

YEAR SIX: LOOKING AHEAD

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I. THE BACKDROP

IN MARCH 1992, FIRST MINISTERS ARTICULATED THEIR VISION of Canada's economic future. Prominent among the many outcomes of their meeting was their statement on "Interprovincial Trade Barriers and Competition for Investment":

First Ministers agreed on the need to accelerate the reduction of internal trade barriers, to strengthen trade linkages within Canada and to find ways to minimize competition for investment.

They then proceeded to outline their concerns and to establish a rough blueprint for what ultimately became the *AIT*. They were not merely mandating the creation of a goodwill artifact – they were setting the terms for the creation of a practical tool to accomplish the economic improvements they contemplated.

We have heard about the flaws and shortcomings of the *AIT* that resulted from that conference on the economy. We have heard that the *AIT* is a "good first step" (how many times over the past five years?). Now we are supposed to come up with some magical answer that will renew, rejuvenate, restore, re-inspire; take us back to the heady heights of 1993-94 when we negotiated until 2 in the morning....

II. STARTING ASSUMPTIONS:

- That the *AIT* is worth something – in the words of one speaker, "fundamentally sound" and participants in this conference are here to do something useful with it.
- That old ways have become stale and blocked, but that we share enough enthusiasm for the *Agreement* to want to refresh processes and embrace new approaches to maximizing its potential.
- That we are not in agreement on whether it should be expanded but are at least sufficiently open-minded that we can listen to ideas for how it might best be used in the interests of the common good.
- That at some level we believe that a common good does exist for the Canadian economy and is worth pursuing.

- That it is easier and less costly to pursue our goal within an established and evolving framework, taking advantage of incremental gains, than to re-invent context and grounds for resolution issue by issue.

III. THE CHALLENGE: TO IMPROVE THE USEFULNESS OF THE *AIT*

DISCUSSION OVER THE YEARS, and at this conference, has focused largely on what the *AIT* is and is not and, where action has been proposed, the focus has been largely on shaping and re-shaping the *AIT* itself, on what might be called improving its quality as a framework.

My remarks will take a different direction, offering what I hope are pragmatic suggestions for improving the utility of the *AIT* in actual application.

- *AIT* already in existence – let's work to realize its potential.
- Continuing negotiation and incremental improvement remain desirable & important
- Meanwhile, how to make most of what we have in hand?

What do we have in hand right now? An existing agreement that:

- Is remarkably comprehensive – discussion groups have not turned up significant areas that Ministers and negotiators somehow ignored or forgot.
- Presents general rules but modifies them in several sector chapters – flexibility or fear of commitment?
- Has significant carve-outs – Aboriginal peoples, financial institutions, culture. Not oversights – explicitly recognized but excluded.
- Recognizes areas that are undeniably part of total economic picture of Canada but are not captured in *AIT* disciplines: e.g., Crown corporation procurement, regional development.
- Has usual share of warts and scars of any instrument designed and executed by humans – show up in some weak language, non-existence of Energy chapter, etc.
- Provides procedures for consistent resolution of disputes

IV. SUGGESTIONS FOR GETTING GREATEST VALUE OUT OF EXISTING AIT:

Re-engage Political Decision Makers

- Without commitment of governments little progress possible.

Accept the AIT For What It Is, and Don't Fear Commitment

- Debate about comforts of political commitment *vs.* certainties of legal agreement - whatever the underpinnings & underlying assumptions, what we have is a rules-based agreement
- *AIT* is, despite weaknesses:
 1. Detailed articulation of the vision of First Ministers in 1992
 2. Major accomplishment in achieving consensus
 3. Framework for accomplishing intents and fulfilling expectations of First Ministers

Promote Education and Awareness

- *AIT* described by one speaker as a "sleeper." Concern about getting message out – website (ITS provides one); pamphlets; conferences. Interesting omission from lists from roundtables: university and college courses – MBAs, BComs, economics students, history students, etc. – lots of info on NAFTA, WTO agreements, but little or nothing on *AIT*
- Recognize as a significant part of Canadian history and teach it that way
- Don't forget educational needs of your politicians
- Remember another important aspect of education and information: openness – already potentially there for *AIT* disputes, parts of which take place in public eye. But for negotiations the rules may be somewhat different – compare radical and representative democracy, and the mandate to negotiate and decide

D. Use Article 1800 – Anticipated by Designers of Agreement

- Example: accords between Quebec and Ontario

- Advantages:
 - opportunity for regional tailoring
 - ratchet effect: in negotiating, one basic tenet was “nothing is agreed to until everything is agreed to.” Effect was to create situations where gains negotiators believed they had made one week or month could be lost the following week or month. Article 1800 does not allow for erosion of existing commitments – provides for trade enhancing arrangements, jumping off from the platform that existing agreement provides.
 - Functional arrangements achieved without need for 13-party consensus (14 if & when Nunavut accedes to the AIT)
 - 1800 provides flexibility to reconcile minimum (*note*: minimum, *not* minimal) national standards with regional needs

E. Be Innovative in Dispute Resolution

- Improve practicality and accessibility of dispute resolution mechanisms: Complaints about mechanisms refer to cost, time and general inconvenience.
- Refocus on real stakeholders – governments are official Parties, but who are principal stakeholders? Are we helping them?
- Consider cross-chapter disputes. Is insistence on linear progression from single chapter to dispute any more than protecting government from perceived “harassment”?
- Consider advantages of permanent, independent body to arbitrate disputes: speed, relatively low expense, procedural and interpretive consistency
 - CITT prepared to do pilot, provide rulings, expertise, venue – would work with Secretariat and any interested Parties to establish terms and proceed.
 Pilot would allow Parties, among other things,
 - (a) to assess mechanism involving permanent body,
 - (b) to work out functional, more accessible mechanism in practice and
 - (c) to bring innovation to funding arrangements.

V. CONCLUDING COMMENTS

IARRIVED AT THIS CONFERENCE TO FIND MANY OLD FRIENDS and colleagues here to study what, in many ways, we created. We “old friends and colleagues” have a challenge – to generate new ideas and practical approaches, to make the AIT realize its potential.

- Original negotiation process marked by a certain amount of acrimony and territorialism, but animated by very high levels of goodwill and a desire to accomplish something useful.
- Resulting *AIT*, even with all its flaws, a significant instrument that has already proven some of its promise.
- Are we capable of bringing some fresh thinking to old problems – of stepping back from the partisanship of negotiations and implementing the *AIT* to the advantage of its stakeholders? Conference participants all have roles to play in making *AIT* live up to its potential. Perhaps these practical suggestions will help to focus on some things that can be done to make the *AIT* a more effective and accessible instrument.

