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LEGISLATIVE SUMMARY



Bill C-14:

An Act to amend the Agreement on Internal Trade Implementation Act and the Crown Liability and Proceedings Act

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Legislative Summary of Bill C-14

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-14: AN ACT TO AMEND THE AGREEMENT ON INTERNAL TRADE IMPLEMENTATION ACT AND THE CROWN LIABILITY AND PROCEEDINGS ACT

1 BACKGROUND

Bill C-14, An Act to amend the Agreement on Internal Trade Implementation Act and the Crown Liability and Proceedings Act (short title: Improving Trade Within Canada Act), was introduced in the House of Commons on 6 October 2011 by the Honourable Christian Paradis, Minister of Industry and Minister of State (Agriculture).

The bill modifies the *Agreement on Internal Trade Implementation Act*¹ and the *Crown Liability and Proceedings Act*.² In particular, the bill provides for the enforceability of orders made under the dispute-resolution process of the *Agreement on Internal Trade* (AIT), specifically in relation to government-to-government disputes. The bill also changes the terminology in the *Agreement on Internal Trade Implementation Act* to make it consistent with the terminology in the AIT and to clarify the effect of any orders made under the Act. As well, the bill repeals a section of the *Crown Liability and Proceedings Act* regarding proceedings initiated under the AIT. A similar bill, C-57, was introduced in the 3rd Session of the 40th Parliament.³

1.1 AGREEMENT ON INTERNAL TRADE

The *Agreement on Internal Trade* was signed in 1994 by the First Ministers of Canada. The objective of the AIT is to reduce barriers to the movement of goods, services and persons across provincial and territorial boundaries in Canada.⁴ The AIT contains six general rules to limit new barriers and to reduce existing barriers, as well as specific obligations in 10 areas: procurement, investment, labour mobility, consumer-related measures and standards, agricultural and food goods, alcoholic beverages, natural resources processing, communications, transportation and environmental protection.

The AIT also includes, in Chapter 17, a dispute-resolution process that is available to governments, individuals and companies.

The AIT has been amended regularly since 1994; 11 Protocols of Amendment have been adopted since the AIT was signed. In 2009, substantive amendments were made concerning labour mobility, freer trade in agricultural products, more transparent procurement practices and reduced transportation barriers. The dispute-resolution process was also amended to allow the imposition of monetary penalties on governments for non-compliance with the AIT.⁵

Given that the AIT has changed over time, Bill C-14 amends the *Agreement on Internal Trade Implementation Act* to ensure consistency between it and the AIT.

2 DESCRIPTION AND ANALYSIS

2.1 CHANGES TO THE DISPUTE-RESOLUTION PROCESS (CLAUSES 3 AND 5(1))

Bill C-14 includes provisions that reflect the recent changes to the AIT regarding the dispute-resolution process between governments. The AIT allows the panels presiding over disputes to levy tariff costs⁶ and monetary penalties against governments for non-compliance with the AIT. The magnitude of monetary penalties is tied to the population in the jurisdiction. In provinces and territories with a population of fewer than 250,000 individuals, the maximum penalty is \$250,000. For those with a population that ranges between 250,000 and 750,000 individuals, the maximum penalty is \$750,000, while it is \$1.5 million for provinces and territories with a population of 750,000 to 1.5 million individuals. The AIT includes provision for a maximum penalty of \$5 million in jurisdictions with a population exceeding 1.5 million; consequently, the federal government could be subject to penalties.⁷

Clause 3 allows any orders of the panels made under chapter 17 of the AIT that impose tariff costs or monetary penalties against the Government of Canada to be enforceable upon registration of the order with the Federal Court. The panel's order is then enforceable in the same manner as any other order of the Federal Court and is not subject to appeal.

If a dispute remains unresolved after the release of a panel's report, the Governor in Council may issue an order for retaliatory measures against the province/territory that is non-compliant with the AIT. Bill C-14 clarifies the scope of this type of order. If the Governor in Council determines that, due to a violation of the AIT, the rights or privileges granted to a province or territory under the AIT should be suspended or that the application of a federal law with respect to a province or territory should be modified or suspended, clause 5(1) ensures that such violations will have penalties that are equal in scale to the violation.

2.2 APPOINTMENTS TO DISPUTE-RESOLUTION PANELS (CLAUSE 6)

Recent amendments to the AIT included modifications to the way in which people are appointed to dispute-resolution panels. In particular, the annex to chapter 17 of the AIT, as revised in 2009, states that each party involved in a dispute must have at least one candidate with knowledge of Canadian administrative law and at least one bilingual candidate. Clause 6 ensures that appointments to the panels by the Governor in Council occur in accordance with the requirements set out in the AIT for appointment of candidates to rosters; the requirements include expertise in relation to the AIT and Canadian administrative law, the ability to act independently from any party to the AIT, the availability to serve for a term of five years and bilingualism.

2.3 TECHNICAL AMENDMENTS (CLAUSES 2, 4, 5(2) AND 7)

Bill C-14 contains various technical clauses. Clause 2 amends the definition of “Agreement” in the Act to accord with changes that have been made to the AIT over the years. Clause 4 changes a section heading in the English version of the Act to clarify that section 9 of the Act refers only to orders from the Governor in Council, while clause 5(2) reflects changes in the numbering of sections in the AIT. Finally, clause 7 repeals a section of the *Crown Liability and Proceedings Act*, which referred to costs being awarded to or against the Crown in proceedings initiated under the AIT.

NOTES

1. *Agreement on Internal Trade Implementation Act*, S.C. 1996, c. 17.
2. *Crown Liability and Proceedings Act*, R.S. 1985, c. C-50.
3. Bill C-57: An Act to amend the Agreement on Internal Trade Implementation Act and the Crown Liability and Proceedings Act, 3rd Session, 40th Parliament.
4. Every Canadian province and territory signed the AIT, with the exception of Nunavut. This territory has observer status.
5. Industry Canada, “[Minister Paradis Reintroduces Bill to Remove Barriers to Interprovincial Trade](#),” News release, 6 October 2011.
6. Tariff costs are fees incurred by a party to a dispute during the dispute-resolution process, such as lawyer’s fees or travel expenses.
7. [Agreement on Internal Trade](#), 2010, Annex 1707.1(2).