Agreement on Internal Trade

The 'Agreement on Internal Trade' (AIT) is an intergovernmental agreement entered into by the federal government and all ten provinces in 1994, which came into force in 1995. The goal of the AIT is the elimination of barriers to economic mobility within Canada (see Economic Union). To further this objective, it builds upon the failed attempts to amend the Constitution in both the Patriation and Canada Rounds. Although motivated by economic considerations, (*i.e.* the economic benefits that would result from increased inter-provincial economic activity) the AIT, along with the *Social Union Framework Agreement*, should be seen as an attempt to renew the federation through non-constitutional means in the wake of the failure of the Charlottetown Accord. The AIT is comprehensive in scope, covering the mobility of goods, services, capital and persons in all areas of economic activity, although there are sectoral chapters dealing with government procurement, investment, etc.

The AIT is modeled on international trade agreements in two respects. First, the primary focus is negative integration (*i.e.* the elimination of discriminatory treatment of out-of-province factors of production). However, the AIT also creates the framework for intergovernmental negotiations to eliminate barriers to mobility arising from inter-provincial regulatory diversity (a process known as positive integration). Second, the AIT contains dispute settlement machinery to deal with alleged violations of the AIT; however, this machinery only applies to trade barriers created after the coming-into-force of the agreement. In the wake of the *CAP Reference (Reference Re Canada Assistance Plan* (B.C.), [1991] 2 S.C.R. 525), it is widely accepted that neither the AIT nor the decisions of AIT panels are justiciable in the ordinary courts (with the exception of non-discrimination in procurement by the federal government), and that the AIT does not operate to fetter legislative sovereignty.

Scholars are divided on whether the AIT has furthered the project of the Canadian Economic Union. Those who are skeptical of the impact of the AIT have called for measures to enhance its effectiveness, for example, by incorporating its key provisions into a federal statute. Moreover, one AIT decision, *Re Manganese-Based Fuel Additives Act* (unreported) has raised fears that AIT panels may not strike the appropriate balance between trade and the environment.

Sources:

- *Agreement on Internal Trade* (Ottawa: Government of Canada, 1994).
- R. Howse, *Securing the Canadian Economic Union: Legal and Constitutional Options for the Federal Government* (Toronto: C.D. Howe Institute, 1996).
- D. Schwanen, "Happy Birthday, AIT!" (2000) 21:6 Policy Options 51.