TOILET SEATS, TRUCKING AND OTHER TRADE TIE-UPS

A new solution to the old problem of Canadian internal trade

CANADA WEST FOUNDATION
TRADE & INVESTMENT CENTRE

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Executive Summary

As Canada enters more free trade agreements abroad, internal trade at home remains anything but free. Despite various internal trade agreements (and despite recent efforts on the part of some provinces, particularly Alberta and Manitoba, unilaterally reducing their internal trade barriers), progress on an open internal market in Canada has been slow. So slow, in fact, that Bank of Canada Governor Stephen Poloz, at a recent armchair chat, called them "absurd."

Barriers that remain create inefficiencies that create costs for businesses, consumers and taxpayers; limit overall economic activity and growth; and impede businesses' achievement of economies of scale through access to a whole-of-Canada market. These in turn limit our global competitiveness, which reduces export and investment opportunities and makes Canada less attractive for both domestic and foreign investment. Finally, internal barriers harm Canadian social and political cohesion.

Yet political promises, including during the recent federal election campaign, miss the point of what has worked, what has not, and what can be done to finally make progress; it is time to be bold.

This report does not attempt to repeat the already extensive work done reviewing the specific barriers themselves (see Appendix A, Bibliography). And although the solution will require co-operation among the federal government and all the provincial and territorial governments, we focus our attention on what the federal government can – and should – do.

The problem of internal trade cannot be solved by the federal government alone. Indeed, some provinces are taking bold steps forward. Success will require effort from the federal, provincial and territorial governments, with the provincial and territorial governments playing key roles. However, strong, well-funded action by the federal government will encourage the remaining provincial and territorial action.

The Problem
Reasons for lack of progress on freer internal trade

01

Major lack of data and comparative analyses by province and territory

Although there have been studies of the various barriers, regulatory differences, costs and lost opportunities, this data is still too general and pan-Canadian. There remains too little data about specific barriers at a more granular level as to how each of the provinces and territories is affected as compared to other provinces and territories, and with respect to specific goods and services. It is also difficult to get the provinces and territories to prioritize funding for this kind of work.

02

Lack of political will

Despite stated intentions, there remains a lack of political will among most of the provinces and territories to really tackle internal trade barriers. This varies across provinces and territories, but the lack of will among some keeps the whole from opening up. What are the causes of this lack of political will? Is it due to lack of knowledge of what can be gained? Or lack of knowledge of what the real costs are, province-by-province? Is it due to lack of resources to do the necessary research and data gathering? Removing barriers often has broadly disbursed benefits but narrowly focussed costs for a vocal few. It is difficult to explain the extent of the costs for each province, or the extent of the potential benefits, without the necessary data. At the same time, it is extremely difficult to get the provinces to prioritize funding for this kind of data collection and analysis – particularly if they are not aware or not persuaded of the extent of either the costs or the potential benefits specific to them in the first place. For the same reasons, there is insufficient public pressure to encourage the provinces to do more.

03

Lack of a robust and functional secretariat

The status quo of the Internal Trade Secretariat (ITS) – which is part of the current pan-Canadian trade agreement, the Canadian Free Trade Agreement (CFTA) – simply will not do. It is woefully underfunded, understaffed, under-resourced and materially under-functioning, completely unacceptable for a country so diverse and so geographically spread out, with an economy as large as Canada's. Its governance structure reflects political compromise far more than a desire to get things done.

04

Lack of knowledge about our own backyard

There is significant lack of knowledge among Canadian businesses (and their provincial and territorial governments) about possibilities in our own Canadian domestic markets, potential domestic suppliers and supply chains in other parts of the country, and potential for economies of scale and collaboration with others in different parts of Canada. This knowledge is critical to compete with international competitors at home and abroad.

05

Too many exceptions

Even though the CFTA uses a "negative list" approach – a significant improvement over the agreement it replaced, the Agreement on Internal Trade (AIT) – there are still far too many exceptions that have been insisted upon, not only by the provinces and territories, but also the federal government. There are also federal regulations that can impede trade, simply because of inconsistency with provincial or territorial equivalents.

The Solution
What can the federal government do?

Some commentators have suggested using s. 121 of the Constitution to legally impose freer domestic trade among the provinces/territories.[1] We do not – for both legal and political reasons (see section called "The Federal Government's role and s. 121" on page 8).

A key finding in our research is that the provinces and territories profoundly distrust the federal government when it comes to internal trade. This creates a challenge and may be a key reason why prior collaborative-style approaches have failed. Unless the federal government can address the lack of trust, there is very little it will be able to do on this file.

In this context, we have the following specific recommendations for the federal government to address the five key barriers listed on page 3.

01

Create and significantly fund – without expecting the provinces or territories to contribute – a new, independent Canadian Internal Trade Bureau (CITB), one mandate of which would be to conduct the all-important research, collection of data and comparative analyses needed at the detailed province-by-province-by-territory level.

One cannot solve a problem without knowing the problem's details. At the same time, (i) there is significant lack of trust in the federal government in various quarters, and (ii) there are significant budget constraints in several jurisdictions. Therefore, a key part of this recommendation is that the federal government fund this data collection and analysis entirely on its own – without requiring provincial/territorial contribution, and without any strings attached. The information and analyses should then be made transparently available to all. It must also remain an independent, arm's-length organization. We recommend the creation of a Canadian Internal Trade Bureau (CTIB) (with more detail later in this report) as the vehicle for this effort and repository for this data.

02

Encourage political will by making the data available that shows more effectively than now, the costs and lost opportunities and use it to encourage public pressure.

Rather than "tell" the provinces what to do, use the research and information gathering to increase awareness of (i) the benefits of more open domestic trade, specifically for each province and territory, as well as (ii) the problems and costs of the status quo. Work is needed to highlight the pros and cons in a way that will resonate with each jurisdiction. It may come as a major surprise to see what might be easily harmonized and capable of mutual recognition, and where opportunities exist for "export" and "import" within our own country. And from international experience, more public awareness (via more availability and dissemination of cost and benefit information) can exert pressure to spur political action. Another way to increase political will would be adjustment assistance with lost revenue from removal of fee-earning regulations, and have the CITB help smaller jurisdictions work through the data.

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[1] Including Prime Minister Justin Trudeau in the recent election campaign.

03

Make the new Canadian Internal Trade Bureau – again, at federal cost without expecting provincial or territorial contribution – into a robust, functional and independent body that is much more than a secretariat.[2]

We recommend the creation of a permanent, independent, well-funded (by the federal government) Canadian Internal Trade Bureau (CITB), not only to do the data collection and analyses noted in Solution #1, but also to have a broader mandate than the current Internal Trade Secretariat. The new CITB would need to be independent (and seen by the provinces and territories as so). It would need permanent staff and resources, and to be administered by an independent Board of Directors, albeit with provincial, territorial and federal representation. We stress this will not happen if the federal government requires provincial contribution to the funding. The federal government funds a variety of other independent bodies that include a significant data collection and analysis function, such as the Competition Bureau; the former National Energy Board (NEB), now the new Canada Energy Regulator; the Canada Infrastructure Bank. This recommendation and the need for federal funding alone is not only to deal with the difficulty in getting 13 separate jurisdictions to prioritize funding – important as that is. It is also important that the federal government stress the independence and lack of "strings attached" aspect of this new body to overcome the current deep lack of trust on the part of several provinces. Given the importance to the Canadian economy of internal trade, this file deserves at least as much attention – and funding – as some of these other efforts – including an annual operating budget of at least $40 million (far more than the current budget of $600,000 for the Secretariat).

04

Create, fund and help organize domestic trade missions.

The federal government spends significant time and money on international trade missions. It should offer to fund and help organize regular internal, domestic "trade missions."[3] Increasing knowledge of other Canadian markets, potential suppliers and building economies of scale would expand market size for some and help Canadian companies grow to a size where they can better compete internationally and also compete at home against foreign companies gaining access to the Canadian market under our new trade agreements.

05

Lead by example: Unilaterally remove a number of exceptions the federal government has under the Canadian Free Trade Agreement (CFTA), and review and amend federal regulations that create challenges due to inconsistency with provincial ones.

The federal government should follow on its own recent, successful effort in this regard in amending the *Importation of Intoxicating Liquor Act*, and show support for efforts such as the Alberta and Manitoba governments' own recent unilateral removal of exceptions. This will not be a solution to the whole problem of exceptions, but it is an opportunity for the federal government to demonstrate its commitment to reducing internal trade barriers, and help to build trust.

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2 Similar to the secretariat body of the World Trade Organization (WTO).

3 An example of this is the "Economic Development Tours" held by the Manitoba Chambers of Commerce, which bring interested businesses from across Canada to communities in Northern Manitoba to highlight the economic opportunities there.

The Problem: Reasons for lack of progress on freer internal trade	The Solution: What can the federal government do
01 Major lack of data and comparative analyses by province and territory	01 Create and significantly fund – without expecting the provinces or territories to contribute – a new, independent Canadian Internal Trade Bureau (CITB), one mandate of which would be to conduct the all-important research, collection of data and comparative analyses needed at the detailed, province-by-province-by-territory level.
02 Lack of political will	02 Encourage political will by making the data available that shows more effectively than now, the costs and lost opportunities and use it to encourage public pressure.
03 Lack of a robust and functional secretariat	03 Make the new Canadian Internal Trade Bureau – again, at federal cost without expecting provincial or territorial contribution – into a robust, functional and independent body that is much more than a secretariat.
04 Lack of knowledge about our own backyard	04 Create, fund, and help organize domestic trade missions.
05 Too many exceptions	05 Lead by example: Unilaterally remove a number of exceptions the federal government has under the Canadian Free Trade Agreement (CFTA), and review and amend federal regulations that create challenges due to inconsistency with provincial ones.

FACTS, DISCUSSION & ANALYSIS

TRADE BARRIERS IN CANADA

There are two types of barriers to internal trade: protectionism and lack of regulatory alignment.

Protectionism is when a province or territory chooses to protect an industry or sector within its borders by (i) preventing the input of goods or services from elsewhere; or (ii) subsidizing a "local" industry or sector so that others cannot compete.

Examples of protectionism within Canada include:

- The Alberta subsidy program for Alberta craft breweries.[4]
- Quebec, Nova Scotia, and Newfoundland and Labrador all restricting the export of live snow crabs; each province requires the crab to be processed in-province before being exported.[5]
- Saskatchewan banning vehicles with Alberta licence plates from Saskatchewan construction sites.[6]

Lack of regulatory alignment happens because the provinces and territories have jurisdiction over many different areas, and create regulations to govern them. Because they do so, they (often inadvertently) create many (often small) inconsistencies with the regulations in other provinces and territories and/or with others related to or created by the federal government. When added up, these can create major problems for an enterprise trying to sell goods and services across provincial and territorial borders.

Examples of regulatory nonalignment within Canada include:

- Grain dust: each province has different standards for how much grain dust people can be exposed to.[7]
- Toilet seats: some provinces have different requirements for toilet seats on construction sites – some are required to have open-faced only, and some are "toilet-seat neutral."[8]
- Pesticides: each province has a different framework for regulating the storage, sale, use, disposal and transportation of pesticides.[9]

4 The internal trade agreement that came before the CFTA – the Agreement on Internal Trade (AIT) – ruled that the program went against rules in the AIT, and Alberta was forced to change the program.

5 This is one of the exceptions on the "negative list" in the CFTA.

6 Alberta filed a complaint with the New West Partnership over this, but Saskatchewan dropped the ban before the dispute moved to arbitration.

7 "Blurring Borders: Canada agrees on free trade with itself," *The Economist*, 2017, https://www.economist.com/the-americas/2017/04/12/canada-agrees-on-free-trade-with-itself.

8 ibid

9 Ryan Greer, "Death by 130,000 Cuts: Improving Canada's Regulatory Competitiveness," *The Canadian Chamber of Commerce*, May 2018, 13.

- Trucking: regulations include "licensing and training requirements; weights and dimensions; technology and equipment; reporting and safety oversite; oversite of international carriers; and regulatory enforcement."[10]
- Coffee creamer: each province has different requirements for individual coffee creamer packaging.[11]

Extent of the problem

Arguably the biggest barrier to solving internal trade barriers in Canada is that no one knows the extent of the problem. These, and others, are more anecdotal than fully researched and documented. There is a lot of anecdotal evidence, and some macro analyses of what the barriers cost Canada as a whole, but there is no comprehensive list of what barriers exist and between what provinces/territories (see Solution #1) regarding detailed data collection and analysis. In 2016, the Senate of Canada estimated that internal trade barriers have an impact on Canadian trade equal to between 0.05% and 7% of GDP. In 2019, the International Monetary Fund estimated a 4% impact on GDP.[12] The fact that two recent, thoroughly researched papers from reputable sources can have such different answers to a basic internal trade question indicates that there is not enough data available to make more precise estimates. For more information on the extent of the problem, and what has been done about it so far, see Appendix A on page 25.

THE FEDERAL GOVERNMENT'S ROLE AND S. 121

Some commentators have argued that the federal government should legally impose freer trade among the provinces and territories using section 121 of the Constitution, which states that *"All Articles of 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."* However the drafters of the Constitution intended this clause to be implemented (we believe broadly), the Supreme Court of Canada has interpreted this clause very narrowly.[13] At this point it seems unlikely that the Supreme Court would allow the federal government to unilaterally impose free trade on the provinces and territories. Additionally, even if the legal route might be successful, such an approach could be disastrous politically, particularly at a time when relations between the federal government and several provinces are already very strained – thanks to issues such as carbon taxes, pipelines, etc. Prime Minister Justin Trudeau, during the recent federal election campaign, promised among other things, to "actively assert federal jurisdiction where needed to move forward with free trade within Canada…"[14] We caution against this.

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10 "Beyond 2020: A blueprint for Saskatchewan business competitiveness," *Saskatchewan Chamber of Commerce*, 2019, 17.

11 "Blurring Borders: Canada agrees on free trade with itself," *The Economist* 2017, https://www.economist.com/the-americas/2017/04/12/canada-agrees-on-free-trade-with-itself.

12 Standing Senate Committee on Banking, Trade and Commerce, "Tear Down These Walls: Dismantling Canada's internal trade barriers," *Senate of Canada*, June 2016. This estimation is based on a wide range of estimates provided to the committee during its investigation of internal trade. Jorge Alvarez, Ivo Krznar and Trevor Tombe, "Internal Trade in Canada: Case for Liberalization," *IMF Working Paper*, July 2019.

13 The most recent instance of this was the Comeau case, also known as the "free the beer" case. In 2012 Gerard Comeau drove from New Brunswick to Quebec to buy alcohol, which is cheaper in Quebec. He was fined coming back into New Brunswick for exceeding the limit of alcohol he was allowed to bring back into the province from another province. He refused to pay the fine and the case went all the way to the Supreme Court, which ruled in 2018 that "provinces and territories have the constitutional right to restrict the importation of goods across provincial and territorial borders – as long as the primary aim of the restriction is not [explicitly] to impede trade." Karina Roman, "Beer not freed: Supreme Court upholds law in cross-border alcohol case," *CBC News*, April 19, 2018, https://www.cbc.ca/news/politics/scoc-decision-liquor-provinces-1.4625861.

14 "Free Trade Within Canada," *Forward: A Real Plan for the Middle Class*, 2019 Federal Liberal Platform, https://2019.liberal.ca/our-platform/free-trade-within-canada/.

At this point it seems unlikely that the Supreme Court would allow the federal government to unilaterally impose free trade on the provinces and territories.

The problem of internal trade cannot be solved by the federal government alone. Indeed, some provinces are taking bold forward steps. Success will require effort from the federal, provincial, and territorial governments, with the provincial and territorial governments playing key roles. However, strong, well-funded action by the federal government will encourage the remaining provincial and territorial action.

Others have done extensive work on the nature of Canada's internal trade problems, what the major barriers are (to the extent that research and knowledge are available), and analyses of national economic impacts. We summarize the efforts of the Internal Trade Agreement of 1994 (ITA), the New West Partnership of 2010 (NWP) and the Canadian Free Trade Agreement of 2017 (CFTA) in Appendix A, which provides an outline of the history and key elements of internal trade in Canada. Appendix B sets out a timeline of major internal trade-related events since the coming into force of the CFTA. Appendix C sets out our sources – interviews and bibliography.

The focus of this report is on why so little progress has been made despite all of those efforts, and it considers what, specifically, the federal government can do to effect real change.[15]

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15 Note that although supply management, the idea of a national securities commission and the challenges of independently regulated professions exemplify important aspects of the barriers to internal trade in Canada and represent opportunities for federal government action, we do not address them specifically in this report due to their respective political complexities.

When all trade barriers are presented for the entire country to see, it makes it difficult to justify regulatory differences in toilet seats on construction sites, in coffee creamer container sizes, and whether or not you need a permit to export a moose (all real internal trade barriers).

Problem 01

Major lack of data by province and territory

Hard to solve a problem when you do not know the extent of the problem

Although there have been studies of the various barriers, regulatory differences, costs and missed opportunities associated with Canada's internal trade challenges, the available data is still too general and often measured at a national level. There is little data about specific, individual barriers and how they compare across 13 jurisdictions, about which goods and services are in play, or information at a more granular level on how each of the provinces and territories is affected, as compared to each of the other provinces and territories, and with respect to which goods and services. We know from a macroeconomic perspective that internal trade barriers increase costs to businesses and consumers, reduce choice and deter investment on a national level.[16] Studies have shown that a reduction of internal trade barriers would have positive impacts on GDP and employment across the country, and at least one has shown that this would be true particularly in provinces and territories with smaller populations and GDP (specifically, the Atlantic provinces and the territories).[17]

Yet determining the full scope of the problem is impossible, because there is insufficient data on the specifics of the internal trade barriers. The lack of information is one of the biggest problems for understanding and proposing specific solutions to Canadian internal trade problems. Paucity of data on trade flows means there is no common fact base, which leads to dissenting views, often politically motivated, which undermines addressing the issue in Canada.

From our interviews with federal, provincial, territorial and Internal Trade Secretariat (ITS) representatives and former employees (See Appendix C), there was consensus that information about internal trade was lacking, including information on barriers to trade, regulatory conflicts and labour mobility issues. All interviewees confirmed that there is no comprehensive database on these issues.

Policy-makers have had to rely on incomplete sources of information when making decisions about internal trade, including high-level, pan-Canadian data, or local anecdotal examples, which, while important, can often be biased, dated, or misinformed.[18] Changing this reality will require much more specific and concrete data – including detailed data from each jurisdiction, compiled in a way that can allow for full comparisons and analyses.

The current approach to data collection occurs only in response to a problem brought forward by a party to the agreement. This is not an efficient means to identify issues, build consensus for action or advance liberalization. Parties will not raise complaints if the time and money involved is too great and the expected resolution is seen as limited or unlikely to happen.

Having a comprehensive internal trade barrier dataset would inform much more clearly issues such as:

- Which provinces/territories have which barriers, and how these specific barriers affect their economies as well as their neighbours';
- How internal trade agreements affect internal trade on a provincial/territorial level;
- Which provinces/territories have best practices that can be adopted by others;
- Where there may be more and perhaps easier opportunities for regulatory harmonization.

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16 David Chaundy, "Trade Barriers in Atlantic Canada: Opportunities for Regulatory Reform," *Atlantic Provinces Economic Council*, October 2016, 21.

17 Jorge Alvarez, Ivo Krznar, and Trevor Tombe, "Internal Trade in Canada," IMF, July 2019, 24.

18 James McLean, "Canada's Evolving Internal Market: An agenda for a more cohesive economic union," *Public Policy Forum*, October 2013, 12.

Lessons from the WTO

Global efforts to liberalize trade have included the creation, with each trade agreement, of an independent body to collect and analyze data to advance the agreement and promote further liberalization.[19] In the case of the World Trade Organization (WTO), this included creation of a strong secretariat which has, on the surface, some of the same functions of Canada's Internal Trade Secretariat (ITS) – a committee of ministers as the chief governance structure, representatives of the parties to oversee day-to-day affairs and a secretariat to facilitate the operation of the agreement including the dispute settlement function. However, the WTO secretariat has a much broader mandate and significant financial resources available; it performs specific data/analysis and advocacy functions, and disseminates information to the public.

This centralized, independent, well-resourced data collection, analysis and dissemination of trade flows as well as of non-tariff trade barriers is an important component of international trade liberalization and a critical function of organizations like the WTO. It is also completely lacking in Canada.

The focus here is on robust secretariat functions and funding. Any changes to create a more robust dispute resolution function cannot be done by the federal government alone – it would require agreement among the provinces and territories.

Funding is a major problem

Funding is a key reason why data on this level has not been collected yet. It is difficult to get 13 jurisdictions plus the federal government to all contribute, certainly in the amounts truly necessary. Some provinces/territories are not interested in funding this data collection or are not able to find the funding, either politically or due to budget constraints and lack of an overarching understanding of the costs of inaction and lost opportunities – all the more reason the data is needed.

The information gathered and the analyses of the costs and opportunities must be transparent and publicly available. If everyone has access to the same information, analyses and recommendations will all be based off the same, solid dataset.

[19] A key element of this is the Trade Policy Review Mechanism, created in Annex 3 to the Marrakesh Agreement of 1994, which essentially created the WTO. The TPR mechanism itself grew out of a provisional agreement established in 1988 in Montreal, Canada. Note that this is not true with NAFTA.

Solution 01

Create and significantly fund a new, independent Canadian Internal Trade Bureau (CITB) – part of which body's job would be to conduct the all-important research, collection of data and comparative analyses needed at the detailed, province-by-province-by-territory level – without expecting the provinces or territories to contribute.

We have learned that (i) there are significant budget constraints or other unwillingness in several provincial/territorial jurisdictions to provide the necessary funding to make real change; and (ii) many provinces/territories do not trust the federal government. We recommend, therefore, (i) that the federal government fund this data collection with far more resources than now; and (ii) that the funding and building of the structure necessary be done by the federal government entirely on its own – without requiring provincial/territorial contribution, and without any strings attached.

From the interviews, there was near universal consensus in welcoming federal government funding for the creation of more information and analysis of internal trade barriers. There was also universal agreement that the federal government would have to go to extraordinary lengths to assure that the collection and assembly of data was indeed independent (like, for example, the Competition Bureau). This point was consistently stressed in our interviews.

Data and analyses needed

The data collection would need to include: all relevant provincial/territorial regulations, and the ability to compare regulations across jurisdictions to see where they are harmonized and where they are not, and why; an indication of which regulations are the most effective; an analysis of progress on removal of regulatory barriers and their impact on internal trade in Canada; and, to the extent possible,[20] interprovincial/territorial trade flows.

A Canadian Internal Trade Bureau

We recommend the creation of a much more robust Canadian Internal Trade Bureau (CITB) to be, among other things, the vehicle for this effort, repository for this data and provider of relevant services.[21] More detail on what this CITB should include, funding levels, etc. is set out in Solution #3.

Federal funding alone

It is essential that the federal government not put any conditions on the data collection and analysis – who does it, where the information is housed, who has access to it, how the provinces and territories use it. The provinces/territories, as mentioned previously, have little trust in the federal government regarding internal trade, and will be wary of the federal government trying to "influence" the data and analysis for its own goals.

Information publicly available

The data must also be publicly available and transparent, not only for the jurisdictions and policy-makers involved, but so the general public can be aware of how critical this issue is. In turn, public awareness will also provide incentive for the provinces, territories and federal government to do more to reduce internal barriers.

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[20] We recognize that this is particularly challenging to measure, because there are no hard borders between the provinces and territories.

[21] Prime Minister Justin Trudeau promised to create a CITB, during the election campaign, but only to "hear, investigate, and help resolve cases where domestic trade barriers may exist." This is not nearly enough. And doing nothing to help indeed may aggravate the lack of trust the provinces/territories have in the federal government.

"Free Trade Within Canada," *Forward: A Real Plan for the Middle Class, Liberal Party of Canada,* Election Platform 2019, https://2019.liberal.ca/our-platform/free-trade-within-canada/.

Problem 02

Lack of political will

Despite public rhetoric, there remains a lack of political will among most of the provinces and territories to really tackle internal trade barriers. This varies across provinces and territories, but the lack of will among some keeps the whole from opening up. The reasons for this include: lack of knowledge of just what might be gained; lack of knowledge of what the real costs are, province-by-province; lack of resources to do the necessary research and data gathering; potential loss of revenue from some regulatory fees; and lack of public or political pressure to do otherwise.

Without data, insufficient knowledge – without funding, insufficient data

As noted earlier, without the necessary data it is difficult to explain the extent of the costs for each province, or the extent of the potential benefits. It is also extremely difficult to get the provinces to prioritize funding for this kind of data collection and analysis – particularly if they are not aware or not persuaded of the extent of either the costs or the potential benefits specific to them. It is a vicious cycle.

Public disclosure can help effect change

An important benefit of transparent public disclosure is the pressure it would put on provinces/territories to reduce their trade barriers, particularly nonsensical ones. When all trade barriers are presented for the entire country to see, it makes it difficult to justify regulatory differences in toilet seats on construction sites, in coffee creamer container sizes, and whether or not you need a permit to export a moose (all real internal trade barriers).[22]

However, we can once again learn from our international experience.

The WTO Secretariat publishes a broad range of trade-related data. Its Trade Policy Reviews contain analysis of progress and openness and can benchmark comparative performance as well as progress. The publication of data by the WTO has been shown to boost trade liberalization.[23]

Concerns regarding giving up revenue sources

Some provinces derive more benefit from some of the barriers than others. Indeed, from our interviews, two jurisdictions noted that fees tied to provincial regulations were an important source of revenue and they would welcome adjustment assistance from the federal government if they were to cut regulations or fees that would benefit the country.

Resources to take advantage of the data

A side note on information came from one of the least-resourced jurisdiction interviewed, which noted that the weakest jurisdictions would need resource assistance to be able to use more information if it were to be made available. More information would be helpful but only if the jurisdiction had the ability to use it. This is where an analysis function would help. A database of regulations is just the start. Analysis that identifies opportunities and pathways to change requires considerable effort that some jurisdictions could not provide – thus holding up progress for all. The suggestion was made that the entity that collects and analyzes the data should also be able to assist the weakest-resourced jurisdictions in using the data.

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[22] The Economist, "Canada agrees on free trade with itself," *The Economist*, April 12, 2017, https://www.economist.com/the-americas/2017/04/12/canada-agrees-on-free-trade-with-itself; Ontario regulation 666/98, "Possession, Buying, and Selling of Wildlife." Part X.

[23] Kuenzel, "Do Trade Flows Respond to Nudges?" Kende, *The Trade Policy Review Mechanism*.

Solution 02

Encourage political will by making the data available that shows the costs and lost opportunities

Rather than "tell" the provinces what to do, use the research and information gathered to (i) increase awareness of the benefits of more open domestic trade, specifically for each province and territory, as well as the problems and costs of the status quo; and (ii) encourage broader debate. Armed with data and evidence, dissemination of this information will encourage media, parliamentarians and other stakeholders to bring pressure to bear on the debate. Work is needed to highlight the pros and cons in a way that will resonate with each jurisdiction. It may come as a major surprise to see what might be easily harmonized and capable of mutual recognition, and where opportunities exist for "export" and "import" within our own country.

Use the data

Revealing the full scope of internal trade barriers – and the associated costs and lost opportunities – will motivate some provincial/territorial leaders to harmonize some regulations, particularly the ones that are idiosyncratic.

Report and publicize

Disseminating the information to the public will encourage broader awareness of the problems and opportunities, which will in turn pressure politicians to make progress.

Regular reporting similar to the WTO's Trade Policy Reviews would provide a "prodding and shaming" impetus for trade liberalization.[24] Publication of this type of information is often accompanied by media attention, and then calls for action from the private sector. Were this information to come out on a regular basis and in so doing build up a tale of progress (or not) using consistent data, the prodding and shaming impacts would be enhanced.

Help with lost revenue

Just as the federal government occasionally provides "compensation" to groups affected by internal trade deals, the federal government could consider providing compensation to a province/territory that would lose revenue from regulatory fees.

Help using the information

Where a province/territory is, due to lack of resources, unable to use the data even if made available, the CITB should offer to provide, at its cost, the required assistance.

[24] The WTO TPR reports are essentially evaluations of each party's trade policies. The technical analysis is done by the WTO technical staff and results are tabled and debated with all WTO members and then shared with the general public. Exact duplication of the TPR process is not the point. Taking elements of the TPR and adapting it to form the basis of a regular review of provincial trade policies is. https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm

Problem 03

Lack of a robust and functional secretariat

For a country so diverse and so geographically spread out, and for an economy as large as Canada's, the status quo is simply unacceptable.

The challenge of political compromise

The purpose of the Committee on Internal Trade (CIT) is to supervise the implementation of the CFTA, assist in the resolution of disputes stemming from the CFTA, approve the operating budget of the Internal Trade Secretariat (ITS) annually, and "consider any other matter that may affect the operation of this agreement."[25] Each government has equal status on the committee, and its Chairpersonship rotates every year among all parties. The 2019 chair is Nova Scotia.[26] All decisions made by the CIT must be made by consensus.[27] This all reflects too much political compromise, and not enough effective governance. Provinces can drag their heels – sometimes deliberately, sometimes because of lack of capacity – either way, progress is stifled. The ITS is weak, in part because the jurisdictions do not trust each other (and especially do not trust the federal government) to maintain the secretariat's neutrality, and because it is extraordinarily under-resourced.

Woefully inadequate funding

The mandate of the ITS is to provide "administrative and operational support to the Committee [on Internal Trade], working groups, and other committees, and any other support as the Committee may direct."[28] Additionally, the Managing Director of the ITS must prepare an operating budget, half of which is paid by the federal government, and the other half paid by the provinces/territories (pro-rated by population size). In 2018, the budget was, shockingly, only $588,972,[29] and there are only five staff members. And it shows. For example, there are no procurement statistics available for 2017-18 or 2013-2016 for that matter. Working groups' progress (for which information is spotty) could be enhanced with information and greater support from the Canadian Internal Trade Bureau. The ITS is clearly woefully underfunded, understaffed and under-resourced.

International lessons

The Canadian internal trade system is much like the international trading system, on a smaller scale and without customs declarations. Trade takes place between jurisdictions based on a set of rules that the jurisdictions must agree to. But unlike the international system, there is no effective independent body to facilitate trade and to provide a forum to improve it.

The ITS is clearly woefully underfunded, understaffed and under-resourced.

[25] CFTA, "Article 1100: Committee on Internal Trade," July 1, 2017, 181, https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf.

[26] CFTA Website, "Annual Meeting of the Committee on Internal Trade – all parties continue to work collaboratively," November 23, 2018, https://www.cfta-alec.ca/annual-meeting-of-the-committee-on-internal-trade-all-parties-continue-to-work-collaboratively/.

[27] CFTA, "Article 1100: Committee on Internal Trade," 182.

[28] ibid.

[29] Internal Trade Secretariat, "Annual Report Canadian Free Trade Agreement for the fiscal year ending March 31, 2018," 19, https://www.cfta-alec.ca/wp-content/uploads/2019/01/CFTA-Annual-Report-2017-2018-English-with-Audit.pdf.

The Canadian internal trade system is much like the international trading system, on a smaller scale and without customs declarations. Trade takes place between jurisdictions based on a set of rules that the jurisdictions must agree to. But unlike the international system, there is no effective independent body to facilitate trade and to provide a forum to improve it.

Inspiration can therefore be drawn from the WTO. There, as with Canada's ITS, decisions are made by members or those appointed by members. However, the WTO secretariat has a much stronger capacity to collect data, conduct comparative analyses, a broader mandate, as well as to provide technical and professional support to committees, to jurisdictions that do not have enough capacity to work on these issues, and to provide information to the public and stakeholders on trade progress.[30,31]

Staff at the WTO Secretariat include economists, lawyers, and trade policy specialists, as well as staff who provide communications and language services – all things lacking in Canada.

Essentially, Canada has a WTO-like agreement, with no WTO.

Provincial and territorial resource constraints came up repeatedly in interviews. Several jurisdictions, particularly the small ones, do not have a lot of capacity for dealing with internal trade barriers, nor do they have many experts to call upon. Several jurisdictions have only two or three people (and in one case, only one person) handling the internal trade file and in some cases, these staff also have the international trade file. Managing the current CFTA working group workload or organizing conference calls, co-ordinating with other staff, etc., was reported by all the smaller jurisdictions to be a full-time job. If the workload for dealing with the internal trade file were to grow, these jurisdictions would have to add staff. Further, a better-resourced secretariat would further exacerbate the problem as it could place additional demands on the parties to the agreement.

To address this latter issue, a much more robust secretariat (like the WTO secretariat) should be able to provide technical and professional support to the jurisdictions that require it.

In addition, unlike the WTO, monitoring of the progress of free trade in Canada is limited. This makes it difficult to know where efforts need to be focussed. While a select group of people may know this (i.e., the working groups of the CFTA know the specific progress in their area) this is not comprehensive, widespread knowledge.

A standard of trade agreements around the world is that they are accompanied and supported by an associated, properly resourced organization that provides independent technical and professional support.[32] The lack of such a body in Canada seriously hinders progress on the internal trade agenda.

30 "Overview of the WTO Secretariat," *World Trade Organization*, https://www.wto.org/english/thewto_e/secre_e/intro_e.htm.

31 The WTO Secretariat, with offices only in Geneva, has 625 regular staff and is headed by a Director-General. Since decisions are taken by Members only, the Secretariat has no decision-making powers (as distinct from the WTO's appellate body). Its main duties are to supply technical and professional support for the various councils and committees, to provide technical assistance for developing countries, to monitor and analyze developments in world trade, to provide information to the public and the media and to organize the ministerial conferences. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments..

The Secretariat staff includes individuals representing about 83 nationalities. The professional staff is composed mostly of economists, lawyers and others with a specialization in international trade policy. There is also a substantial number of personnel working in support services, including informatics, finance, human resources and language services. https://www.wto.org/english/thewto_e/secre_e/intro_e.htm

32 NAFTA is a notable exception to this.

Solution 03

Again – at federal cost without expecting provincial or territorial contribution – make the new Canadian Internal Trade Bureau (CIBT) a robust, functional and independent body that is much more than a secretariat, similar to the WTO

New Canadian Internal Trade Bureau

As noted earlier, we recommend the creation of a permanent, well-funded (by the federal government) Canadian Internal Trade Bureau (CITB). The new CITB would need to be an independent, arm's-length body (and seen by the provinces and territories as so). It would need permanent staff and resources, and to be administered by an independent Board of Directors, albeit with provincial, territorial and federal representation – in other words, a broader mandate with the funding to match. The model of the WTO Secretariat should be used for examples of good practices.

Adequate – but federal only – funding

To stress, this will not happen if the federal government requires provincial contribution to the funding. But making this fully and adequately federally funded is consistent with the federal approach to other similar needs in other parts of our national economic interest. The federal government funds a variety of other independent bodies that include a significant data collection and analysis function, such as the Competition Bureau; the former National Energy Board (NEB), now the new Canada Energy Regulator; the Canada Infrastructure Bank, among others. The annual operating budgets for these organizations, paid for by the federal government, run between $40 million and $90 million. Yet, the annual budget for Canada's current Internal Trade Secretariat is a mere $600,000. A truly effective Canadian Internal Trade Tribunal should be funded at least as much as some of these other organizations – therefore at least $40 million annually, for it to accomplish both the data collection and analysis functions set out in Solution #1 as well as the other functions of a true secretariat.

The focus here is on robust secretariat functions and funding. Any changes to create a more robust dispute resolution function cannot be done by the federal government alone – it would require agreement among the provinces and territories.

International lessons learned

Along the lines of the WTO, the new CITB needs to be staffed to provide technical support on how to streamline regulations and to identify best practices as well as approaches to resolve specific problems. Communications staff and language services would be important to share the work being done with the public and other stakeholders.

Independence critical

This recommendation and the need for federal funding alone is not only to deal with the difficulty in getting 13 separate jurisdictions to prioritize funding – important as that is. It is also important that the federal government stress the independence and "no strings attached" aspect of this new body to overcome the current deep lack of trust on the part of several provinces. Key to success will be the independence of the CITB and its research and other activities.

Problem 04

Lack of knowledge about our own backyard

Not only is there lack of data about the barriers to internal trade, there is also significant lack of knowledge among Canadian businesses (and their provincial and territorial governments) about other Canadian domestic markets, potential domestic suppliers and supply chains in other parts of the country. Importantly, this also means lack of awareness of potential for collaboration with others in different parts of Canada for expansion internationally. Canadian businesses are also missing opportunities to develop economies of scale, critical for international competitiveness and possible expansion abroad, but also to compete against foreign competitors looking to take advantage of our recent international free trade deals.

We know that not knowing the negatives is one problem, but not knowing the missed positives is also holding us back; there are trade and investment opportunities that exist in other provinces/territories that companies from each jurisdiction are missing out on. When we talk about internal trade, we are often just talking about the barriers that exist, but internal trade efforts are also key to a cohesive, functioning internal market. Canada's inability to grow our small businesses into medium and large businesses begins for many by increasing their reach within Canada.[33] This is not only to simply expand domestic business opportunities, but to gain economies of scale that permit them to compete internationally.

Solution 04

Create, fund and help organize domestic trade missions

The federal government spends a great deal of time and money on international trade missions, yet there is great lack of knowledge in Canada about our own Canadian markets, potential suppliers and supply chains, and potential for collaboration (and economies of scale) for expansion internationally. The federal government should offer to fund and help organize regular internal, domestic "trade missions."[34]

The fix to this problem is fairly simple. It is widely done internationally but is a relatively novel idea within Canada's borders. The federal government should fund trade missions between the provinces and territories.

This would result in benefits. It would cultivate an attitude of a "Canadian" market, as opposed to a "Saskatchewan" or "New Brunswick" market. It would provide more incentive for provincial/territorial governments to reduce idiosyncratic trade barriers if they have companies looking to invest in their jurisdiction but have a few odd outstanding regulations that are causing difficulties. (An example of this could be an Ontario construction company looking to build a major project in Nunavut, but there is a disconnect between Ontario and Nunavut on, for example, safety vests and toilet seats on site. Nunavut would be motivated to align its regulations with Ontario to attract the construction company.) It would expand market size for some, and help Canadian companies grow to a size where they can better compete internationally and also compete at home against foreign companies gaining access to the Canadian market under our new trade agreements.

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33 "The Scale up Challenge," *BDC*, September 2016, 15. https://www.bdc.ca/en/about/sme_research/pages/the-scale-up-challenge.aspx

34 An example of this is the "Economic Development Tours" held by the Manitoba Chambers of Commerce, which bring interested businesses from across Canada to communities in Northern Manitoba to highlight the economic opportunities there.

Internal trade missions are also an opportunity to motivate provinces and territories to provide a simplified regulatory environment for investors, and a way for interested companies to pressure jurisdictions to get on the same regulatory page for their industry.

Manitoba has started doing this within its own borders – it provides an excellent example for developing the concept of trade missions across the country. The Manitoba Chambers of Commerce has Economic Development Tours (which are partially funded by the federal government), to showcase the business opportunities in Northern Manitoba, including communities such as Flin Flon, Thompson, Nelson House, and Churchill. These tours allow communities to showcase their value proposition to Canadian companies and investors that would not otherwise know these opportunities exist.[35]

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[35] "Economic Development Tours," *Manitoba Chambers of Commerce*, https://mbchamber.mb.ca/economic-development-tours/.

Problem 05

Too many exceptions

Even though the CFTA uses a “negative list” approach (a significant improvement over the AIT), there are still far too many exceptions that have been insisted upon (over 200 at last count), not only by the provinces and territories, but also the federal government.

Some of the exceptions are not currently invoked and thus pose no current, direct costs – but the fact that they could be implemented at any time imposes an uncertainty cost for business that can limit investment and have a chilling effect on trade. Public procurement is one clear area for potential improvement. Reducing these exceptions should be a priority. There is currently a review being done by all jurisdictions on CFTA party-specific exceptions; this (and the recent Alberta and Manitoba commitments to unilaterally remove most of their own exceptions) is an excellent opportunity for the federal government to join in leading by example. This could help reduce the lack of trust by acknowledging publicly that the federal government has barriers of its own that it needs to work on and that it is a committed partner in this effort – rather than one that tends to point fingers at the provinces/territories.

The CFTA, although using a “negative list” approach, contains a variety of exceptions listed for each party. For example, Chapter 5 deals with procurement, but sets out a lengthy list of things that it does not apply to;[36] Annex 520.1 sets out all of the entities that are excluded, as well as additional exceptions; Article 202, “Legitimate Objectives” also provides opportunities for exceptions; Part VII, Annex I sets out all of the Exceptions for Existing Measures; Annex II includes all of the Exceptions for Future Measures that the parties have carved out of compliance with the general non-discrimination requirements (Article 201). In the latter, some of the exceptions for existing measures listed for the federal government include items to ensure consistency with international commitments, federal legislation (such as the *Investment Canada Act*), and to retain the Canada Post monopoly for postal services. These are less amenable to change. However, given all of the exceptions retained by the federal government under these various sections of the CFTA, there must be some that can be waived. However, the scope of this report is too limited for a more detailed analysis of which ones might be most possible and/or be most effective.

From our interviews, the idea of the federal government taking the lead on removing exceptions was universally supported. In most cases it was suggested as almost a necessity for progress. The interviewees noted that the provinces are already working to do this through an agreement at the Council of the Federation and the federal government needed not to just follow suit but to lead. This was also seen as an important confidence-builder to encourage and reward the provinces for taking the first step. Unfortunately, when asked for recommendations or even examples of what the federal government could do in this regard, no suggestions or concrete examples were provided.

[36] Article 504, Scope and Coverage, section 11 “non-application”

Solution 05

Lead by example, review the federal government exceptions under the CFTA, and look for other regulations that create barriers[37]

As noted, some of the exceptions retained for the federal government in the CFTA are not amenable to unilateral withdrawal. However, some are – and the federal government has already now shown its ability and willingness to do so, to much support: the recent amendment to the *Importation of Intoxicating Liquor Act* (the IILA) in the *Budget Implementation Act, 2019* was well-received both internally and publicly. This amendment removed all remaining federal barriers to interprovincial trade of alcohol and to permit "direct-to-consumer" shipping of alcohol across provincial borders, without having to apply to the provincial liquor authority for a licence to purchase it. There remain various provincial barriers tied up in the monopolies still afforded provincial liquor authorities, but this was an important move by the federal government. Although we suspect that the area of procurement is a likely place to start, recommendations as to which further exceptions in particular the federal government should remove will require more detailed examination than the scope of this report permits.

This effort on the part of the federal government should involve not just CFTA exceptions, but also a review of how federal regulations may impede internal trade and amending those regulations when possible. (Again, there is need for data and comparative analysis effort to help determine where these opportunities exist.)

This will not be a solution to the whole problem of exceptions, but it is an opportunity for the federal government to demonstrate its commitment to reducing internal trade barriers, to show that the federal government is willing to engage in the effort, and to help build all-important trust.

[37] Note that in July and in September, 2019, the Alberta government demonstrated this kind of leadership by removing most of the exceptions reserved for Alberta under the CFTA, and Manitoba demonstrated this leadership October 2019. It remains to be seen which, if any, provinces follow suit.

Conclusion

The federal government recognizes internal trade barriers of various kinds are significant, and cause cumbersome and costly inefficiencies in the Canadian economy. The government also recognizes the situation will remain thus, unless new and bold solutions are found. Efforts to date are proof that progress will continue to be slow under the status quo.

There are, however, some things the federal government can do, unilaterally, to significantly help this challenge – and significantly help improve the Canadian economy as a whole.

A critical part of the solution is the creation of significant "real" funding (commensurate with similar Canadian agencies and organizations) for an independent Canadian Internal Trade Bureau to collect and house data; to conduct the much-needed comparative analyses for the detailed situation across all 13 provinces and territories (and itself); to act as a truly robust, functioning and independent secretariat; to provide trade-enhancing services – similar to international trade agencies such as the WTO Secretariat.

Critically, the creation and funding of the new CITB must be done by the federal government alone, partly because of the inability or unwillingness of other jurisdictions to participate, but also because of the serious distrust currently in the system. It is essential that the CITB be independent.

Using, and making available, the data collected, knowledge developed, and providing related services can encourage political will among the provinces/territories to also take important steps to reduce barriers. This would be an added benefit to the creation and funding of the CITB. Creating, funding and helping to organize internal trade missions would also go a long way to addressing the lack of awareness among Canadian businesses of our own domestic market and collaboration opportunities. Finally, taking more unilateral action in the form of eliminating some of the federal government's own exceptions would have the added benefit of building more trust.

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APPENDIX A
KEY HISTORY AND ELEMENTS OF INTERNAL TRADE IN CANADA

Estimates on the impact of trade barriers on Canada's GDP vary widely, with estimates ranging from 0.05% to 7%.[38] Barriers themselves vary widely by industry and by province. According to one analysis, the lowest barriers, affecting about 7% of each industry, are in chemicals, petroleum, and textiles. The highest barriers, affecting more than 27% of each industry, are in food products, heavier metals, and other manufacturing goods.[39] The same study finds that internal trade barriers are lowest generally in British Columbia, Alberta, and Ontario, and highest in Yukon, Manitoba, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador.[40] The fact that estimates as to overall cost vary so widely is, on its own, proof that there is insufficient data on internal trade.

Agreement on Internal Trade (AIT), 1995

The Agreement on Internal Trade (AIT) was an intergovernmental trade agreement signed in 1995 by all of the provinces, the then-two territories and the federal government. Its purpose was to "reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada," while promoting equal economic opportunity across Canada and enhancing competitiveness of Canadian businesses..[41] At the time, Canadian unity had experienced the failure of the Meech Lake and Charlottetown Accords, and the imminent Quebec referendum – there was political motivation to prove that the "economic union could function effectively." At the same time, the recently concluded NAFTA and the GATT Uruguay Round trade negotiations raised questions about whether it was now easier for Canadians to trade abroad than among each other.[42]

However lofty the rhetoric on the AIT, the actual agreement was not particularly ambitious, using positive lists for what was included under the AIT, a weak dispute resolution mechanism, and a lack of regulatory harmonization.[43]

Canadian Free Trade Agreement (CFTA), 2017

The Canadian Free Trade Agreement (CFTA) replaced the AIT on July 1, 2017. The CFTA was also signed by all of the provinces, the now-three territories and the federal government. Its goal is to reduce barriers to the movement of services, goods, and investments, and to establish an open, efficient and stable domestic market.[44] It was created because there was a widespread recognition that the AIT was out-dated, both because of Canada's external trade relationships and the rapid changes in the Canadian and global economies, and had not accomplished its goals. The signing of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) was a particular impetus; not only did this open up Canada to more European Union competition, some recognized that it would now be easier to trade with the European Union than between provinces.[45] When Canada signed the AIT, it only had trade agreements with two countries (the United States and Mexico); today, it has 14 trade agreements in force with 51 countries.[46]

As one commentator put it, it was time to "take off the training wheels" that was the AIT, and create a more ambitious agreement.[47]

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38 David Tkachuk and Joseph A. Day, "Tear Down These Walls: Dismantling Canada's Internal Trade Barriers," *Report of the Standing Senate Committee on Banking, Trade and Commerce*, June 2016, 3.

39 Jorge Alvarez, Ivo Krznar, and Trevor Tombe, "Internal Trade in Canada: Case for Liberalization," *IMF Working Paper*, July 2019, 31.

40 ibid.

41 *"Agreement on Internal Trade/Accord sur le commerce intérieur,"* Canada, 2015, 1, https://www.cfta-alec.ca/wp-content/uploads/2017/06/Consolidated-with-14th-Protocol-final-draft.pdf.

42 James McLean, *Canada's Evolving Internal Market: An agenda for a more cohesive economic union*, Canada's Public Policy Forum, 2013, 10.

43 David Tkachuk and Joseph A. Day, "Tear Down These Walls," 3.

44 The Canadian Free Trade Agreement, https://www.cfta-alec.ca/.

45 Drew Hasselback, "New internal-trade deal expected to add $25 billion a year to economy, give 'home-field advantage,' The Financial Post, April 7, 2017, https://business.financialpost.com/news/economy/canadas-new-internal-trade-deal-expected-to-add-25-billion-a-year-to-economy.

46 Statistics Canada, "A look at free trade in Canada," Government of Canada, September 4, 2019, https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2019048-eng.htm.

47 Perrin Beatty, "Canada's next free-trade agreement? How about a deal between provinces," *The Globe and Mail*, January 2, 2014, https://www.theglobeandmail.com/opinion/canadas-next-free-trade-agreement-how-about-a-deal-between-provinces/article16167382/.

The CFTA, while an improved agreement, has still not radically transformed the internal trade landscape in Canada, primarily because of a lack of political will. As with the AIT, each jurisdiction was concerned with protecting specific industries within their borders. While the CFTA adopted a negative list approach – unless something is explicitly mentioned in the CFTA text as an exception, it is automatically covered by the agreement – it has an astounding number of exceptions listed. At least some of the impetus for the CFTA arguably came from the need to reconcile concessions made under CETA. The provinces took part in those negotiations and were well aware of incongruities between what was now available to European companies versus companies in Canada. It is therefore useful to think of the CFTA as more a rearguard than progressive action.

The CFTA is still in "start-up" phase. The working groups have held first rounds of face-to-face meetings and regular teleconferences. Based on comments from some of the people involved, the working groups and tables and are making progress, but given what was anticipated in the negotiations and the limited resources applied, progress has been slow.

The two main bodies associated with the CFTA – the Internal Trade Secretariat and the Committee on Internal Trade – were both used under the AIT and transferred to the CFTA.

Committee on Internal Trade (CIT)

The purpose of the CIT is to supervise the implementation of the CFTA, assist in the resolution of disputes stemming from the CFTA, approve the operating budget of the Internal Trade Secretariat annually and "consider any other matter that may affect the operation of this agreement."[48]

Each government has equal status on the committee, and its Chairpersonship rotates every year among all parties. The 2019 chair is Nova Scotia.[49] All decisions made by the CIT must be made by consensus.[50]

Internal Trade Secretariat (ITS)

The mandate of the ITS is to provide "administrative and operational support to the Committee [on Internal Trade], working groups, and other committees, and any other support as the Committee may direct."[51] Additionally the Managing Director of the ITS must prepare an operating budget, half of which is paid by the federal government, and the other half paid by the provinces/territories (pro-rated by population size). In 2018, the budget was $588,972,[52] and there are five staff members.

New West Partnership Trade Agreement (NWPTA), 2010

The NWPTA was signed between Alberta, Saskatchewan and British Columbia in 2010, with Manitoba joining in 2016. The NWPTA replaced the Trade, Investment and Labour Mobility Agreement (TILMA) signed by British Columbia and Alberta.

The NWPTA is a reaction to the slow pace of consensus needed to liberalize internal trade. It is a "coalition of the willing" assembled to accelerate interprovincial trade liberalization, including services and movement of people, through measures that could not be agreed upon in the larger, national internal trade debates – including the AIT and CFTA. These measures included credential equivalency, more open government procurement, a negative list for regulatory exceptions and fewer exceptions in general. The NWPTA plays an important function in the Canadian debates over internal trade. It used the negative list approach which was later adopted for the CFTA. It also provides an important safety valve for those provinces that are unhappy with the much slower, consensus-based approach.

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48 CFTA, "Article 1100: Committee on Internal Trade," July 1, 2017, 181, https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf.

49 CFTA Website, "Annual Meeting of the Committee on Internal Trade – all parties continue to work collaboratively," November 23, 2018, https://www.cfta-alec.ca/annual-meeting-of-the-committee-on-internal-trade-all-parties-continue-to-work-collaboratively/.

50 CFTA, "Article 1100: Committee on Internal Trade," 182.

51 ibid.

52 Internal Trade Secretariat, "Annual Report Canadian Free Trade Agreement for the fiscal year ending March 31, 2018," 19, https://www.cfta-alec.ca/wp-content/uploads/2019/01/CFTA-Annual-Report-2017-2018-English-with-Audit.pdf.

APPENDIX B
POST-CFTA INTERNAL TRADE TIMELINE

July 1, 2017
CFTA comes into force.

December 2017
Saskatchewan bans vehicles with Alberta licence plates from Saskatchewan construction sites; it says this was in response to a similar ban in Alberta, which the Alberta government denied, and to anti-free-trade initiatives from the Alberta government in general.[53]

December 2017
Comeau hearing is held at Supreme court. Most provinces and the supply managed industries argue against Comeau.

January 22, 2018
Saskatchewan lifts the "licence plate" ban, the day before a NWPTA panel is to start investigating.

February 2018
The Government of Alberta enacts a short-lived ban against B.C. wine, in response to the Government of B.C.'s call for further review of the Trans Mountain pipeline. The ban lasts two weeks.[54]

April 19, 2018
Supreme Court judgment on the Comeau case: Comeau loses, a blow against freer internal trade in Canada. The Supreme Court said that "a law preventing residents of New Brunswick from stocking up on alcohol from another province is constitutional."[55]

May 11, 2018
Final verdict (post-appeal) comes down on the dispute with Alberta regarding price mark-ups on out-of-province beer. The panel finds that the Alberta Small Brewers Development Program is inconsistent with the Agreement on Internal Trade.[56]

August 12, 2018
Dominic LeBlanc is appointed as the federal Minister of Intergovernmental and Northern Affairs and Internal Trade – up until this point, Prime Minister Justin Trudeau filled this ministry. LeBlanc says his mandate is to "work collaboratively with provinces," and to "focus on building bridges, rather than points of conflict."

September 24, 2018
The Government of Yukon cancels a $904K contract given to a Yellowknife company to build a new high school; Yukon's public works minister says the contract will go to a tender restricted to Yukon companies. There had been an outcry from the Yukon contracting community when the original contract was announced.[57]

October 29, 2018
Governments of Ontario and Saskatchewan sign an MOU related to interprovincial trade, and which is to be the start of planning to bring down trade barriers.[58]

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53 Dean Bennett, "Saskatchewan ends ban on Alberta licence plates at its job sites," *Global News*, January 22, 2018, https://globalnews.ca/news/3979902/licence-plates-job-sites-saskatchewan-alberta/.

54 Justin McElroy, "Alberta ends B.C. wine boycott after B.C. premier announces court action on pipeline standoff," *CBC News*, February 22, 2018, https://www.cbc.ca/news/canada/british-columbia/wine-boycott-ends-1.4547754.

55 Communications Staff Supreme Court of Canada, "Case in Brief: *R. v. Comeau*," Supreme Court of Canada, 2018 SCC 15, Judgement of April 19, 2018.

56 Peter E. Kirby, Debra P. Steger, and Milos Barutciski, "Appeal of the Report of the Panel in the Dispute Between Artisan Ales Consulting Inc. and the Government of Alberta Regarding Mark-ups on Beer," *Agreement on Internal Trade Appellate Panel*, May 20, 2018, https://www.cfta-alec.ca/wp-content/uploads/2018/06/GOA-vs.-Artisan-Ale-appeal-report-Final.pdf.

57 Nancy Thomson, "Yukon government cancels $904K contract with Yellowknife firm, calling it a 'mistake,'" *CBC News* September 24, 2018, https://www.cbc.ca/news/canada/north/yukon-government-cancels-contract-yellowknife-firm-1.4836114.

58 Marieke Walsh, "Ontario, Saskatchewan pledge to dismantle internal trade barriers," *iPolitics* October 29, 2018, https://ipolitics.ca/2018/10/29/ontario-saskatchewan-pledge-to-dismantle-internal-trade-barriers/.

November 26, 2018
Alberta files a complaint to the CFTA about access to Ontario liquor stores.[59]

December 7, 2018
Nova Scotia government announces several measures to reduce barriers to internal trade, including limits on alcohol purchased in other provinces, extra-provincial business registration and renewal fees, tire restrictions, and more.[60]

April 9, 2019
Federal government introduces legislation (via the *Budget Implementation Act*, 2019) to amend to the *Importation of Intoxicating Liquor Act*. This amendment removes all remaining federal barriers to interprovincial trade of alcohol, and permits "direct-to-consumer" shipping of alcohol across provincial borders without having to apply to the provincial liquor authority for a licence to purchase it.[61]

July 3, 2019
Economic ministers of Ontario and Quebec meet after the premiers of both provinces pledge to work together to intensify market diversification and interprovincial trade.[62]

July 8, 2019
B.C. removes limits on residents bringing liquor into B.C. from another province or territory for personal consumption.[63]

July 10, 2019
Alberta Premier Jason Kenney offers to unilaterally lift 13 (of 27) of the province's regulatory barriers to interprovincial trade.[64]

August 25, 2019
Alberta and Ontario quietly start free trade talks.[65]

September 21, 2019
Alberta Premier Jason Kenney announces the unilateral lifting of another eight exceptions, relating to energy, alcohol and the sale of public lands.[66]

October 4, 2019
Manitoba unilaterally removes a number of its exceptions under the Canadian Free Trade Agreement.[67]

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59 Dan Healing, "Beer battle brewing: Alberta launches trade challenge against Ontario over access to liquor stores," *The Canadian Press* November 26, 2018, https://globalnews.ca/news/4699420/alberta-craft-beer-trade-challenge-ontario/.

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APPENDIX C
SOURCE MATERIAL

Interviews

In addition to the attached bibliography of material we used in our research, CWF staff conducted telephone interviews with 18 current and former Internal Trade Secretariat representatives and staff from nine provinces and territories, the federal government and those with knowledge of the Internal Trade Secretariat. In addition, we received a written response to questions from a tenth province. The preponderance of interviewees requested that they and their jurisdiction not be identified.

Interview questions focused on five areas:

1. Level of information on internal trade issues, the pace of liberalization and whether increasing the amount of information could increase the pace of liberalization.
2. Views on the current status of the CFTA process.
3. Views on the functioning of the secretariat and views on whether enlarging and better resourcing it is a good, and viable, option to accelerate liberalization.
4. (After our first two interviews) Whether the federal should lead in cutting exceptions under the CFTA, and if so, any specific examples.
5. New ideas for what the federal government can do to improve internal trade in Canada.

Additional questions toward the end of the interviews included questions about differences between the NWPTA and the CFTA and clarification and corroboration of views on how the regulatory co-operation table worked.

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