Economic Union

'Economic Union' is a conception of Canada that holds that one of the basic purposes of the Canadian federation is the elimination of impediments to economic mobility amongst provinces (see federalism). This goal is reflected to a considerable extent in the terms of the *Constitution Act, 1867*,[1] which among other things, prohibited the imposition of tariffs on interprovincial shipments of goods (section 121), and vested jurisdiction in the federal government over subject-matters that would give it the ability to create an integrated Canadian economic space (e.g. trade and commerce, federal works and undertakings, and tariffs). However, the broad interpretation given by the Judicial Committee of the Privy Council to provincial jurisdiction over property and civil rights, and the correspondingly narrow interpretation given to both the trade and commerce power and section 121, are considered by many scholars to have limited the capacity of the *Constitution Act, 1867* to impose constitutional constraints on provincial laws that create barriers to trade (see division of powers).[2]

As a direct consequence, amendments to the Constitution to enhance the Canadian Economic Union have been an important fixture on the agenda of constitutional reform, both during the Patriation and the Canada Rounds. With the exception of the entrenchment of mobility rights in the *Charter*, these attempts at constitutional reform have been unsuccessful. The lack of success can be attributed in part to strong provincial opposition to the constitutionalization of free-trade principles that could potentially operate as a significant limit on the capacity of provinces to adopt a host of laws which serve important public purposes, but which inhibit economic mobility (e.g. labour laws, consumer safety laws).[3] Nonetheless, the federal government and the provinces signed the *Agreement on Internal Trade* (*AIT)* in 1994 in order to eliminate barriers to economic mobility. The *AIT* was replaced by the *Canadian Free Trade Agreement* in 2017.[4]

[1] *Constitution Act, 1867* (UK), 30 & 31Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

[2] See: Katherine Swinton, "Courting Our Way to Economic Integration: Judicial Review and the Canadian Economic Union" (1995) 25:2 Can Bus LJ 280.

[3] See: David Schneiderman, "Economic Citizenship and Deliberative Democracy: An Inquiry into Constitutional Limitations on Economic Regulation" (1995) 21:1 Queen's LJ 125.

[4] *Canadian Free Trade Agreement Implementation Act*, SC 2017, c 33, s 219.