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Agreement on Internal Trade, Chapter Eight -- Consumer - Related Measures and Standards

Annual Report to the AIT Secretariat Office of Consumer Affairs, Industry Canada Fiscal year ending March 31, 2002

1. INTRODUCTION/BACKGROUND

Chapter Eight of the Agreement on Internal Trade calls upon the federal, provincial and territorial governments to report on and cooperate in the enforcement of consumer protection measures. As part of that agreement, the Committee on Consumer Related Measures and Standards (CMC), composed of federal, provincial and territorial officials, undertook negotiations to reach agreement on specific commitments made under the AIT. The CMC is furthermore tasked with monitoring the implementation and administration of agreements made under Chapter Eight of the AIT.

The CMC is also responsible for identifying any substantive measures for inclusion in future negotiations and to act as a forum for discussions between the Parties on consumer-related measures as well as dispute resolution. The CMC is presently co-chaired by Ms. Judy Budovitch, of New Brunswick's Ministry of Justice, and Mr. Michael Jenkin, Director-General of the Office of Consumer Affairs, Industry Canada.

2. GENERAL PROGRESS ON CHAPTER EIGHT

There has been excellent progress towards meeting the objectives outlined in Chapter Eight. This progress has been the result of maintaining open and frank lines of communication through regular meetings and conference calls of CMC representatives, Deputy Ministers, and a meeting of Ministers Responsible for consumer affairs in St. John's in May 2001.

At a CMC meeting in October 2001, CMC officials met with representatives from business and consumer organizations for an exchange of ideas and to develop a forward plan.

Progress is being made with regard to harmonization of direct sellers and cost of credit disclosure measures, despite the fact that the original deadlines for implementation have been missed.

It should be noted that the CMC and the Ministers' meetings have proved to be effective fora for issues of importance to consumers but which lie outside the strict limits of Chapter Eight. These areas include collection agencies, market-based consumer redress, electronic commerce, and the "alternative consumer credit market".

3. SPECIFIC REQUIREMENTS UNDER CHAPTER EIGHT

3(a) Harmonization

3(a)(i) Direct Sellers Measures (AIT Annex 807.1)

AIT Deadlines:

Conclusion of Negotiation: July 1, 1995
Adoption of Legislation: July 1996

Issue:

Negotiations among the provinces/territories began in 1994. While it was impossible to harmonize the definition of "direct seller", the jurisdictions agreed to establish a 10-day cancellation right for consumers, and well as obligatory contractual terms. In this way, consumers would receive a high standard of protection throughout the country, while businesses operating in more than one jurisdiction could use the same contract in each.

Ultimately, final agreement was reached on a harmonization proposal establishing a 10-day absolute cancellation policy and a single statement of cancellation rights to be issued in one uniform contract across the country.

Progress:

All jurisdictions are now fully harmonised.

3(a)(ii) Cost of Credit Disclosure Harmonization (AIT Annex 807.1)

AIT Deadlines:

Conclusion of negotiations: January 1, 1996

Adoption: January 1, 1997

Issue:

Changing patterns of credit use among Canadians have prompted the need to modernize laws governing credit. In particular, consumer leasing arrangements, similar to credit arrangements, have become more and more widely used as a means of financing automobiles.

The objectives of the reforms are to harmonize laws and develop simplified, uniform cost of credit disclosure requirements in order to reduce compliance costs and provide uniform consumer protection across Canada. Harmonization will apply to all federal and provincial laws governing disclosure of the cost of consumer loans. At the federal level, harmonization affects the *Bank Act* and the *Interest Act*, while at the provincial level the affected statutes are predominantly consumer protection and financial institutions laws.

There are three specific objectives being pursued:

- C Fair, accurate, timely and comparable consumer information about the cost of credit
- C Easy to understand credit disclosure
- C Ability for consumers to pay off loans at any time with no financial penalty

Progress:

In June 1998 the CMC presented the draft technical template in accordance with the approved harmonisation proposals at the 1996 Consumer Ministers' meeting. As of the last report (covering up to March 31, 2001), the Federal and Alberta legislation and necessary regulations had come into force. While Ontario, Nova Scotia and British Columbia tabled legislation that had in all cases received royal assent. They are in the process of developing implementing regulations for full harmonisation. (*Since then, both Saskatchewan and New Brunswick have tabled legislation*).

Future Action:

Although full implementation will be long after the deadline indicated in the AIT Annex, progress in the major jurisdictions reflects a formidable effort, given the arduous negotiations and consultations over this difficult material. Most remaining jurisdictions anticipate that their enabling legislation will be tabled sometime in late 2002 or 2003.

3(b) Cooperative Enforcement

(AIT Article 808)

3(b)(i) Cooperative Enforcement Agreement

The Cooperative Enforcement Agreement, approved by Ministers in 1998, came into effect on April 1, 1999. The agreement provides for a uniform administrative mechanism for requesting and supplying information and other assistance from other jurisdictions. Although not formally incorporated or

annexed to the AIT, the CMC fulfilled its obligations under chapter 8 by reporting on the conclusion of the agreement to Ministers. Since the last report the Agreement has been signed by the Ministers in Yukon, leaving Nunavut as the only outstanding jurisdiction.

Future Action:

The CMC hopes to extend the agreement to apply to Nunavut.

3(b)(ii) Canshare

Ministers approved the creation of a Canshare Management Sub-Committee, composed of representatives from each jurisdiction's regulatory branch to work with other law enforcement agencies to access Canshare, to develop a business plan and implementation plan. The Sub Committee, which is currently chaired by Alberta and the Federal Government, continued working on legal documents to enable the creation and sustainable funding of Canshare and access by new law enforcement agencies, in addition to a document setting out the rules of usage. Data from Ontario, Alberta, Saskatchewan, the Federal Competition Bureau and Project Phonebusters has been incorporated into the information sharing network, while most jurisdictions are posting alerts.

3 (c) Other Commitments

3 (c) (i) Dispute Resolution

(AIT paragraph 809(2)(d))

The "Consultations Process" which was forwarded to the Secretariat of the Agreement on Internal Trade in May 1999, was included in the Fourth Protocol of Amendment to the AIT which came into effect Feb 28, 2001.

3(d) Other Issues

(AIT paragraph 809(2)(c))

At the Ministers' meeting in St. John's in May 2001, and over subsequent conference calls, Ministers approved the following workplan:

3 (d) (i) Electronic Commerce

Ministers approved a common template for harmonized consumer protection legislation in electronic commerce which will cover contract formation, cancellation rights, credit card charge-backs and information provision. Manitoba has already tabled its legislation, which came into force in March 2001. Alberta announced its enabling regulations in May 2001, which came into force in October, 2001. Nova Scotia tabled enabling legislation in November 2001 while New Brunswick tabled its legislation in May 2001.

Ministers welcomed and supported a partnership project among governments, businesses and consumers which is designed to identify on-line merchants who follow consumer friendly business practices. The project will include a Code of Practice developed by a multi-stakeholder group for on-line merchants and development of a standard for consumer protection in electronic commerce.

Ministers approved a consumer information product, Shopping Safely On-line, developed by a federal, provincial and territorial working group in cooperation with the Canadian Association of Internet Providers (CAIP). This product was distributed in July 2001.

3 (d) (ii) Collection Agencies

Ministers agreed to ratify a harmonization initiative that will enable all provinces and territories to implement a common list of prohibited collection practices, which was subsequently ratified. (*Note: Saskatchewan tabled its amendments in April 2002.*)

Several jurisdictions including Saskatchewan and New Brunswick, are also able to indicate their ability to share information regarding the compliance of licensees with respect to fair debt collection practices by collection agencies. Other jurisdictions are soon to follow.

3 (d) (iii) Market -Driven Consumer Redress

Ministers approved the creation of a guide which will identify and promote best practices for complaint prevention, complaint handling, and dispute resolution. The guide was subsequently developed by the CMC in conjunction with key consumer, academic and business stakeholders to be distributed in the spring of 2002.

3 (d) (iv) Alternative Consumer Credit Market

Ministers approved a work plan which includes working with mainstream lenders, consumer organizations and the ACCM industry on best practice guidelines, and to develop initiatives on consumer awareness and a range of regulatory options.

3 (d) (v) Consumer Information

Ministers to approved the third edition of The Canadian Consumer Handbook. The handbook comprises two main sections. The first of these contains general advice and guidance to consumers. The second is a directory of postal addresses, telephone and fax numbers and, where applicable, e-mail addresses of government departments, organizations, associations and businesses which may assist consumers with particular queries and/or problems. The third edition was subsequently launched online and in CD-ROM format.

The CMC will also seek approval for a proposed new package of information on credit, targeted to young adults entering the marketplace for the first time.

3 (d) (vi) Future Work Plan

In addition to monitoring the implementation of the above work plan items, Ministers gave CMC the mandate to

- examine options for extending charge-back rights proposed in the harmonized consumer protection legislation in electronic commerce to other forms of commerce, as well as the question of applicable laws in disputes between sellers and consumers residing in different jurisdictions;
- develop additional information products; and
- examine the area of consumer debt and media violence.

Following a meeting with consumer and business organizations in October 2001, CMC also agreed to explore the issues of

- trade liberalisation,
- redress, and
- credit reporting.