

IMPROVING INTERNAL TRADE: A BOLD APPROACH



Trade barriers hurt all Canadians by damaging our country's productivity and competitiveness. They raise prices for consumers, discourage investment, increase compliance costs and reduce innovative capacity. Internal trade barriers cost Canada's economy as much as \$14 billion each year. They harm our international reputation as a place to do business. The 30-nation Organisation for Economic Co-operation and Development has called on Canada to dismantle the remaining obstacles to interprovincial trade.

A bold approach is needed.



National organizations representing a broad base of businesses and professionals agree that urgent measures are needed now to improve trade, investment and labour mobility in Canada.



THE HISTORICAL CONTEXT –

1. The provinces and the federal government have tried for some time to remove trade barriers that hamper the domestic economy.
2. Twelve years ago, the provinces and the federal government signed the Agreement on Internal Trade (AIT).
3. Unfortunately, the AIT has not worked as intended. It is limited, complex and unenforceable. It is opaque and inaccessible to those outside of government, and operated by an intergovernmental structure incomprehensible to outsiders.
4. To establish a common market within Canada, the Constitution confers upon the federal Parliament the exclusive power to make laws in relation to the regulation of trade and commerce. Section 91(2) of the Constitution Act, 1867, establishing the powers of the federal Parliament, states: "*... it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, [...] 2. The Regulation of Trade and Commerce.*"
5. In establishing a common market under exclusive federal jurisdiction, Canada's Constitution envisions a domestic economy free of interprovincial trade barriers. This principle was enshrined in Section 121 of the Constitution Act, 1867; "*All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.*"



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6. What was not foreseen was the ascendancy of non-fiscal or non-tariff barriers as the principal impediments that would hamper free trade in Canada's modern economy. Some of these include differing government procurement practices, limitations on the flow of investment and the movement of persons from province to province, different securities rules arising from the fragmented regulation of Canada's capital market, differing regulations and standards under the guise of consumer protection to protect local interests from competition, differing product and grade standards and differing commercial transportation codes.
7. Following their annual meeting in August 2007, Premiers acknowledged the need to strengthen domestic trade between provinces and territories by reducing barriers to trade flows that have arisen among provinces in the 140 years since Confederation.
8. The Speech from the Throne delivered to Parliament in October 2007 recognized that Canada still has a long way to go to establish free trade across provincial borders, hurting Canada's competitive position. The government committed to finding ways to make the economic union work better, using its trade and commerce powers.
9. A coalition of leading Canadian business groups proposes a bold approach:
 - The federal government should take leadership by establishing a set of "open trade principles" to be adopted by all jurisdictions;
 - The federal government should establish a standing internal trade tribunal to ensure that all parties adhere to the principles.

Under this new approach commitments made under the Agreement on Internal Trade or the Trade, Investment and Labour Mobility Agreement or other agreements would apply.

WHAT IS NEEDED –

1. A principles-based approach

In keeping with its constitutional responsibility to establish an economic union without barriers to trade and to regulate interprovincial trade and commerce, the federal government should legislatively establish the following "open trade principles" :

- The standard for interprovincial trade should be a free and open market (non-discrimination) on the principle that, unless it is necessary for a legitimate objective, no government will maintain measures or restrict or impair interprovincial trade, investment or labour mobility.
- If any government fails to honour the above principle, appropriate monetary penalties, judicial enforcement and retaliatory trade action will be available to the government disputant or its aggrieved constituent(s).
- For any specific barrier to be permitted as a legitimate objective, a strong evidence-based case should be required based on standards of established trade law jurisprudence.

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II. Dispute Resolution Process

The federal government should establish a standing internal trade tribunal that all Canadians – individuals, private firms, trade associations and governments – can access. The tribunal would operate on the basis of consultation and mediation and, if necessary, binding arbitration to resolve internal trade disputes.

- The tribunal would be accessible to all Canadians and be efficient and effective in terms of the timeliness and the binding nature of its decisions.
- The tribunal would determine if a measure is a barrier and, if so, issue an order on how it is to be resolved, including removal or amendment of the measure, and the assignment of monetary penalties if its order is disregarded.
- Government disputants would continue to retain the right of retaliatory trade action as currently provided by the Agreement on Internal Trade.

III. Existing Commitments Apply

All governments remain bound by the Agreement on Internal Trade.

- All historical panel findings should be implemented immediately. Failure to do so would result in a \$5 million annual penalty and the option of retaliatory trade action until such time as implementation occurs.

IV. Enforcement

All tribunal orders and existing panel decisions will be subject to enforcement by the courts at the option of the disputants.

NEXT STEPS

The coalition is looking for specific actions from all levels of governments to begin immediate work in this area.

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ABOUT THE COALITION

The following organizations have endorsed the above statement:

Canadian Bankers Association
The Canadian Chamber of Commerce
Canadian Council of Chief Executives
Canadian Federation of Independent Business
Canadian Manufacturers & Exporters
Canadian Petroleum Products Institute
Canadian Restaurant and Foodservices Association
Certified General Accountants Association of Canada
Dairy Processors Association of Canada
Vegetable Oil Industry of Canada

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