

**Final Text
December 4, 2008**

Chapter Seven

Labour Mobility

**Attachment 1 to Ninth
Protocol of Amendment**

Approved December 5th, 2008

Disclaimer: This text is subject to receiving all signatures of AIT Parties

Chapter Seven

Labour Mobility

Article 700: Application of General Rules

1. Articles 404 (Legitimate Objectives) and 405 (Reconciliation) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), 403 (No Obstacles), and 406 (Transparency) apply to this Chapter.
3. For purposes of Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), and 403 (No Obstacles), any reference in those Articles to Article 404 (Legitimate Objectives) shall be construed as a reference to Article 708.

Article 701: Purpose

The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties.

Article 702: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) residency requirements for workers as a condition of access to employment opportunities or as a condition of certification relating to a worker's occupation,
 - (b) certification requirements, other than residency requirements, for workers in order to practice an occupation or use a particular occupational title, and
 - (c) occupational standards.
2. This Chapter does not cover
 - (a) social policy measures including, but not limited to, labour standards and codes, minimum wages, employment insurance qualification periods and social assistance, and
 - (b) Quebec's measures pertaining to language requirements.

Article 703: Extent of Obligations

1. For the purposes of Article 102(1)(b) and (c) (Extent of Obligations), each Party shall, through appropriate measures, ensure compliance with this Chapter by

(a) its regional, local, district and other forms of municipal government, and

(b) its other governmental bodies and by non-governmental bodies that exercise authority delegated by law.

2. Each Party shall, through appropriate measures, seek compliance with this Chapter by non-governmental bodies other than those that exercise authority delegated by law.

Article 704: Relationship to Other Agreements

In the event of an inconsistency in a particular case between a provision of this Chapter and a provision of any other agreement between two or more Parties respecting matters covered by this Chapter, the agreement that is more conducive to labour mobility in that particular case prevails to the extent of the inconsistency. It is understood that any such other agreement may prevail only as between the Parties that are party to that agreement.

Article 705: Residency Requirements

1. Subject to Article 708, no Party shall require a worker of a Party to be resident in its territory as a condition of:

(a) eligibility for employment; or

(b) certification relating to the worker's occupation.

2. With respect to the Federal Government, paragraph 1 (a) means that, subject to Article 708, it shall not require a worker of a Party to be a resident of a particular province or territory as a condition of eligibility to apply, in an external appointment or hiring process, for appointment or hiring to a position or job in

(a) federal public service departments, departmental corporations, Crown corporations, separate agencies and other portions of the public administration which are listed in Schedules I to VI of the *Financial Administration Act*, Revised Statutes of Canada, chapter F-10, as amended from time to time, and

(b) other Crown corporations, as defined in *the Financial Administration Act*, Revised Statutes of Canada, chapter F-10, as amended from time to time, which are not covered under paragraph (a).

Article 706: Certification of Workers

1. Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

2. Subject to paragraphs 3, 4 and Article 708, each Party shall recognize any worker holding a jurisdictional certification bearing the Red Seal endorsement under the Interprovincial Standards Red Seal Program as qualified to practice the occupation identified in the certification.

3. It is understood that a regulatory authority of a Party may, as a condition of certification for any worker referred to in paragraph 1 or 2, impose requirements on that worker (other than requirements for material additional training, experience, examinations or assessments), including requirements to:

- (a) pay an application or processing fee;
- (b) obtain insurance, malpractice coverage or similar protection;
- (c) post a bond;
- (d) undergo a criminal background check;
- (e) provide evidence of good character;
- (f) demonstrate knowledge of the measures maintained by that Party applicable to the practice of the occupation in its territory;
- (g) provide a certificate, letter or other evidence from the regulatory authority in each territory in which they are currently certified confirming that their certification in that territory is in good standing;

provided that:

- (h) subject to paragraph (5)(c), any requirements referred to in paragraphs (a) to (f) are the same as, or substantially similar to but no more onerous than, those imposed by the regulatory authority on its own workers as part of the normal certification process; and
- (i) the requirement does not create a disguised restriction on labour mobility.

4. Nothing in paragraphs 1 or 2 limits the ability of a regulatory authority of a Party to:

- (a) refuse to certify a worker or impose terms, conditions or restrictions on his or her ability to practice where such action is considered necessary to protect the public interest as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to the competency, conduct or character of that worker;
- (b) impose additional training, experience, examinations or assessments as a condition of certification where the person has not practiced the occupation within a specified period of time;
- (c) require the worker to demonstrate proficiency in either English or French as a condition of certification in cases where there was no equivalent language proficiency requirement imposed upon, and satisfied by, the worker as a condition of the worker's certification in his or her current certifying jurisdiction;
- (d) assess the equivalency of a practice limitation, restriction or condition imposed on a worker in his or her current certifying jurisdiction to any practice limitation, restriction or condition that may be applied by the regulatory authority to a worker in its territory, and apply an equivalent practice limitation, restriction or condition to the worker's certification, or, where the regulatory authority has no provision for applying an equivalent limited, restricted or conditional certification, refuse to certify the worker;

provided that:

- (e) any such measure is the same as, or substantially similar to but no more onerous than, that imposed by the regulatory authority on its own workers; and
- (f) the measure does not create a disguised restriction on labour mobility.

5. Subject to Article 708, each Party shall ensure that any measure that it adopts or maintains relating to certification of workers of any other Party:

(a) is published on the website of the relevant regulatory authority or through a readily accessible website of the Party;

(b) results in expeditious certification; and

(c) except for actual cost differentials, does not impose fees or other costs that are more burdensome than those imposed on its own workers.

6. Where a worker has been certified for an occupation by a regulatory authority of a Party, nothing in this Article prevents a regulatory authority of another Party from permitting the worker to practice that occupation in its territory without further certification.

Article 707: Occupational Standards

1. Each Party may adopt or maintain any occupational standard, and in doing so, may establish the level of protection that it considers to be appropriate in the circumstances. Parties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards.

2. Further to paragraph 1, each Party shall, to the extent possible and where practical, adopt occupational standards based on common interprovincial standards, including occupational standards developed for the Interprovincial Standards Red Seal Program, or international standards. The Parties acknowledge their continued commitment to the Interprovincial Standards Red Seal Program, including the use of National Occupational Analyses, as a well-established means of establishing common interprovincial standards for trades.

3. If occupational standards have not been established in the territory of a Party in respect of a particular occupation but exist in the territory of any other Party, and the Party without the standards wishes to develop such standards, it shall do so in a manner conducive to labour mobility. A Party intending to develop such standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those standards.

4. If occupational standards do not exist in the territories of any of the Parties in respect of an occupation and a Party considers it necessary to establish occupational standards for that occupation, the Parties agree that the process of development of new occupational standards shall occur in a manner conducive to labour mobility. A Party intending to develop new standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those standards.

5. If a Party considers it necessary to make changes to any standards in respect of an occupation, the Parties agree that the process for making such changes shall occur in a manner conducive to labour mobility. A Party intending to make such changes shall notify the other Parties and afford them an opportunity to comment on the modification of those standards.

Article 708: Legitimate Objectives

1. Where it is established that a measure falling within the scope and coverage of this Chapter is inconsistent with Article 401, Article 402, Article 403 or Article 705, or paragraphs 1, 2 or 5 of Article 706, that measure is still permissible under this Chapter where it can be demonstrated that:

(a) the purpose of the measure is to achieve a legitimate objective;

(b) the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and

(c) the measure does not create a disguised restriction to labour mobility.

2. For greater certainty, for purposes of the application of paragraph 1(b) of Article 708 to paragraph 1, 2 or 5 of Article 706, a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective. In the case of a difference related to academic credentials, education, training or experience, the Party seeking to impose an additional requirement must be able to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability. As an example, the imposition of a requirement for additional, education, training or experience may be justified under paragraph (1)(b) where a Party can demonstrate that:

(a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and

(b) as a result of that difference, the worker lacks a critical skill, area of knowledge or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

3. Where a Party adopts or maintains a measure under paragraph 1, it shall give written notice to the Forum of the measure, in the form, and containing the information, considered appropriate by the Forum. The notice shall indicate the Party's justification for the measure and the anticipated duration of the measure.

4. The Forum shall develop and implement a framework for the Parties to establish a list of specific measures taken under paragraph 1 for which notice has been given to the Forum under paragraph 3. This list will be posted by the Forum on a public website.

Article 709: Implementation, Administration and Assessment

1. The Forum shall:

(a) promote the implementation of and ongoing adherence to this Chapter and develop a work plan or plans related to those objectives;

(b) develop and implement the framework for the implementation of Article 707;

(c) develop the form and content required for notices under paragraph 3 of Article 708;

(d) develop and implement the framework for the posting of measures under paragraph 4 of Article 708; and

(e) annually produce a report on the operation of this Chapter and submit that report to the Committee.

2. The annual report referred to in paragraph 1(e) shall include:

(a) an assessment of the effectiveness of this Chapter, including an assessment of whether there have been any unintended adverse consequences, together with appropriate recommendations to address concerns identified in the assessment, including recommended amendments to this Chapter;

(b) a list of measures for which notice has been given under paragraph 3 of Article 708, together with a description of their respective justification and their anticipated duration; and

(c) a summary of any disputes that have arisen between the Parties during the year concerning the interpretation or application of this Chapter and the results of any consultations or other dispute resolution procedures resorted to by the Parties concerned to resolve the disputes.

3. The Forum may establish any committees that it considers necessary to assist it in the implementation of any work plan. The committees may be composed of representatives of the Parties and, where appropriate, of relevant regulatory authorities, other non-governmental bodies and interest groups.

Article 710: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this Chapter.

Article 711: Definitions

1. In this Chapter:

certified means that a worker holds a certificate, licence, registration or other form of official recognition issued by a regulatory authority of a Party which attests to the worker being qualified and, where applicable, authorized to practice a particular occupation or to use a particular occupational title in the territory of that Party. For greater certainty, "certified" does not include only having work experience in a given occupation gained within a Party where certification is not required in order to practice that occupation;

Forum means the Forum of Labour Market Ministers;

legitimate objective means one or more of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers;
- (g) provision of adequate social and health services to all its geographic regions; and
- (h) programs for disadvantaged groups;

National Occupational Analysis means a document developed pursuant to the Interprovincial Standards Red Seal Program that details tasks and subtasks performed by workers in a trade;

non-governmental body, with or without authority delegated by law, includes professional corporations and associations, hospitals, health units, long-term care facilities, clinics, other health care/service organizations and authorities, professional regulatory bodies, school authorities, universities, colleges and other educational and training institutions, trade unions and industry associations;

non-governmental body that exercises authority delegated by law means any non-governmental body to whom authority has been delegated by provincial or federal statute to set or implement measures related to:

- (a) the establishment of occupational standards or certification requirements;
- (b) the assessment of the qualifications of workers against established occupational standards or certification requirements; or
- (c) the official recognition that an individual meets established occupational standards or certification requirements;

occupation means a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed.

occupational standard means the skills, knowledge and abilities required for an occupation as established by a regulatory authority of a Party and against which the qualifications of an individual in that occupation are assessed;

regulatory authority of a Party means a department, ministry or similar agency of government of a Party or a non-governmental body that exercises authority delegated by law;

worker means an individual, whether employed, self-employed or unemployed, who performs or seeks to perform work for pay or profit; and

worker of a Party means a worker resident in the territory of a Party.