

REGULATORY AND INTERNAL TRADE

42. Addressing Barriers to Interprovincial Trade

DESCRIPTION

Despite recent trade agreements, many barriers continue significantly impede the movement of goods, services and labour between Canadian provinces and territories, creating ongoing uncertainty that harms Canada's reputation as a secure place to invest and do business.

These challenges create barriers to international competitiveness, as Canada will be under increased pressure to resolve its own internal trade barriers as foreign direct investments resulting from international trade agreements such as CETA, and ongoing negotiations around NAFTA and CPTPP, will no longer tolerate bad behaviour from its partners.

BACKGROUND

The movement of goods, services and labour between Canada's provinces and territories represents a significant cornerstone of the national economy. While international exports constitute roughly 30 percent of Canada's GDP, more than \$1 billion in trade moves within Canada every day as interprovincial trade reaches approximately \$385 billion per year and constitutes roughly 20 percent of GDP. Indeed, for most provinces, the two types of trade represent very similar percentages of their own GDP. However, interprovincial trade issues have traditionally received disproportionately less attention from legislators: while calls continue to be loudly made for greater trade liberalization and less protectionism within international trade agreements such as NAFTA and TPP, it is abundantly clear that the same approach is also sorely needed within Canada.

IMPACT OF INTERNAL TRADE BARRIERS AND THEIR REMOVAL

Interprovincial trade barriers unnecessarily constrain the growth of the Canadian economy in ways both big and small.

The effect of these protectionist measures is keenly felt by provincial small and mid-sized producers, which commonly lack the volume and financial resources to sell to provincial liquor boards. As a result, many provincial liquor producers are limited in their ability to establish demand for their products in a national domestic market, which makes competition against large international producers more challenging. Interprovincial protectionist measures are also a drag on all producers who would benefit from internet-based sales and direct-to-consumer buying programs that provide better margins and enable more efficient supply management.

Perhaps most importantly, barriers to individual import of wine, beer and spirits are a hindrance to Canada's tourism industry. Many out-of-province Canadian tourists now cannot bring BC's and Ontario's fine wines home to share with their friends and are unable to participate in the wine clubs operated by many provincial enterprising wineries. Wineries lose because they are challenged to build long-term, loyal relationships with out-of-province customers. Consumers lose because their favourite label wine is not available to them at home.

Other examples abound: food safety regulations vary across the country and provinces have separate marketing boards for dairy and poultry, which can result in agricultural products produced in one province not able to be on the supermarket shelves of another. The transportation sector faces differing provincial regulations, as tires sizes and safety regulations for commercial trucks hauling large or dangerous goods are not harmonized across Canada. Refiners also face differing rules, as the ethanol mix allowed in fuel changes province to province.

Moreover, the country also lacks a single securities regulator and some barriers to labour mobility still exist. The myriad of differing regulations that exist across the country make Canada a complex market to do business with, and add to the cost of doing business.

According to Statistics Canada, these collective barriers have essentially amounted to a 6.9 percent tariff between provinces, and have a particularly acute impact on trade relating to direct business inputs. Estimates indicate that trade barriers are unnecessarily constraining growth, constraining Canada's economy by an estimated 7 percent.

Removal of these barriers could therefore have a significant impact for Canadian businesses and consumers alike, as recent studies indicate that meaningful liberalization of internal trade could add \$50 billion to \$130 billion to Canada's overall GDP. Using a mid-range estimate of \$100 billion, these economic gains represent more than \$7,500 per household per year ; this would also serve to cut the Canada-U.S. productivity gap by as much as one-third. The scope of this issue, and the considerable gains that could emerge from its resolution, has led the Canadian Chamber of Commerce (CCC) to repeatedly identify this as one of the country's top 10 barriers to growth ; the CCC also identified this issue as a central impediment to Canada's regulatory competitiveness in a May 2018 report.

PRIOR EFFORTS TO ADDRESS INTERNAL TRADE BARRIERS

The provinces themselves have made some efforts to address these via regionalized agreements, and while these have frequently offered a framework for discussion, their overly broad nature have traditionally failed to effectively address ongoing concerns. In an attempt to rectify these and other such regulatory misalignments, the federal, provincial and territorial governments signed the Canadian Free Trade Agreement (CFTA) in April 2017.

While it provides some progressive relief measures on specific areas such as procurement, much of the 300-page document is dedicated to exemptions, creating opt-out measures on many key files that continue to pose significant issues at the sub-national level. Moreover, there exist many persistent regulatory concerns that fall outside of the CFTA's intended purview. Conversely, Australia sought to achieve the same goals of the CFTA in 1992 with the Mutual Recognition Act, a 17-page document that simply stated that goods and workers regulated in one state could freely flow to another.

In the wake of the CFTA's announcement, many business organizations, including the CCC, indicated that the long-term success of this agreement would depend upon concerted efforts by the signatories to view it as a framework to engage in active regulatory reconciliation and cooperation. However, many examples of the CFTA's insufficiency on this front have emerged since its passage, as parties have continued to engage in on-again, off-again trade conflicts both public and private -- conflicts which this agreement was theoretically designed to address and avoid.

Additionally, unlike measures Canada has built into its international treaties, the CFTA fails to institute meaningful tools for dispute resolution. The associated monetary penalties that have been updated within the CFTA are equally inconsequential, with the maximum being \$10 million for the largest of the provinces; this is arguably insufficient, given that the previous maximum penalty of \$5 million under the previous 20-year-old Agreement on Internal Trade, not to mention the potential billions at stake.

This system for settling disputes under the Canada-EU provides recourse for companies that feel they have been unfairly treated to take action directly against the offending state. The lack of truly meaningful efforts of this nature with Canada means that unless the federal government takes action now to eliminate internal trade barriers, European companies bidding on Canadian government work will gain an institutionalized edge over Canadian businesses trying to win similar contracts outside their home province once CETA is enforced.

Additional challenges to the goals and the effectiveness of the CFTA have since arisen through the Supreme Court of Canada's April 2018 ruling on the Comeau case -- a case in which the CCC served as intervenor -- which effectively declared that Canada has no constitutional guarantee of free trade between provinces. This was considered to be a significant blow to the pursuit of a common market within Canada via the courts, confirming that the critical work of ongoing modernization of the rules governing interprovincial trade must be advanced by the federal, provincial and territorial governments.

In the words of Chamber President and CEO Perrin Beatty, "We have to decide at this point in Canada whether we are one country or 13."

RECOMMENDATIONS

That the federal government:

1. Work with the provincial and territorial governments on the mutual recognition of regulations, rules and policies to allow for the free movement of labour, goods, and services in Canada and the reduction of exceptions as currently established within the Canadian Free Trade Agreement.
2. Conduct a full review of the CFTA with a view to further eliminating barriers to trade, investment and labour mobility, ensuring that the agreement:
 - Covers all sectors of the economy and includes all government entities including ministries, crown corporations and regional and local governments, without exception;
 - Institutes a dispute resolution mechanism for persons that includes access to a panel with binding and enforceable powers, including the ability to impose higher financial penalties that are more appropriately reflective of the stakes inherent in interprovincial trade;
 - Include a specific focus on the removal of barriers to inter-provincial trade in wine, beer and spirits; and
 - Ensures that the agreement includes the elimination of non-tariff trade barriers to encourage competition and ensure a level playing field for signatories and their respective businesses.

SUBMITTED BY LONDON CHAMBER OF COMMERCE

CO-SPONSORED BY TIMMINS CHAMBER OF COMMERCE, KELOWNA CHAMBER OF COMMERCE

THE SPECIAL ISSUES COMMITTEE SUPPORTS THIS RESOLUTION