

Intelligence MEMOS



From: Lawrence Herman
To: Trade Observers
Date: April 16, 2025
Re: OTTAWA HAS THE POWER TO FREE INTERPROVINCIAL TRADE. IT MUST USE IT

At his news conference following Donald Trump's reciprocal tariff announcements on April 3, Prime Minister Mark Carney repeated the point he had been making for weeks: Removing internal trade barriers across the country would be part of his government's strategy to counter the American threats to Canada's economic future.

This is also a main facet of the "national trade strategy" that Mr. Carney had outlined previously, wherein he committed to table legislation by July 1 to eliminate all federal barriers to interprovincial trade and labour mobility and to remove all federal exemptions under the Canada Free Trade Agreement (CFTA).

The election will determine whether the Liberal leader gets a chance to enact his plans. But even as he underscored the unprecedented challenges Canada now faces, what wasn't clear in the news conferences was whether there was any agreement among premiers on removing provincial trade barriers, long considered a major defect in the CFTA, which permits these through a long list of preferences and exemptions

Following a first ministers' meeting in late March, Ontario Premier Doug Ford said that "most premiers" agreed on eliminating provincial barriers and he and the federal government intended "to clear all exemptions" – though Mr. Ford didn't provide any detail on the extent to which "most" premiers were agreed.

Given the crisis in Canada-US relations, what's urgently needed is federal legislation that eliminates all internal trade barriers – both provincial and federal. This wouldn't mean an end to legitimate provincial regulatory measures, but it would respond to the current crisis by preventing any province from putting up trade walls aimed at protecting local operations from out-of-province competition.

The federal government has the constitutional authority to do this. It's just that successive governments have failed to exercise that authority, preferring the path of co-operative federalism, accommodation and interprovincial agreements such as the CFTA. But while that may have worked under the old order, that is no longer true in today's Trumpian world.

The *Constitution Act* gives Parliament paramount authority over the "peace, order and good government" of Canada and, under Section 91, lists specific fields under exclusive federal jurisdiction, such as banking, currency, defence, and criminal law. Importantly, Section 91 also confers exclusive federal powers over "trade and commerce" – and not just international trade and commerce, but trade and commerce generally. Section 92, in contrast, gives the provinces jurisdiction over internal matters that are of a "merely local or private nature" within provincial borders.

In prior years, Parliament used its federal trade and commerce authority to pass laws directly involving interprovincial trade. For example, the 1928 federal *Importation of Intoxicating Liquor Act* was enacted under Section 91, but allows provinces to regulate imports through their own liquor boards. And among many other examples, the entire cross-Canada supply management system for dairy products, about which we hear so much, comes under the federal *Farm Products Agencies Act*, originally enacted in 1972.

In response to the continuing threats from the White House, federal trade legislation should be bold and decisive, creating the legal and policy framework for a truly comprehensive Canadian economic union by eliminating all federal and provincial trade barriers. After all, Canada's international trade agreements, like the WTO Agreement and the Canada-US-Mexico Agreement, directly affect the provinces and are given the force of law in Canada through federal legislation. There are many possible ingredients and specific measures that could be covered under such a federal law, including separate treatment for oil and gas to meet Western Canadian concerns, though those details can be left for further elaboration down the road.

While certain premiers and other groups may challenge the constitutional validity of Ottawa's trade and commerce authority, the Supreme Court of Canada has repeatedly confirmed federal jurisdiction over matters of overriding national interest, most recently in the 2021 *Greenhouse Gas Pollution Pricing Act* [reference](#) 2021, where the Court confirmed Parliament's right to implement carbon pricing for the good of the country as a whole. To pre-empt opposition and possible legal challenges, however, this new bill could be introduced in Parliament and referred immediately to the Supreme Court of Canada to determine its constitutional validity.

But this is what ultimately matters: Whatever the outcome in this month's federal election, the Canadian government has to use its constitutional authority with bold determination to meet today's existential challenges from our erstwhile friends and former allies south of the border.

Lawrence Herman is an international lawyer with Herman & Associates and a senior fellow at the C.D. Howe Institute.

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