty, consistency and implementation for the consideration of provincial and territorial Ministers responsible for internal trade at their 2005 meeting.

#### **Background:**

Criticisms of the AIT dispute resolution mechanism have been wide ranging touching on procedural issues, complexity, fairness and length of the process and lack of implementation of panel results.

Improvement of the AIT Dispute Resolution Mechanism was Short-Term Objective 2.2 in the Council of the Federation's internal trade work plan. This short-term work, now complete, focused on procedural fairness.

A committee of P/T Attorney General solicitors was created to assist in carrying out this task. The work of this Committee culminated in a report, authored by Ontario, but with extensive review and input by all participating jurisdictions. The Short-Term Report classified the working group's recommendations into three categories:

- recommendations for immediate action by provinces and territories;
- recommendations for short term action with the federal government; and
- recommendations for consideration in the longer term review of the AIT dispute resolution process.

#### **Current Status**

The work of the short-term group will now be included within the in-depth review over the coming months, to be led by Saskatchewan.

Officials will begin work later this summer, beginning with the third category of recommendations alluded to above. It is expected that additional items will be identified and will also be included in the work.

In addition to the continued engagement of governments, the longer-term review is expected to engage non-governmental persons, organizations, and groups that have been involved in, or affected by, the AIT dispute resolution process.

Lead Jurisdiction: Saskatchewan, July 2004

### **Workplan Item 3.4: Assess and Address Issues Related To Business Subsidies**

#### **Mandate:**

The Council of the Federation Internal Trade Workplan calls for three actions to be concluded by the 2005 meeting of Provincial/Territorial (P/T) Ministers Responsible for Internal Trade: (1) an independent assessment of the nature and extent of the issue; (2) development of options to address areas where subsidy competition remains a concern; and (3) a review and evaluation of data collected under the Agreement on Internal Trade (AIT) to date. Terms of Reference for completing these actions have been developed by officials.

#### **Current Status:**

*Action Item 1: Independent assessment of areas where subsidy competition remains a concern.*

Each P/T will identify real life situations in which subsidy practices of other Parties to the AIT have been considered to have had an unduly negative impact on their economic interests. An independent analysis of this information will then be conducted to verify the validity of claims and determine if there is verifiable evidence substantiating the claim. Officials will develop terms of reference to guide this analysis.

Based on this review, a report will be developed for officials outlining areas where subsidy practices/competition continue to be of concern and where there is sufficient evidence to suggest that undue negative impacts are occurring. It is proposed that this Report be completed no later than December 13, 2004.

*Action Item 2: Development of Options to Address Areas of Concern*

Based on the Report, officials will develop possible options to address areas of concern outlined in the Report. A report summarizing the results of the independent assessment and outlining options to address outstanding issues will be prepared for the 2005 Annual Meeting of Ministers.

*Action Item 3: Review/Evaluation of Data Collected To Date on Incentives*

P/T officials will conduct a review and evaluation of the data collected to date as part of the required reporting under the AIT's Code of Conduct on Incentives. Officials may consider, among other things, the comparability of data collected, potential uses of the data, concerns regarding public release of the data, the administrative burdens associated with collecting the data, the extent to which the current reporting meets the needs of transparency in this area, and alternative means of meeting transparency regarding incentives. The review and evaluation of data on incentives, including any recommendations for changes in this area, will be included as part of the report to the 2005 Annual Meeting of Ministers on this workplan item.

Manitoba, July 2004

## **COUNCIL OF THE FEDERATION INTERNAL TRADE WORKPLAN ITEM 3.5 Address Labour Mobility Issues, Including Mutual Recognition of Foreign Credentials**

**Mandate:** Forum of Labour Market Ministers (FLMM) is to prepare an assessment of the effectiveness of the Chapter 7 of the Agreement of Internal Trade including a common survey of their occupational regulatory bodies for inclusion in the Annual Report of Chapter 7.

### **Status:**

The Forum of Labour Market Ministers (FLMM) is currently working on labour mobility issues, including the issue of foreign credential recognition. In May 2004, the P\T officials approved the mandate and the workplan of the Labour Mobility Coordinating Group (LMCG) **to address inter-provincial labour mobility issues**. This workplan states that LMCG is to continue its work on a monitoring framework to provide flexible approaches for individual jurisdictions in line with their labour mobility obligations. This framework should include a common survey of their occupational regulatory bodies by individual jurisdictions, the status of mutual recognition agreements and a report on formal complaints. The assessment of the chapter will determine whether regulatory bodies are working together to ensure consistent treatment and mutual recognition of workers in Canada. The Lead jurisdiction will approach the FLMM to determine a timeline for the outcome and to address foreign trained workers issue.

### **Background:**

- Under the Labour Mobility Chapter of the AIT, all provinces and territories are to comply with a number of obligations aimed at eliminating barriers to labour mobility, so that any worker that is qualified to work within one province or territory has access to employment opportunities in the same occupation within another province or territory.
- Senior Officials of the Forum of Labour Market Ministers have approved the mandate, the workplan and the budget of the Labour Mobility Coordinating Group for the year 2004-2005.

Ontario, July 2004

## **Workplan Item 3.7: Accelerate the Harmonization of Regulations and Standards**

### **Mandate**

Provincial/Territorial Internal Trade Ministers have approved a workplan that would have officials report on and assess the status of intergovernmental harmonization efforts as well as identify options for accelerating the process and avoiding new and unnecessary trade/mobility barriers. Ministers would review the findings and what to present to the Council in April, 2005.

### **Background**

Governments generally accept that many, if not most, trade/mobility barriers arise because of differing, ever changing and complex regulatory/standards regimes. Trade agreements, including the AIT, promote, but do not require, harmonization so progress in Canada has been mixed. Recognizing the various approaches being taken or considered internationally to minimize trade/mobility impacts, there may be some worth considering for application in Canada.

### **Current status**

Nova Scotia, with some academic support, is researching and reviewing experience, progress, and proposals made internationally for dealing with the challenge. In the fall other P/T governments will be approached to provide input on the status of harmonization, mutual recognition, and reconciliation activities. The Standards Council of Canada is planning to include this CoF topic on its agenda for the 2nd National Standards System conference in November.

Nova Scotia, July 2004

### **Workplan Item 3.8: Review of the Scope and Coverage Of The AIT Agriculture Chapter**

#### **Mandate:**

As provided for in directions from the Council of the Federation, the work plan for this item calls for P/T Ministers of Agriculture to complete a review of the scope and coverage of the AIT Agriculture Chapter by their June or July 2005 Annual Meeting and to report on the results of their review to P/T Internal Trade Ministers at that time.

#### **Background:**

Various agri-food industry sectors have criticized the limited coverage of the Agriculture Chapter of the Agreement on Internal Trade (AIT) while others have complained that it impacts negatively upon supply-managed commodities.

The AIT called for Ministers of Agriculture to complete a review of the scope and coverage of the Agriculture Chapter of the AIT by September 1, 1997. Agriculture officials conducted an extensive review of the Chapter, including potential new text for a Chapter, but resolution of this issue has not yet been concluded at any of the annual Agriculture Ministers meeting.

#### **Current Status:**

It is anticipated that P/T Ministers of Agriculture will meet in the fall of 2004 and will review progress on a work plan proposed by P/T Agriculture officials to complete the review for P/T Agriculture Ministers to consider at their 2005 Annual meeting.

Prince Edward Island, July 2004

### **Workplan Item 3.9: Improvements to the Procurement Chapter**

#### **Mandate:**

The Council of the Federation has requested, “Officials to undertake a full review of the Procurement Chapter in the Agreement on Internal Trade (AIT) with a view to identifying proposals such as the reduction of the thresholds that currently apply under the Agreement, expansion of the Chapter’s coverage to include professional services and access to tender calls by way of a unique gateway.”

#### **Approach:**

Working groups have been established since the spring of 2003 to review and report on areas where improvements can be made to the Procurement Chapter of the AIT. Areas under review include: reduction of the thresholds; expansion of the Chapter’s coverage to include professional services as well as the elimination of other exclusions/exemptions; the sharing of parties’ tender notices through an electronic gateway; examination of when and if public private partnerships are obligated to follow the AIT procurement rules; and improving the language in the Procurement Chapter related to “Bid Protest Procedures,” “Regional Economic Development” and “Transition Costs.”

#### **Current Status:**

Draft reports have been prepared on each of the items referred to above. These reports were discussed by officials of all parties to the Agreement at a meeting held in Calgary on June 17 and 18, 2004. While progress has been made in all areas, it was concluded that further research and work are required. It is anticipated that revised reports will be prepared and presented to Provincial and Territorial Internal Trade Ministers at their next meeting.

The date for completion of this work is April 2005 as specified in the Council of the Federation Workplan.

Newfoundland & Labrador, July 2004

## **Workplan Item 4.0: Other Business**

### **Mandate:**

Provinces and Territories, either individually or as groups, are encouraged to undertake research and analysis and/or actions into internal trade matters and issues of interest and to report the results of these undertakings to P/T ministers responsible for trade.

### **Background:**

The Uniform Law Conference's Commercial Law Strategy is a 5-10 year project touching many areas of commercial law, much of which in common-law Canada has not been updated for more than 50 years. The strategy involves substantive commercial law and the law touching the resolution disputes, which is essential to make substantive law meaningful.

Examples of laws being reviewed include:

- Electronic commerce framework - Uniform Electronic Commerce Act and Uniform Electronic Evidence Act are the principal elements.
- Transfer of indirectly held securities - makes law on settling securities transfers to consistent with market practices, reducing systemic risk and promoting global competitiveness.
- General law on secured transactions needs to review based on recent changes in the US and in Quebec. Harmonization of these laws has become more critical as assets and Canadians become more mobile.
- Enforcement of Canadian judgements and decrees and of foreign judgements - will make the national economic market more predictable by supporting substantive rights.
- Uniform franchises legislation project led by Ontario to promote the introduction of consistent legislation in this area.

### **Status:**

At the April 28, 2004 Meeting of P/T ministers responsible for internal trade, Ontario's minister led a discussion regarding the Commercial law strategy being developed by the Uniform Law conference of Canada. This strategy is intended to modernize and harmonize essential areas of commercial law in Canada, with a view to current international practices where appropriate.

### **Recommendation:**

At the April 28, 2004 meeting, Ministers expressed keen interest in this initiative and agreed with the suggestion from Ontario that the Uniform Law Conference be invited to make a presentation at a future meeting of Ministers of internal trade.

July 2004