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Does the Agreement on Internal Trade Do Enough to Liberalize Canada's Domestic Trade in Agri-food Products?

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Liberalize Canada's Domestic Trade in Agri-food Products?
(Background Paper)***

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DOES THE *AGREEMENT ON INTERNAL TRADE* DO ENOUGH TO LIBERALIZE CANADA'S DOMESTIC TRADE IN AGRI-FOOD PRODUCTS?

1 INTRODUCTION

Canada's internal market is sometimes seen as a secondary market by the agri-food sector, which has sought to optimize sales in the United States. In the early 2000s, the weakness of the Canadian dollar compared with the US dollar made agri-food exports to the US both competitive and financially attractive. However, the rising value of the Canadian dollar and the US policy on mandatory country of origin labelling (COOL)¹ compromised Canadian agricultural and food exports to the US. These factors have prompted Canada to develop viable markets to complement the US market. They have also helped to revive discussions about developing Canada's internal market and the need to further liberalize trade in this market.

Although the *Agreement on Internal Trade*² was signed in 1995, there are still barriers to free trade in this market. To remove these barriers, a protocol of amendment to Chapter 9 on agricultural and food goods was developed in 2009 with a view to stimulating interprovincial trade in agri-food products. This paper explores whether this protocol of amendment can effectively contribute to the process of trade liberalization in agri-food products in the internal market in Canada.

This paper begins with a statistical overview of interprovincial trade in Canada and describes the types of trade barriers in this market. It then presents the *Agreement on Internal Trade* and its protocol of amendment for the chapter on agricultural and food goods. Finally it raises questions about the possibility of truly achieving the objectives of the amendment protocol, in view of the bilateral and multilateral trade accords among the provinces and territories.

2 THE INTERPROVINCIAL MARKET AND TRADE BARRIERS

2.1 INTERPROVINCIAL TRADE IN AGRICULTURAL AND FOOD PRODUCTS³

From 2000 to 2005, interprovincial exports of agricultural and food products were higher than Canada's agri-food exports to the United States. Interprovincial exports of agri-food products rose by 20% during this period, increasing from \$21 billion to \$25 billion in value. During this period, the value of agri-food exports to the United States was between \$16 billion and \$20 billion.⁴ Interprovincial exports of agri-food products are dominated by Ontario and Quebec. In 2005, these two provinces held estimated market shares of 24% and 23% respectively, followed by Alberta (16%) and Saskatchewan (9%). These four provinces accounted for three quarters of the interprovincial export market that year.

The interprovincial import market, on the other hand, was dominated in 2005 by Ontario (25%), Alberta (19%), British Columbia (16%) and Quebec (12%), a market concentration of 72%.

2.2 BARRIERS TO INTERNAL TRADE

In the literature on international trade, the concept of trade barriers usually refers to tariffs and to non-tariff barriers, which are measures other than tariffs that impede transactions between trading partners. These non-tariff barriers, which vary from country to country, are similar to trade restrictions. Import quotas, government intervention in the domestic market and the administrative procedures necessary for the import or export of products are examples of non-tariff barriers.⁵

In Canada, there are no tariffs between the provinces and territories, but there are obstacles to trade in the form of non-tariff barriers. These obstacles are the result of the adoption of legislation, regulations and standards by the provincial and territorial governments or of the lack of harmonization between these legislative instruments and standards. Companies wishing to export goods must therefore invest additional time and money in order to comply with these laws, regulations and technical standards.⁶

Some governments and enterprises have criticized these obstacles because of the additional costs.⁷ Surveys conducted by the Canadian Chamber of Commerce (2004), COMPAS (2004) and the Conference Board of Canada (2006) identified the main types of regulations that result in additional costs for enterprises trading in goods and services. Three of these are particularly noteworthy:

- regional preferences in the awarding of public contracts;⁸
- regulations governing road transport, construction site safety, the standardization of industrial equipment, and financial services; and
- failure to recognize labour qualifications from one province or territory to another.

Some observers maintain that the laws, regulations and technical standards pertaining to agricultural and food products serve to distort interprovincial trade in agri-food products.⁹ The *Agricultural Products Marketing Act*,¹⁰ for instance, is a federal act that restricts interprovincial trade in products such as those subject to supply management. Another example lies in the differences between federal and provincial meat inspection programs, which constitute a barrier to trade in animal products since meat products may not be shipped or transported from one province to another unless prepared or stored in a federally accredited facility. A provincially accredited slaughterhouse is therefore authorized to sell its products only in the province in which it is located. With regard to regulations and technical standards, certain sanitary and phytosanitary measures¹¹ and labelling criteria sometimes create barriers to the internal trade in agri-food products.

Opinions vary as to how much these obstacles affect enterprises economically. Studies by the Canadian Centre for Policy Alternatives have found that “the presence of interprovincial trade barriers is ‘miniscule at most’ and ‘to the extent they existed in

the past ... they have already been resolved.”¹² These studies have also revealed that there is no credible evidence of an internal trade crisis in Canada. Other observers argue, however, that these barriers have a cost, which varies according to the calculation method and data sources used. The Public Interest Advocacy Centre maintains that these non-tariff trade barriers cost between 0.05% and 1.58% of Canada's Gross Domestic Product (GDP). Then Minister of Industry, the Honourable Jim Prentice, told the Standing Senate Committee on Banking, Trade and Commerce in March 2008 that the cost of trade barriers was at least \$2 billion to \$3 billion per year (0.2% of GDP) and no more than 3.8% of GDP.¹³ Another source has suggested that, in the agriculture sector, trade barriers cost \$1 billion.¹⁴

Despite this range of opinions on the real economic impact of interprovincial trade barriers, there is a strong desire to remove these obstacles. If the federal government and the provinces have difficulty harmonizing their internal laws and regulations, how can Canada convince its international trading partners to conclude free trade agreements? This question highlights the importance of improving the *Agreement on Internal Trade*.

3 CANADA'S AGREEMENT ON INTERNAL TRADE

The *Agreement on Internal Trade* (AIT) is an intergovernmental agreement that was concluded on 18 July 1994 and came into effect on 1 July 1995. It is designed to enhance interprovincial trade by eliminating barriers to the free circulation of persons, products, services and investments within Canada. The signatories to the AIT hope to create an internal market that is open, strong and stable. The signatories are Canada and its provinces and territories, except for Nunavut, which is an observer, and not a signatory to the agreement.¹⁵

The AIT has often been criticized for not allowing for the amendment or revocation of laws or regulations that impede interprovincial trade. The AIT is only politically binding on governments; it is not legally binding.¹⁶ Moreover, from 1995 to 2007, the dispute resolution mechanism under the agreement did not impose any monetary penalties for violations. There was no financial incentive for the signatory parties to follow the recommendations of the dispute resolution groups.

Despite these criticisms, the AIT has produced some results in eliminating trade barriers. The most significant progress has been with respect to public contracts. The AIT chapter on public contracts now covers a wide range of government entities that were previously exempt from procurement rules under the AIT. The alcoholic beverages sector is another area where progress has been made in eliminating barriers. The restrictions on the marketing of beer have largely disappeared, and progress has been made with respect to standards and distribution practices for wine.¹⁷

To further liberalize trade in agricultural and food products, more significant efforts will be needed. Some experts suggest that the focus should be threefold: marketing laws; supply management; and regulations or standards regarding the naming, labelling and composition of agricultural and food products.¹⁸ This is why the parties agreed, on 15 October 2009, on a protocol to amend AIT Chapter 9 regarding

agricultural and food goods. It should be noted, however, that when this paper was drafted, the protocol had not yet been signed by the parties and was therefore not in effect. The signing of this protocol will help liberalize trade in agricultural and food products, since the Chapter 9 protocol of amendment aims to eliminate technical measures relating to technical regulations, standards and conformity assessment procedures. In the original agreement, Chapter 9 pertained to the elimination of technical barriers to trade in agricultural and food goods, with such a barrier being defined as one that:

- a) involves product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory;
- b) deals exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method;
- c) involves any procedure used, directly or indirectly, to determine that relevant requirements in technical measures are fulfilled; or
- d) involves a sanitary or phytosanitary measure.¹⁹

The protocol of amendment expands the definition of technical barriers to trade by including technical standards and regulations and conformity assessment procedures as long as these barriers do not conflict with legitimate objectives such as public safety, the protection of human, animal or plant life or health, environmental protection and consumer protection. This version also includes the following definitions of technical measures:

standard means a document approved by a recognized Body including those accredited by Canada's National Standards System, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

technical regulation means a document or instrument of a legislative nature which defines product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory by law. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

conformity assessment procedure means a procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.²⁰

Although the signatory parties, through this protocol, reiterated their support for supply management and for its application measures other than those of a technical nature, the fact remains that they indicated their desire to simplify or relax the laws

and main regulations and technical standards that hamper interprovincial trade. Moreover, governments will be less inclined to violate the provisions of Chapter 9, since the dispute resolution body has had the power since December 2008 to impose a maximum monetary penalty of \$5 million. The amount of the penalty depends on the seriousness of the violations, their impact on the market and the population of the entity in question.

In short, although it has not yet been signed by the parties, the 15 October 2009 protocol of amendment seeks to strengthen the mechanism to remove barriers to the internal trade in agriculture and agri-food products. This interest in removing barriers to interprovincial trade in the agri-food sector is nevertheless not reflected in certain bilateral and multilateral agreements signed between the provinces.

4 BILATERAL AND MULTILATERAL AGREEMENTS

Article 1800 (Trade Enhancement Arrangements) of the AIT allows the parties to enter into bilateral or multilateral agreements in order to enhance trade and mobility provided that, among other things, the arrangement liberalizes trade beyond what is required by the AIT. With respect to agricultural and food products, however, it appears that certain agreements do not meet this condition.

4.1 *TRADE AND COOPERATION AGREEMENT BETWEEN ONTARIO AND QUÉBEC*

The *Trade and Cooperation Agreement between Ontario and Québec* came into force on 1 October 2009.²¹ Its objectives are to reduce and eliminate, to the greatest extent possible, barriers to the free movement of persons, goods, services, investments and investors between Ontario and Quebec, and to exceed the requirements of the AIT. This agreement, which the parties see as a way of helping to reduce and eliminate barriers, does allow the provinces to preserve their rights, specifically in the agriculture sector. With respect to agricultural and food products, the parties agreed to retain and strengthen supply management and regulated marketing and to make them key instruments in the Ontario–Quebec economic area. Some experts argue that these tools impede the liberalization of trade between the provinces. The AIT Chapter 9 protocol of amendment is a bit stricter, as it seeks to remove the technical measures underlying supply management. The parties also agree in paragraph 4, Article 10.2, of Chapter 10 of the Ontario–Quebec Agreement not to revoke or question a measure maintained or adopted after that agreement came into force and that is related to the *Quebec Act Respecting the Marketing of Agricultural, Food and Fish Products* in Quebec, or to the *Farm Products Marketing Act* or the *Commodity Boards and Marketing Agencies Act* in Ontario.²² Moreover, Chapter 12 of the Ontario–Quebec Agreement (Dispute Resolution) does not apply to a measure defined in that context.

The Ontario–Quebec Agreement also allows the parties to retain their technical standards and regulations regarding labelling and food composition, provided that these technical standards and regulations pertain to:

- a) providing consumer information pertaining to the nature, origin, composition or production process of an agriculture or food good or any other essential product characteristic; or;
- b) protecting consumers against deception, fraud and unsubstantiated product claims; or
- c) ensuring the integrity or authenticity of an agriculture or food product.²³

The AIT and the Chapter 9 protocol of amendment do not consider items a) and c) above as legitimate objectives. With regard to b), however, the AIT views consumer protection as a legitimate objective on the whole, and so this item helps protect the consumer against deception, fraud and unsubstantiated allegations.

In signing this agreement, Ontario and Quebec appear to have preserved their trade relations as long as they comply with the provinces' specific characteristics and respective legislation. In that context, it is difficult to imagine how the Ontario–Quebec Agreement could relax or harmonize the laws, regulations and technical standards that are considered barriers to the trade in agricultural and food products under the AIT and its Chapter 9 protocol of amendment. The same applies to the other interprovincial agreements.

4.2 OTHER INTERPROVINCIAL AGREEMENTS

A number of other interprovincial agreements have been signed to improve trade between the provinces and increase economic benefits. These agreements are usually between provinces that are geographically close to one another. Like the Ontario–Quebec Agreement, some of these agreements leave intact the regulations and technical measures in the agri-food sector, especially as regards supply management and the regulated marketing of farm products. Other agreements simply do not include agri-food.

The *New West Partnership Trade Agreement* (NWPTA) between British Columbia, Alberta and Saskatchewan came into force on 1 July 2010.²⁴ This agreement replaces the Alberta–British Columbia *Trade, Investment and Labour Mobility Agreement* concluded in 2006 and affords greater scope. It is stricter than the AIT regarding the liberalization of trade between these provinces, as it seeks to eliminate all barriers to trade between them. Under this agreement, the parties must recognize or at least harmonize their respective standards and regulations in a way that does not restrict or impede trade, investments and labour mobility among them. They must also refrain from establishing any new standards or regulations that limit or impede trade, investments or labour mobility. There are some exceptions, however. In the case of Alberta and Saskatchewan, the regulated marketing and supply management measures adopted or maintained are not covered by the NWPTA. In the case of British Columbia, regulatory measures adopted pursuant to the *Natural Products Marketing (BC) Act* – which restrict trade and investment with regard to regulated marketing products – are not subject to the NWPTA. Moreover, these exceptions are not subject to the dispute resolution process, which means there is no legal recourse to resolve a dispute relating to these exceptions.

The *New Brunswick–Nova Scotia Partnership Agreement on Regulation and the Economy (PARE)*²⁵, which came into force on 24 February 2009, should also be noted. This agreement seeks to harmonize fish industry regulations in order to promote trade in fish products between the two provinces. The relative importance of the fish industry in these provinces, particularly in Nova Scotia, is the basis for this agreement. Yet the scope of economic activities in the agri-food sector is significant and raises questions as to why the PARE does not cover agriculture or other food products. An agreement in this sector could contribute to the liberalization of agri-food trade between these provinces and create greater economic spinoffs.

The signatory governments to the AIT have indicated their intention to expand trade in agricultural and food products by developing the Chapter 9 protocol of amendment. However, the content of certain bilateral and multilateral arrangements signed alongside the AIT does not appear to reflect this intention. While the intention is to develop trade, some of these agreements do not include reference to agricultural and food products, and where they do, they do not address the inconsistency of marketing laws and technical regulations and standards, which constitutes the main barrier to trade in agricultural and food products.

5 CONCLUSION

The presence of non-tariff barriers in Canada impedes internal trade growth. Some authors maintain that the *Agreement on Internal Trade*, which the parties see as a tool for liberalizing interprovincial trade, is not entirely effective. It appears to be a political agreement with no legal impact; moreover, until December 2008, it did not provide for monetary sanctions against those violating it, and it was not binding. These criticisms led the governments to make amendments to the agreement, specifically to Chapter 9 on agricultural and food goods. Since 15 October 2009, a protocol of amendment has called for the elimination of technical measures that impede trade in these goods.

This progress could be compromised, however, by bilateral and multilateral agreements that tend to preserve the disparities in the provinces' marketing laws and technical measures regarding supply management and the composition and labelling of products. These agreements limit trade in agricultural and food products by leaving technical barriers in place, restricting the ability of stakeholders in the agri-food sector to develop the full potential of the internal market. The process of liberalizing trade, then, does not depend solely on improving the *Agreement on Internal Trade*. Provincial and territorial governments must also make changes to their bilateral and multilateral agreements in order to facilitate trade in agricultural and food products. Agri-food stakeholders in the provinces and territories should also work together on harmonizing existing technical standards and measures, including those pertaining to supply management and regulated marketing, without compromising the profitability and competitiveness of enterprises in this sector.

NOTES

1. This policy requires retailers with sales equal to or greater than US\$230,000 per year to inform customers of the country of origin of certain products, including fruit and vegetables, fish and seafood, and certain animal products. This policy has been in effect since 2005 for fish and seafood, and since 2009 for other products.
2. [Agreement on Internal Trade](#).
3. Unless otherwise indicated, the statistics in this section were calculated using Statistics Canada interprovincial and international trade figures, [CANSIM, Table 386-0002](#).
4. Industry Canada, [Trade Data Online](#).
5. H.P. Bowen, A. Hollander and J.-M. Viaene, *Applied International Trade Analysis*, Ann Arbor, University of Michigan Press, 1998.
6. According to the World Trade Organization (WTO), technical regulations and standards set out the specific characteristics of a product: its size, shape, design, purposes and uses, and the way it is labelled or packaged prior to its release onto the market. In some cases the way a product is produced changes its characteristics. In such cases, the technical regulations and standards are based on the production procedures and methods.
7. Public Interest Advocacy Centre (PIAC), [The Consumer Perspective of Trade & Commerce Powers](#), Ottawa, 2009.
8. The awarding by a public sector entity of a public contract to a contractor or supplier operating in a specific geographical area that offers the lowest price at the end of the public competitive bidding process.
9. Kathleen E. Macmillan and Patrick Grady, [A New Prescription: Can the BC-Alberta TILMA Resuscitate Internal Trade in Canada?](#), Backgrounder 106, Toronto, C.D. Howe Institute, October 2007.
10. This Act gives provincial marketing boards certain powers to enable them to improve marketing conditions for agriculture products in interprovincial and international markets. These powers are granted by decree at the request of the provinces and delegates.
11. According to the [Agreement on Internal Trade, Consolidated Version](#), 2009, Article 908, sanitary and phytosanitary measures are measures adopted to:
 - a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease;
 - b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease causing organism in a food, beverage or feedstuff;
 - c) protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or
 - d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest.
12. Quoted in PIAC (2009), p. 25.
13. Senate, Standing Committee on Banking, Trade and Commerce, [Evidence](#), 6 March 2008.
14. PIAC (2009), p. 26.

15. The territory of Nunavut, having been created in 1999, did not exist when the AIT was signed.
16. Kathleen Macmillan and Patrick Grady, *Inter-Provincial Barriers to Internal Trade in Goods, Services and Flows of Capital: Policy, Knowledge Gaps and Research Issues*, Industry Canada, Ottawa, 2007.
17. Ibid.
18. Ibid.
19. [*Agreement on Internal Trade, Consolidated Version*](#), 2009, Article 908.
20. "[Eleventh Protocol of Amendment to the Agreement on Internal Trade](#)," 8 November 2010, Article 907.
21. [*Trade and Cooperation Agreement between Ontario and Québec*](#), September 2009.
22. Ibid., Article 10.2.
23. Ibid., Article 10.2.7.
24. [*New West Partnership Trade Agreement*](#), 2010.
25. [*New Brunswick–Nova Scotia Partnership Agreement on Regulation and the Economy*](#), 24 February 2009.