New West Partnership – Labour's View

GENERAL

- Generally, it is labour's view that the fundamental architecture of the New West Partnership (NWP) agreement is flawed. It is, by its very design and structure, an instrument for deregulation and the lowering of standards intended to protect the public interest. The agreement establishes a process by which provinces are put in the position of defending the legitimacy of an extremely broad range of government measures against challenges from other provinces, individuals and corporations. A more reasonable approach would begin with identifying specific, actual barriers to trade, investment and labour mobility and establishing a process by which governments cooperatively work to remove those barriers that unnecessarily impose economic costs. The Agreement on Internal Trade follows more closely this alternative approach.
- There is also good reason to question the very rationale for the NWP. There is little evidence that there are significant inter-provincial trade barriers imposing economic costs that would justify such a sweeping deregulation instrument. The Conference Board of Canada study often cited in support of the NWP has been wholly discredited by senior economists, including a senior official with Finance Canada who deemed it "not credible." Proponents of NWP have been unable to identify more than a handful of actual, specific barriers and the only credible research that does exist indicates that such barriers are limited in significance and have minimal economic costs:
    - The pro-free trade Macdonald Commission estimated the economic cost if interprovincial trade barriers to be a maximum of 0.05% of GDP, and it is reasonable to assume these barriers have been reduced in the decades since that analysis;
    - UBC economist Brian Copeland reviewed the evidence on inter-provincial trade barriers in 1998 and concluded they were so insignificant that "efforts to liberalize are likely to have only a small effect on trade flows";
    - Federal officials told a Senate committee in 2006 that interprovincial trade barriers might be worth a maximum of 0.38% of GDP.
    - Former Canadian Economic Association President John Helliwell found that, "for the four largest provinces, there is no evidence that interprovincial trade is less dense than is intraprovincial trade."

SPECIFICS

There is no carve-out for health care, education and other social service sectors

- Governments have recognized the threat of trade liberalization agreements to public services by negotiating certain exemptions for social service sectors in the NAFTA and the GATS (WTO).
- By contrast, the NWP's exemptions (Part V) are extremely narrow and do not exempt health care, education or most other social services.
- Without an exemption for health care, it is very plausible that a for-profit health care corporation could claim a right to compete with the public health care system under the private contracting provisions in Manitoba's Health Services Insurance Act. If the Maples Surgical Centre or Western Surgical can have a contract to provide surgical services in Manitoba, a company from another jurisdiction could reasonably claim a right to equal treatment under the NWP's non-discrimination provisions (Article 4).

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The "no obstacles" clause has a fundamentally deregulatory thrust that will encourage the lowering of standards intended to protect the public interest

- The "no obstacles" clause in Article 3 requires each province to ensure its measures "do not operate to restrict or impair" trade, investment or labour mobility unless (Article 6) that province can demonstrate the measure serves a "legitimate objective," "the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective," and the measure is not a "disguised restriction to trade, investment or labour mobility."
- Because vague language, such as "legitimate objective," or "not more restrictive … than necessary," is not given more precise definition in the agreement, it will be left to unelected tribunals to define its meaning.
- Even where a province can successfully defend a measure as serving a legitimate objective, the agreement puts that province in a position to having to spend resources defending measures implemented to protect the public interest. Further, that province must prove before a tribunal that the proposed measure is the least intrusive measure available.
- Article 5 goes further to impose the very strong restriction that "parties shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility." The same article also commits governments to "mutually recognize or otherwise reconcile their existing standards and regulations that operate to restrictor impair trade, investment or labour mobility."
- The overall thrust of these provisions is deregulatory by establishing a panel before which other provinces, individuals and corporations can challenge the legitimacy and necessity of measures intended to protect the public interest. These provisions likely have a "regulatory chill" effect that mitigates against governments enacting measures in the public interest.
- It is important to emphasize that this "regulatory chill" effect would be wide ranging in scope, as the agreement's definition of "measure" is extremely broad, encompassing "any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice or other procedure" (page 30). Further, the NWP is a "negative list" agreement in which all government measures are included unless specifically excluded.

Part IV of the agreement gives private individuals and corporations the right to challenge and seek compensation for measures alleged to infringe the agreement

- Part IV exposes governments to potentially costly private party challenges. Article 30(2) authorizes compensation awards up to $5 million.
- These awards are determined by unelected tribunals.
- Even if a province can successfully defend a measure against such challenges, the requirement to defend against such challenges creates a disincentive to enacting measures in the public interest.
- Under NAFTA's "national treatment" provisions, American and Mexican private investors acquire equal rights with private investors within NWP provinces. Joining the NWP means that American and Mexican investors would gain these new compensation rights without any reciprocal gains for investors from NWP provinces.

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Article 13 strongly encourages a reduction of worker training, apprenticeship and certification standards to the lowest standard among participating provinces.

- Section 1 of Article 13 requires a province to recognize the occupational certification from another participating province as sufficient qualification to practice.
- If a province wants to maintain higher certification standards it must defend the higher standard as related to an expanded scope of practice that serves a "legitimate objective." Again, the agreement establishes unreasonable obstacles to governments wishing to implement higher standards in the public interest.

Articles 12 (Business Subsidies) and 14 (Procurement) place very restrictive limits on the ability of provinces and municipalities to implement local economic development strategies

- The definition of "business subsidies" in Article 12 is extremely broad, encompassing any measures "that otherwise distort investment decisions" or "provide an advantage to an enterprise that results in material injury to a competing enterprise of another party." Although there are some exceptions to the prohibition on business subsidies, this broad definition imposes restrictive, new limits on the ability of provincial and municipal governments to promote local/regional economic development.
- The thresholds in Article 14 for mandatory opening up of procurement to parties from other jurisdictions are extremely low relative to those in the Agreement on Internal Trade. For example, NWP sets a threshold of just $10,000 for goods procured by government departments, agencies, boards and commissions. Tendering a small $10,000 purchase of goods would cost approximately $500, 5% of the cost of the goods themselves. This is an inefficient use of taxpayer dollars and removes the ability to support small and growing local businesses and their workers.

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