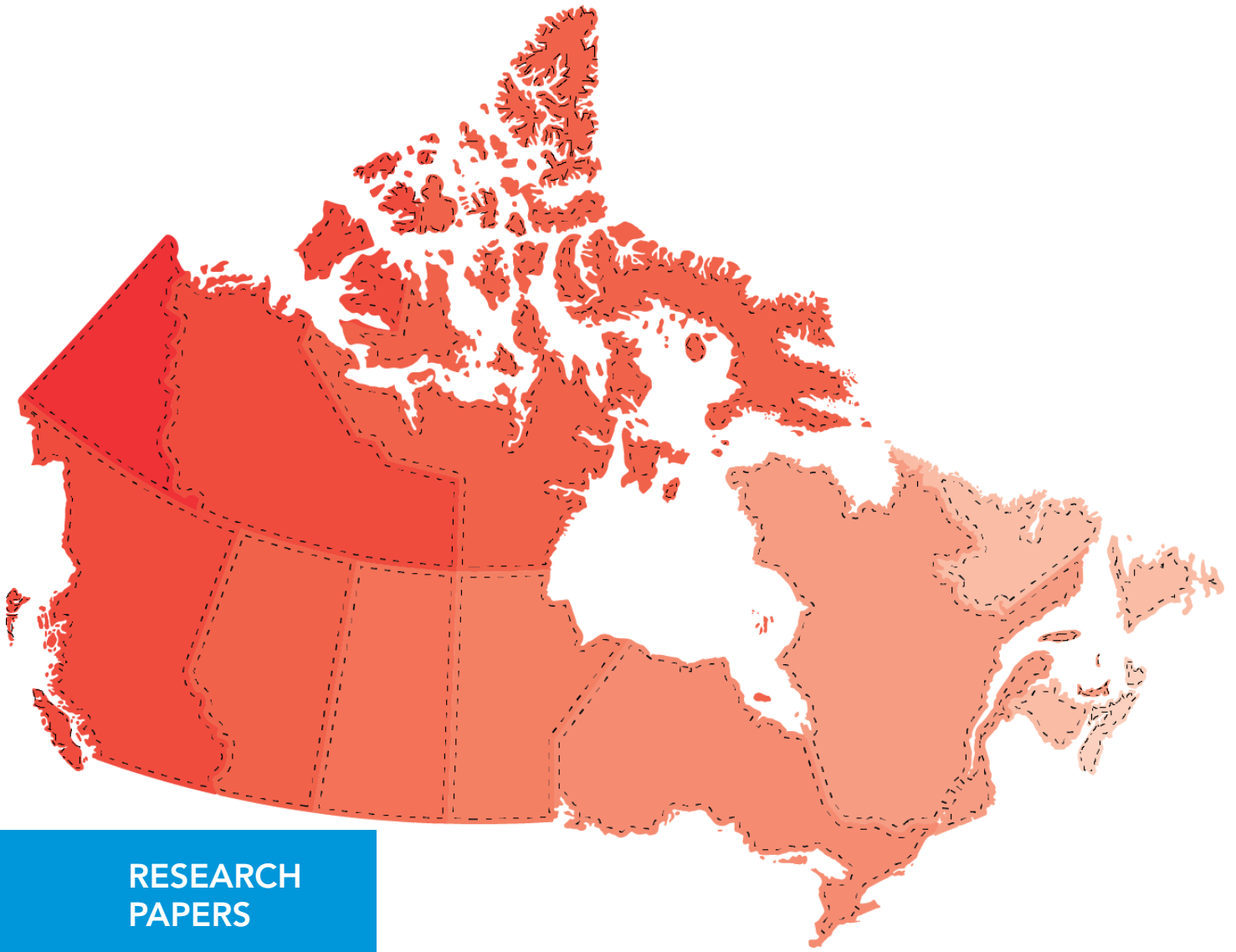




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**RESEARCH  
PAPERS**

**NOVEMBER 2019**

# **INTERNAL TRADE PROVINCIAL LEADERSHIP INDEX**

By Mark Milke, with the collaboration of Peter St. Onge



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**Mark Milke**  
with the collaboration  
of Peter St. Onge

# Internal Trade Provincial Leadership Index

Montreal Economic Institute  
in collaboration with the Canadian Constitution Foundation

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November 2019





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## EXECUTIVE SUMMARY

Canada was founded as a nation in part to eliminate the troublesome trade barriers that existed in pre-Confederation British North America. For example, in the Province of Canada, George Brown, a reform-minded politician from Canada West (now Ontario), remarked how a trip to Nova Scotia or New Brunswick was like going to a foreign country, where a “customs officer meets you at the frontier, arrests your progress, and levies his imposts on your effects.”

Despite the successful formation of the Dominion of Canada in 1867 out of disparate, divided provinces in British North America, and despite a constitutional clause that specifically endorsed unrestricted free trade among Canadians, the early desire of Brown, and also of Sir John A. Macdonald, Sir George-Étienne Cartier, and many others, remains unrealized 152 years after Confederation.

### The Problem: The Cost

Canadians lose out when internal free trade is hampered.

- Statistics Canada has estimated that such barriers equate to a 6.9% tariff selling between provinces, an effect that is nonexistent between US states.
- Some economists have calculated that internal trade liberalization could add from \$50 billion to \$130 billion to Canada’s overall GDP. This represents between \$3,500 and \$9,200 per Canadian household every year.

### Our Approach

In recent years, provincial, territorial, and federal politicians have increasingly endorsed that early vision. Most have spoken out in favour of free internal trade and also agreed to a “template” of sorts, namely the 2017 Canadian Free Trade Agreement (CFTA), the aim of which is to remove remaining barriers to trade among the provinces and territories in everything from wine, beer, and spirits to transportation regulations which impede the free flow of goods and services cross-country.

To further that goal, this report, an Internal Trade Provincial Leadership Index, will begin tracking progress toward one Canada, free of internal trade barriers. This

report surveys actions and statements by government officials of all ten provinces, three territories, and the federal government, though only the provinces and territories are compared for the index, given that some matters are sub-national.

We start with a qualitative look at some issues that have been in the news, and that consumers can easily relate to. These include alcohol importation rules and automobile insurance, both common consumer purchases that also have available, relevant data. They also include energy pipelines and market access, as Canada’s natural resource sector (including oil and gas) is the country’s largest contributor to GDP, employment, and tax revenues.

**In recent years, provincial, territorial, and federal politicians have spoken out in favour of free internal trade and also agreed to a “template” of sorts, namely the 2017 Canadian Free Trade Agreement (CFTA).**

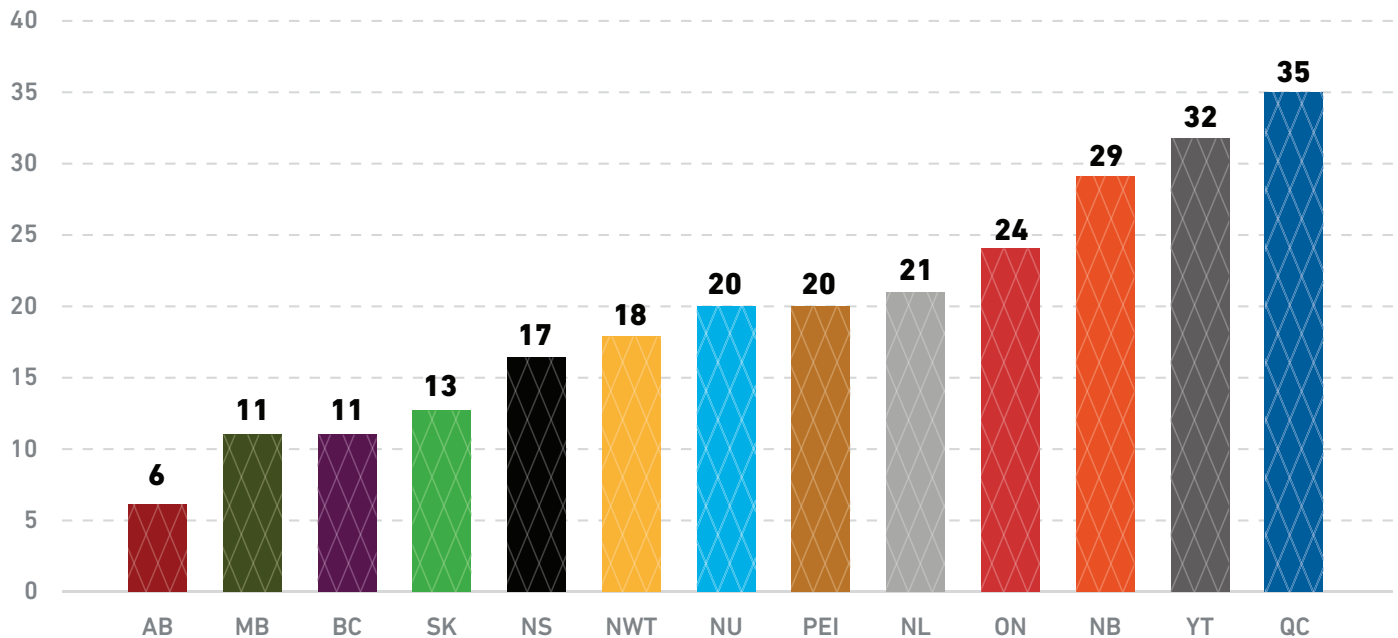
We then look to the 2017 Canadian Free Trade Agreement for our quantitative ranking. The provinces and territories have multiple exceptions listed to the CFTA. We total the three types of exceptions, listed under procurement, existing measures, and future measures, for each province and territory and rank them accordingly, adjusting the totals to account for official announcements eliminating these exceptions.

### The Ranking

Alberta is in first place thanks to its recent elimination of most of its exceptions in the CFTA, followed by British Columbia and Manitoba, tied for second after the latter also eliminated some of its exceptions, while Saskatchewan takes fourth place. Bringing up the rear with the most exceptions are New Brunswick, Yukon, and Quebec.

## Executive Summary Figure

## Free trade and provincial leadership index (A lower score = fewer barriers to trade)



Sources: See Table 2-1 of the present paper.

## Remedies: How Provinces and Territories Can Improve Their Scores

In broad terms, there are three possible remedies to internal trade barriers.

- **Option One: Federal, provincial, and territorial governments continue to refine and remove exceptions from the Canadian Free Trade Agreement.**
- **Option Two: Provinces and territories make increased use of the “passport” system of mutual recognition where it is not already used.**
- **Option Three: A province or territory acts unilaterally and ends barriers and regulations that act as a hindrance to a truly free internal market.**

## Canadians Want One Country, One Market

Despite the wide range of scores, Canadians across the country are clear that they want Canada to be one country, with one open market. In a 2017 Ipsos poll commissioned by the MEI, nine out of ten Canadians agreed that they should be allowed to bring any legally purchased product from one province to another. Canadians really do want what Macdonald, Cartier, and their colleagues pressed for in 1867: unrestricted free trade.



## SOMMAIRE EXÉCUTIF

Le Canada a été fondé comme pays en partie pour éliminer les encombrantes barrières commerciales qui existaient en Amérique du Nord britannique avant la Confédération. George Brown, un politicien réformiste du Canada-Ouest (aujourd'hui l'Ontario) avait fait remarquer comment, dans la province du Canada, un voyage en Nouvelle-Écosse ou au Nouveau-Brunswick était comme un séjour dans un pays étranger où un « agent des douanes vous rencontre à la frontière, interrompt votre marche et perçoit ses taxes sur vos effets ».

Bien qu'on ait réussi, en 1867, à former le Dominion du Canada avec des provinces disparates et divisées de l'Amérique du Nord britannique, et malgré une disposition constitutionnelle qui permettait explicitement le libre-échange sans entraves entre Canadiens, le souhait initial de Brown, de John A. Macdonald, de George-Étienne Cartier et de plusieurs autres n'a toujours pas été réalisé, 152 ans après la Confédération.

### Le problème : le coût

Les Canadiens sont perdants quand le libre-échange intérieur est entravé.

- Selon Statistique Canada, de telles barrières au commerce correspondent à un tarif douanier de 6,9 % que s'imposent les provinces entre elles, un effet qui n'existe pas entre les États américains.
- Certains économistes ont calculé que la libéralisation du commerce intérieur pourrait ajouter de 50 à 130 milliards \$ au PIB du Canada. Cela représente un gain de 3500 à 9200 \$ par ménage canadien, chaque année.

### Notre approche

Ces dernières années, de plus en plus de politiciens provinciaux, territoriaux et fédéraux ont appuyé la vision des fondateurs du pays. La plupart ont appuyé la création d'un véritable marché commun canadien. Ils ont aussi convenu d'une sorte de « gabarit », celui de l'Accord de libre-échange canadien (ALEC) de 2017, qui vise à supprimer des barrières restantes au commerce dans les provinces et territoires dans une variété de domaines, allant du vin, de la bière et des spiritueux aux règlements sur le transport qui empêchent la libre circulation des biens et services à travers le pays.

Pour atteindre cet objectif, le présent rapport, un Indice du leadership provincial en matière de commerce intérieur,

entamera un suivi des progrès menant à l'établissement d'une seule économie canadienne, affranchie des barrières au commerce intérieur. Ce rapport recense les gestes et déclarations des responsables gouvernementaux des dix provinces, des trois territoires et du fédéral, quoique seuls les provinces et territoires seront comparés aux fins de l'indice, puisque certains enjeux sont de compétence locale.

Nous avons commencé par examiner qualitativement certains sujets qui ont fait les manchettes et auxquels les consommateurs peuvent facilement s'identifier. Cela inclut notamment les règles d'« importation » de l'alcool et de l'assurance automobile, deux produits de consommation courante pour lesquels il est également possible d'obtenir des données pertinentes. Nous avons aussi inclus les pipelines et l'accès au marché de l'énergie puisqu'au Canada, le secteur des ressources naturelles (incluant les hydrocarbures) est le principal contributeur au PIB, à l'emploi et aux recettes fiscales.

**Ces dernières années, les politiciens provinciaux, territoriaux et fédéraux ont appuyé la création d'un véritable marché commun canadien et ont aussi convenu d'une sorte de « gabarit », celui de l'Accord de libre-échange canadien (ALEC) de 2017.**

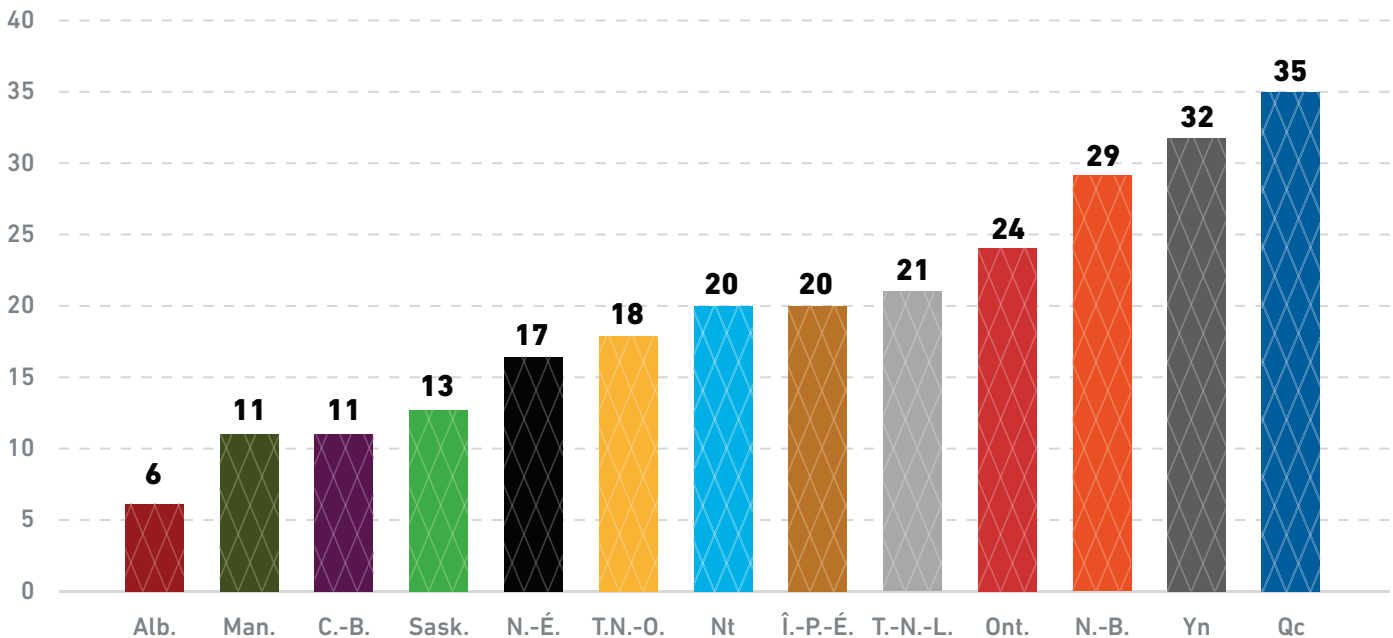
Ensuite, nous avons consulté l'Accord de libre-échange canadien de 2017 aux fins de notre classement quantitatif. Les provinces et territoires font l'objet de multiples exceptions dans l'ALEC. Nous avons fait le total des trois types d'exceptions – énumérées sous les rubriques approvisionnement, mesures existantes et mesures futures – pour chaque province et territoire, puis les avons classés en conséquence, en ajustant le total pour tenir compte des annonces officielles éliminant ces exceptions.

### Le classement

L'Alberta se classe au premier rang grâce à la suppression récente de la plupart de ses exceptions prévues dans l'ALEC. La Colombie-Britannique et le Manitoba arrivent *ex aequo* au deuxième rang, ce dernier ayant aussi supprimé certaines de ses exceptions, tandis que la Saskatchewan obtient la quatrième place. Le peloton de queue est formé du Nouveau-Brunswick, du Yukon et

Figure sommaire exécutif

## Indice de leadership en matière de commerce interprovincial (une note plus basse = moins d'entraves au commerce)



Sources : Voir Tableau 2-1 du présent rapport.

du Québec, qui sont visés par le plus grand nombre d'exceptions.

### Solutions : comment les provinces et territoires peuvent-ils améliorer leur note

De façon générale, il existe trois solutions possibles aux entraves au commerce intérieur.

- **Première option : les gouvernements fédéral, provinciaux et territoriaux continuent à préciser et à supprimer les exceptions prévues dans l'Accord de libre-échange canadien.**
- **Deuxième option : les provinces et territoires ont davantage recours au système de « passeport » de reconnaissance mutuelle lorsque celui-ci n'est pas déjà employé.**
- **Troisième option : une province ou un territoire agit unilatéralement et met fin aux barrières et règlements qui freinent la formation d'un marché intérieur véritablement libre.**

### Les Canadiens veulent un pays, une économie

Malgré le large éventail des notes obtenues, les Canadiens de partout au pays expriment clairement la volonté que le Canada soit un seul pays doté d'une seule économie. Dans un sondage Ipsos réalisé en 2017 à la demande de l'IEDM, neuf Canadiens sur dix considéraient qu'ils devraient avoir le droit de transporter d'une province à l'autre tout produit acheté légalement. Les Canadiens veulent vraiment ce sur quoi Macdonald, Cartier et leurs collègues avaient insisté en 1867 : une liberté de commerce sans entraves.

## INTRODUCTION

### A Century and a Half of Internal Trade Barriers

Canada was founded as a nation in part to eliminate the troublesome trader barriers that existed in pre-Confederation British North America. For example, in the Province of Canada, George Brown, a reform-minded politician from Canada West (formerly Upper Canada), remarked how a trip to Nova Scotia or New Brunswick was like going to a foreign country, where a “customs officer meets you at the frontier, arrests your progress, and levies his imposts on your effects.” Instead of such isolationist border barriers which hampered travel and trade, Brown argued “heartily for the union, because it will throw down the barriers of trade, and give us control of a market of four million people”—to which his colleagues responded, “Hear, hear.”<sup>1</sup>

Brown was not alone in his desire to see a new country that would overcome the isolationist nature of then pre-Confederation barriers to free trade across British North America. In 1865 and 1866, New Brunswick parliamentarians debated the matter and John McMillan looked to England and its attachment to free trade as an example to follow. In 1866, he argued that a spirit of progress should animate his fellow citizens, and open borders and the prosperity they would bring could be accomplished through confederation. “To enter into an alliance that will enable us to have free trade with our neighbours, and this union of the provinces, I maintain, would be commercially the best step we could take.”<sup>2</sup> In Newfoundland, Thomas Talbot mused over how he and his fellow Newfoundlanders were “shut up here in our isolation sharing little in the great enterprise and civilizing strides that are being made east and west of us... If these evils could be swept away by Confederation, I would welcome it at any price.”<sup>3</sup>

Pre-Confederation politicians explicitly aimed at a Confederation free of imposts, duties, tariffs, and taxes on goods from each other’s provinces. They also envisioned unrestricted trade. One of the clearest statements of the founders’ intent came from John A. Macdonald, who in February, 1865 said that Canada wanted “unrestricted free trade, between people of the

five provinces.”<sup>4</sup> Such sentiments were in fact why they enacted section 121 of the *Constitution Act, 1867*, which states that “All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.”<sup>5</sup>

**The *Constitution Act, 1867*, states that “All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.”**

Regardless of any interpretations of that clause by subsequent politicians or even the courts, unrestricted trade in the new Dominion of Canada, as it became on July 1<sup>st</sup>, 1867, was always their vision. Yet 149 years after the founding of Canada, in 2016, the Canadian Senate could still identify both major and minor barriers to internal trade in Canada, including:<sup>6</sup>

- *Some truck configurations must be driven only at night in British Columbia and only during the day in neighbouring Alberta.*
- *Weight limits on certain truck tires differ across jurisdictions. The practical effect is that some truck drivers must change their tires when crossing certain provincial/territorial borders.*
- *Dairy creamer and milk container sizes differ across jurisdictions, forcing some companies to duplicate production streams.*
- *Trucks purchased in Quebec and shipped to other parts of Canada are required to obtain engineering reports from the various provinces/territories through which the trucks will transit.*
- *Beer bottle size standards differ across jurisdictions. For example, Garrison Brewing produces beer in Nova Scotia, which has bottle size standards that differ from those in Newfoundland and Labrador;*

1. Janet Aizenstat, et al. (eds.), *Canada’s Founding Debates*, Stoddart, 1999, p. 135.

2. *Ibid.*, p. 127.

3. *Ibid.*, p. 146.

4. Ian A. Blue, *Free Trade within Canada: Say Goodbye to Gold Seal*, Macdonald-Laurier Institute, May 2011, p. 10.

5. Government of Canada, Justice Laws Website, *Constitution Act, 1867*.

6. Senate of Canada, *Tear Down Those Walls: Dismantling Canada’s Internal Trade Barriers*, June 4, 2016, p. 60.

consequently, to sell in the latter province, Garrison Brewing would have to establish a separate production system.

- Even differing standards for maple syrup grades exist, with provincial, territorial, and federal standards at odds with each other.

## What Canada Is Missing: Thousands per Household and One Open Country

Provincial trade barriers not only contradict the vision of Canada's founders; they also harm the economy and thus employment and incomes, resulting in significant losses to Canadians. Statistics Canada has estimated that such barriers equate to a 6.9% tariff selling between provinces, an effect that is nonexistent between US states.<sup>7</sup>

**Statistics Canada has estimated that such barriers equate to a 6.9% tariff selling between provinces, an effect that is nonexistent between US states.**

Interprovincial trade makes up one-fifth of GDP, and could be larger absent barriers.<sup>8</sup> As the International Monetary Fund (IMF) noted in the spring of 2019, the Canadian Free Trade Agreement (CFTA) provided a platform for cooperation in reducing internal trade barriers, but it left some issues unresolved. They included "setting clear targets for reducing the number of exemptions and strengthening the process of regulatory reconciliation."<sup>9</sup> The IMF found that the potential gains were substantial and could increase real GDP by almost 4%, much more than recently-signed international trade agreements.<sup>10</sup>

Most prominently, a team of economists at the University of Calgary have calculated that internal trade liberalization could add from \$50 billion to \$130 billion to

Canada's overall GDP.<sup>11</sup> This represents between \$1,400 and \$3,700 per Canadian every year, and between \$3,500 and \$9,200 per Canadian household every year.<sup>12</sup>

## The Public Wants Internal Free Trade

In line with the vision of the founders, from Brown to Macdonald and others, Canadians are overwhelmingly in favour of one Canada, one market for goods and services. A 2017 Ipsos poll commissioned by the MEI<sup>13</sup> found that:

- Nine in ten Canadians (89%) agree (72% strongly/17% somewhat) they should be allowed to bring any legally purchased product from one province to another.
- Most Canadians do not like liquor monopolies. Only 14% agreed that provinces with these monopolies should be allowed to "protect" them by fining citizens who bring back wine or beer from other provinces.
- Less than two in ten (16%) agree that provinces should be allowed to impose restrictions on goods from other provinces to protect their own industries.
- Most Canadians (81%) think that reducing trade barriers between provinces will be good for consumers (58% strongly/23% somewhat). Over three in four (77%) think that it will be good for Canadian business (56% strongly/21% somewhat).
- Most Canadians also see free trade as an issue of national unity: 88% agree (71% strongly/18% somewhat) that "there should be free trade between Canadian provinces because we are one country."
  - This is a majority view across all regions, with agreement standing at 92% in Atlantic Canada, 92% in Saskatchewan and Manitoba, 91% in Ontario, 90% in BC, 88% in Alberta, and 81% in Quebec.
- Most Canadians think they should be allowed to order any legal product from anywhere in the country.

7. Robby K. Bemrose, W. Mark Brown, and Jesse Tweedle, *Going the Distance: Estimating the Effect of Provincial Borders on Trade when Geography Matters*, Statistics Canada, September 14, 2017, p. 33.

8. Michelle Egan, "Canada's big challenge: The long list of trade barriers between its own provinces," LSE Business Review, London School of Economics, September 23, 2017.

9. International Monetary Fund, Canada: Staff Concluding Statement of the 2019 Article IV Mission, May 21, 2019.

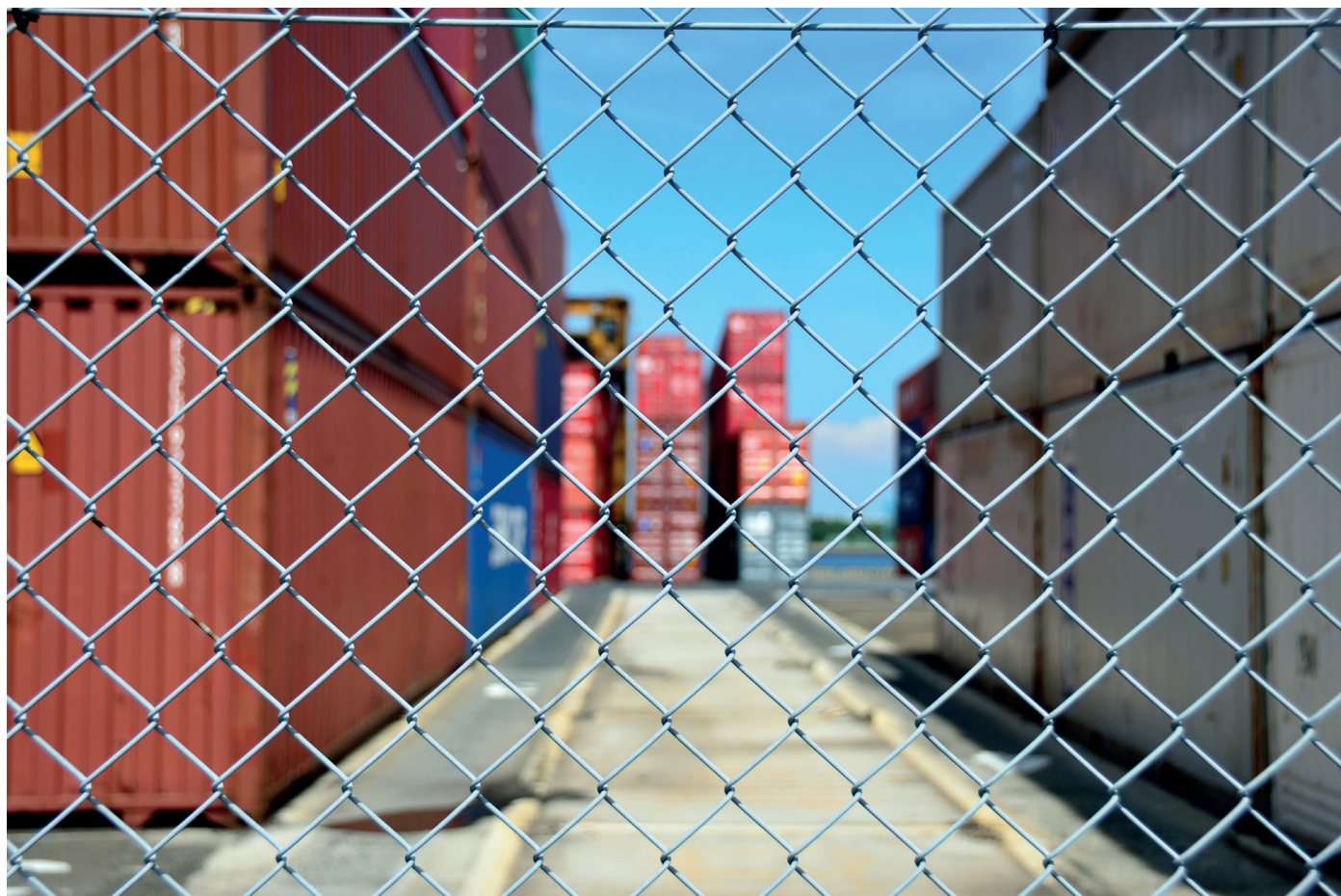
10. *Ibid.*

11. Lukas Albrecht and Trevor Tombe, "Internal Trade, Productivity and Interconnected Industries: A Quantitative Analysis," *Canadian Journal of Economics*, Vol. 49, No. 1, February 2016.

12. Statistics Canada, Table 17-10-0005-01: Population estimates on July 1<sup>st</sup>, by age and sex, 2017.

13. Ipsos Public Affairs, "Comeau Case Canadian Opinion Survey," commissioned by the MEI, November 2017.





- 88% believe (71% strongly/17% somewhat) they should be able to order goods from anywhere in Canada.
- 78% think they should be allowed to bring any amount of beer or wine they buy in one province to another.
- 84% agree (63% strongly/21% somewhat) Canadians should be allowed to order wine directly from a winery in another province.
- Agreement with this view on ordering wine is strongest in BC (91%), followed by Saskatchewan and Manitoba (88%), Atlantic Canada (88%), Ontario (87%), Alberta (87%), and Quebec (70%).

### Politicians Say They Want Freer Internal Trade

In recent years, praise of internal free trade has been a staple of political discourse. In just a sampling from 2018, consider how politicians of every stripe, from coast to coast, have argued for the importance of an

**Most Canadians see free trade as an issue of national unity: 88% agree that “there should be free trade between Canadian provinces because we are one country.”**

open internal market and expressed their desire to move toward that end.

- Nova Scotia Premier Stephen MacNeil has argued, “We need to move towards being a more pro-trade country inside of our country.”<sup>14</sup>
- With regard to limits on wine imports, Manitoba Premier Brian Pallister has said, “I suggest we consider going further by fully removing those limits, a

14. Kevin Bissett, “Supreme Court decision means an end to cross-border beer runs,” *The Canadian Press*, April 19, 2018.

move strongly supported by Canadians from every region of the country.”<sup>15</sup>

- When it was unclear if Canada, the United States, and Mexico would reach a new trilateral trade deal, New Brunswick Premier Brian Gallant opined that “there’s already a call for us to do better when it comes to internal trade because of what’s happening in the U.S.”<sup>16</sup>
- Ontario Premier Doug Ford promised in 2018, in conjunction with Saskatchewan Premier Scott Moe, to work to standardize regulations: “Most of barriers when it comes to free trade between provinces is regulations,” said Ford. “We’re going to put a list together, both myself and Premier Moe, of different sectors—let’s use transportation for example—where we can start knocking down some regulations.”<sup>17</sup>
- Others, including Quebec Premier Francois Legault,<sup>18</sup> federal Minister of Intergovernmental and Northern Affairs and Internal Trade Dominic LeBlanc,<sup>19</sup> and Prime Minister Justin Trudeau<sup>20</sup> have also endorsed a Canada free of internal barriers.

eliminating these exceptions. Each province and territory is ranked accordingly. The federal government is not scored in this report, given that it is not involved in every aspect of internal trade except by extension (i.e., its 1928 *Intoxicating Liquors Act* which delegates responsibility to the provinces for liquor imports).

## Progress by Comparing Provinces: The Internal Trade Provincial Leadership Index

Given the historical aims of Canada’s founders, the economic rationale, the majority of public opinion, and the political desire to finally transform Canada into the free-trading dynamo envisioned in 1867, this report will look at how each province and territory measures up on the issue of internal free trade. To do so, we have created the Internal Trade Provincial Leadership Index. This index measures three types of exceptions listed by province in the CFTA, cataloguing those listed under Procurement, Existing Measures, and Future Measures, and adjusting the totals to account for official announcements

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15. Steve Lambert, “Manitoba premier asks colleagues to cut restrictions on inter-provincial booze,” *National Post*, July 12, 2018.

16. Bruce Champion-Smith, “U.S. trade spat should spur provinces to knock down barriers to cross-Canada trade, New Brunswick premier says,” *Toronto Star*, June 27, 2018.

17. Paola Loriggio, “Ontario, Saskatchewan premiers vow to reduce provincial trade barriers,” *Financial Post*, October 29, 2018.

18. Secrétariat du Québec aux relations canadiennes, “François Legault souhaite des discussions résolument axées sur l’économie,” December 5, 2018.

19. Government of Canada, “Ministers LeBlanc and Brison welcome progress on trade between provinces and territories,” News release, Intergovernmental Affairs, July 20, 2018.

20. Janice Dickson, “Premiers not generally resistant to knocking down trade barriers, says LeBlanc,” *National Post*, August 29, 2018.

## CHAPTER 1

### Consumer Freedoms and Market Access

#### Consumer Freedoms across the Country

One way to measure open internal markets in Canada is to examine barriers (or their lack) for common products or services, those that consumers would immediately “identify with” and are relatively easy to track.

The ability of consumers to purchase beer, wine, and spirits and transport it across provincial boundaries is one such item. Another is automobile insurance, and the degree to which a company can enter a provincial market for basic and optional insurance.

Each province has exclusive jurisdiction over the import of beer, wine, and spirits not because of a constitutionally-assigned exclusive power but because of the 1928 federal *Importation of Intoxicating Liquors Act*, which gives the provinces that power.<sup>21</sup>

For automobile insurance, property and casualty insurance companies are regulated federally and provincially depending on the specific aspect in question. Federally, the *Insurance Companies Act* gives the Office of the Superintendent of Financial Institutions jurisdiction over the property and casualty insurance industry for financial soundness. The provinces regulate and license the insurance sector in their province and also oversee in-province marketing by such companies.<sup>22</sup>

#### Alcohol Markets

Many Canadians are likely familiar with the case of New Brunswick man Gerard Comeau, who in 2012 purchased beer in Quebec and then illegally transported it across the provincial boundary into his home province. By law, New Brunswick forbade the importation of alcoholic beverages even for consumer use beyond a marginal limit, just 12 pints of beer or one bottle of spirits or wine.<sup>23</sup> Comeau contested the fine he was given, testing the constitutional status of the New Brunswick law with reference to Section 121 of the *Constitution Act*,

1867. Section 121 states that “All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.”<sup>24</sup>

Comeau was initially acquitted by a judge of the New Brunswick Provincial Court, who concluded that a section of the provincial law forbidding importation, 134(b), was unconstitutional, and the New Brunswick Court of Appeal subsequently refused to hear the case.<sup>25</sup> The government of New Brunswick then appealed to the Supreme Court of Canada, which agreed to hear the appeal, and in 2018, ultimately ruled against Comeau. The unanimous Supreme Court judgment decreed that the New Brunswick section was constitutional and that Section 121 did not require “absolute free trade across Canada.”<sup>26</sup>

**By law, New Brunswick forbade the importation of alcoholic beverages even for consumer use beyond a marginal limit, just 12 pints of beer or one bottle of spirits or wine.**

Regardless of whether one agrees with the Supreme Court of Canada on *R. vs. Comeau* and its interpretation of Section 121, provinces are certainly not required to impose such restrictions. Table 1-1 notes whether a province restricts its own consumers from buying wine, beer, and spirits in another province (in any amount) and transporting it home for personal use. It also notes whether a consumer can order wine directly from a winery and have it shipped across a provincial boundary to their home province.

#### Automobile Insurance Markets

Automobile insurance is divided into two broad categories familiar to most consumers: basic insurance (also known as mandatory insurance), which includes liability insurance for example, and optional insurance such as windshield insurance. Some provinces allow any insurance company to provide both types of automobile

21. Michel Kelly-Gagnon and Dan Paszkowski, “Free my grapes: Dismantling Canada’s interprovincial barriers to trade,” *The Hill Times*, March 19, 2018.

22. Office of the Superintendent of Financial Institutions, *Who We Regulate*, October 23, 2014.

23. Michel Kelly-Gagnon and Patrick Déry, “The Comeau Case: The End of Provincial Trade Barriers?” *Viewpoint*, MEI, December 5, 2017.

24. Government of Canada, *op. cit.*, footnote 5.

25. Alexandre Saulnier-Marceau and Jacob Stone, “Supreme Court Confirms in *R. v. Comeau* That Provinces Can Restrict Interprovincial Trade in Beer and Other Goods,” *McCarthy Tetraault*, April 25, 2018.

26. Supreme Court of Canada, *R. v. Comeau*, SCC 15, 2018, para. 55.

Table 1-1

Consumers: Beer, wine, and spirits		
Province	Legal to transport alcohol across provincial boundaries (unlimited amounts)?	Direct-to-consumer shipment of wine
Alberta	Yes	Not Legal
British Columbia	Yes	Yes
Manitoba	Yes	Yes
New Brunswick	Not Legal	Not Legal
Newfoundland and Labrador	Yes	Not Legal
Nova Scotia	Not Legal	Yes
Ontario	Not Legal	Not Legal
Prince Edward Island	Not Legal	Not Legal
Quebec	Not Legal	Not Legal
Saskatchewan	Yes	Not Legal
Northwest Territories	Not Legal	Not Legal
Nunavut	Not Legal	Not Legal
Yukon	Not Legal	Not Legal

Source: Canadian Federation of Independent Business, Selected Internal Trade Indicators, July 23, 2019.

insurance. Some provinces have government Crown corporations selling basic/mandatory insurance, and ban competitors as well as banning free trade in such insurance. For example, an Ontario or New Brunswick automobile insurance company cannot offer basic automobile insurance in British Columbia, Manitoba, Quebec, or Saskatchewan (see Table 1-2). This is injurious both to consumer choice and competition.

## Energy Pipelines and Market Access

Canada's resource sector is the country's largest contributor to GDP and employment, not to mention tax revenues, with its share of GDP at 17% in recent years, accounting for 14% of employment. The sector includes mining, forestry, and oil and natural gas.<sup>27</sup>

27. Depending on what is included in the definition of natural resources, and the year in question, the sector's share of GDP can vary. In his 2015 paper on the matter, former Statistics Canada chief economist Philip Cross estimates the sector at 16.6%. See Philip Cross, *Unearthing the Full Economic Impact of Canada's Natural Resources*, Macdonald-Laurier Institute, May 2015, pp. 20 and 26.

**Some provinces have government Crown corporations selling basic/mandatory insurance, and ban competitors as well as banning free trade in such insurance.**

There have been no barriers to transporting mineral and forest products across provincial borders in recent years. However, over the past decade, several provincial governments have opposed and/or impeded pipeline construction (see Table 1-3). They include former and present British Columbia premiers (Christy Clark had her "five requirements," and John Horgan's government has actively gone to court to try and stop the twinning of the Trans Mountain pipeline). They also include Quebec Premier Francois Legault, who in 2018 incorrectly stated<sup>28</sup>

28. Leger, "Energy: Survey of Quebecers," commissioned by the MEI, November 30, 2018.



Table 1-2

Consumers: Automobile insurance		
Province	Basic insurance	Optional insurance
	Open?	
Alberta	Yes	Yes
British Columbia	Not Open	Yes
Manitoba	Not Open	Yes
New Brunswick	Yes	Yes
Newfoundland and Labrador	Yes	Yes
Nova Scotia	Yes	Yes
Ontario	Yes	Yes
Prince Edward Island	Yes	Yes
Quebec	Not Open	Yes
Saskatchewan	Not Open	Yes
Northwest Territories	Yes	Yes
Nunavut	Yes	Yes
Yukon	Yes	Yes

Source: Insurance Bureau of Canada, Auto, Auto Insurance, Mandatory Coverage; One Insurance, Personal, Private Auto Insurance.

that “There is no social licence in Quebec for [an oil] pipeline passing through Quebec.”<sup>29</sup> In fact, there is such a social mandate; a subsequent poll commissioned by the MEI found that 66% of Quebecers favoured the importation of Western Canadian oil into Quebec, versus just 7% who preferred importing oil from the United States, followed by Algeria (3%), Nigeria (1%), and the countries of the Middle East (1%).<sup>30</sup>

**There have been no barriers to transporting mineral and forest products across provincial borders in recent years. However, over the past decade, several provincial governments have opposed and/or impeded pipeline construction.**

29. Maura Forrest, “First ministers’ meeting ends with little in way of drama or tangible progress,” Canada.com, December 8, 2018.

30. Leger, *op. cit.*, footnote 28.

Table 1-3

Energy: Province supportive of pipelines?		
Province	Oil	Natural gas
Alberta	Yes	Yes
British Columbia	Not Supportive	Yes
Manitoba	Yes	N/A
New Brunswick	Yes	Yes
Newfoundland and Labrador	Yes	Yes
Nova Scotia	Yes	Yes
Ontario	Yes	Yes
Prince Edward Island	N/A	N/A
Quebec	Not Supportive	Yes
Saskatchewan	Yes	Yes
Northwest Territories	Yes	Yes
Nunavut	N/A	N/A
Yukon	N/A	N/A

**Sources, Oil** – **AB**: Justin Giovannetti, “Kenney moves to confront B.C., court Quebec over pipelines,” *The Globe and Mail*, April 17, 2019; **BC**: Rob Shaw, “Disappointed Horgan says B.C. will continue with Trans Mountain pipeline fight,” *Vancouver Sun*, June 19, 2019; **MB**: David Baxter, “Oil pipelines remain contentious as more provinces opposed to federal carbon tax,” *Global News*, July 10, 2019; **NB**: Elizabeth Fraser, “Higgs pushes national energy corridor to get pipelines built with few holdups,” *CBC News*, July 15, 2019; **NL**: The Canadian Press, “‘We can wait no longer’: Newfoundland unveils plans to double oil production by 2030,” *Financial Post*, February 19, 2018; **NS**: Todd Veinotte, “N.S. premier joins call to restart Energy East pipeline project pitch,” *Global News*, May 31, 2018; **ON**: Ontario Government, “A Plan for the People: Ontario Economic Outlook and Fiscal Review,” November 15, 2018; **QC**: The Canadian Press, “Legault congratulates Kenney but says Quebec won’t accept a new oil pipeline,” *City News*, April 17, 2019; **SK**: Adam Macvicar, “Saskatchewan Premier Scott Moe urging feds to restart Trans Mountain project,” *Global News*, August 30, 2018; **NWT**: Michael Allan McCrae, “A northern pipeline could move Alberta’s stranded oil and gas: NWT Premier,” *Mining.com*, August 4, 2012.

**Sources, Natural gas** – **AB**: Sammy Hudes, “Kenney promises to speed up well approvals, get ‘fair price’ for natural gas,” *Calgary Herald*, April 2, 2019; **BC**: Chris Newton, “Horgan announces new framework for natural gas and LNG development in B.C.,” *Energetic City*, March 22, 2018; **NB**: Elizabeth Fraser, “Higgs pushes national energy corridor to get pipelines built with few holdups,” *CBC News*, July 15, 2019; **NL**: Ashley Fitzpatrick, “Newfoundland and Labrador wants more oil, gas production,” *The Labrador Voice*, February 19, 2018; **NS**: Michael Gorman, “Premier to lead N.S. group at offshore conference in Texas,” *CBC News*, April 27, 2018; **ON**: Ontario Government, “A Plan for the People: Ontario Economic Outlook and Fiscal Review,” November 15, 2018; **QC**: “Quebec premier open to construction of gas pipeline,” *Global News*, July 10, 2019; **SK**: David Baxter, “Oil pipelines remain contentious as more provinces opposed to federal carbon tax,” *Global News*, July 10, 2019; **NWT**: Michael Allan McCrae, “A northern pipeline could move Alberta’s stranded oil and gas: NWT Premier,” *Mining.com*, August 4, 2012.

## CHAPTER 2

### Exceptions to the Canadian Free Trade Agreement

The 2017 Canadian Free Trade Agreement<sup>31</sup> (CFTA) was a joint project of the federal government, the provinces, and the territories, and took effect on July 1<sup>st</sup>, 2017, the 150<sup>th</sup> anniversary of Confederation. The CFTA replaced the 1995 Agreement on Internal Trade.<sup>32</sup> The federal government trumpeted the deal as committing “all governments to reducing the patchwork of rules and regulations that can stifle growth.” The federal government also noted that the CFTA would free up trade in “virtually every sector of the economy,” enable “Canadian companies operating in regulated professions, such as engineering and architecture, to compete for opportunities to supply their products and services to governments across the country,” enable “suppliers to most publicly owned energy utilities to bid for government contracts in many parts of the country,” and establish “a process to enhance trade in beer, wine and spirits among provinces and territories.”<sup>33</sup>

The Canadian Free Trade Agreement was a positive rhetorical commitment to fewer hurdles for an open internal market in Canada. However, the agreement contains multiple exceptions on government procurement, and also on specific goods and services, categorized as “existing measures” and “future measures.” These form the basis of our index, the explicit exceptions to internal free trade. To get a sense of some of the exceptions and how they act as a continued barrier to the free-trading dynamo on the northern half of North America envisioned by Canada’s founders, consider some examples of the Articles to which the federal government, provinces, and territories committed. And to which multiple exceptions—carve-outs from free trade—were then stipulated.

#### Examples of Exceptions

There are multiple exceptions to even the agreed-upon free-trade measures. For example, Article 313 first states in paragraph 1 that provinces shall not, vis-à-vis investment in a province, “impose or enforce, or condition the receipt or continued receipt of an advantage on compliance with, any requirement to:

- (a) achieve a specific level or percentage of local content of goods or services;
- (b) purchase or use goods or services produced locally;
- (c) purchase goods or services from a local source; or
- (d) transfer technology, a production process, or other proprietary knowledge to a person or a Party.”

However, the agreement then hollows out the above intention by noting in the next paragraph that “Nothing in paragraph 1 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.”<sup>34</sup>

**The Canadian Free Trade Agreement was a positive rhetorical commitment to fewer hurdles for an open internal market in Canada. However, the agreement contains multiple exceptions.**

Similarly, in Article 315, the provinces reserve their own right to continue monopoly behaviour so long as the government is the entity that owns the monopoly.

Without prejudice to the Parties’ rights and obligations under this Agreement, nothing in this Part prevents a Party from maintaining, establishing, or authorizing monopolies and government enterprises in its territory or expanding the scope of a monopoly to cover an additional good or service.<sup>35</sup>

Yet again, in Article 317, the provinces promise to “act solely in accordance with commercial considerations in its territory” in purchasing, selling, or supplying goods or services. The agreement then offers an exception by which the governments again reserve the right to discriminate against investors “to fulfill the purpose for

31. *Canadian Free Trade Agreement*, Consolidated version, April 19, 2017.

32. Government of Canada, “Historic trade accord strengthens Canada’s economic union,” news release, Innovation, Science and Economic Development Canada, April 7, 2017.

33. *Ibid.*

34. *Canadian Free Trade Agreement*, *op. cit.*, footnote 31, p. 18.

35. *Ibid.*, p. 19.

which the monopoly or government enterprise has been created.”<sup>36</sup>

Similarly, even before the provinces spell out their own exceptions to the CFTA, many Articles contain caveats that allow a province to circumvent the prohibitions of the Agreement. That includes carve-out exceptions for offering incentives,<sup>37</sup> adding a procurement preference for “made in Canada” goods and services,<sup>38</sup> and competition in public employment contracts.<sup>39</sup>

The federal government has a list of exceptions, some reasonable—Canadian Security Intelligence Service—and some not:

- Public relations services;
- veterinarians;
- Canada Pension Plan Investment Board and its subsidiaries;
- Public Sector Pension Investment Board and its subsidiaries;
- shared governance corporations;
- the Canada Lands Company Limited or its subsidiaries for property development;
- shipbuilding and repair, including related architectural and engineering services, by any Crown corporation for which the Minister of Transport is specified;
- transportation services, leasing and rental of transportation equipment, or transportation services incidental to a procurement contract by Marine Atlantic Inc.;
- Canada Post Corporation;
- financial management consulting of a “confidential” nature.<sup>40</sup>

## Yet More Exceptions: 50% of the CFTA

In addition to these general exceptions to specific rules, each province and territory lists exceptions to the specific chapter on procurement before later in the Agreement

stating more wide-ranging exceptions. The federal government, provinces, and territories list 26 pages of exceptions to agreed-to procurement protocols.<sup>41</sup>

Not including exceptions noted in many Articles, nearly half the pages in the CFTA—171 pages—are made up of schedules of exceptions, those noted above but also a specific exception section (Part IV) and two large annex sections (Annex I and Annex II) that specify exceptions to Existing Measures and then Future Measures.<sup>42</sup>

There are thus three sections of the CFTA that form the basis for our ranking: Exceptions for Government Procurement; Exceptions for Existing Measures; and Exceptions for Future Measures. The provinces and territories are scored according to their total exceptions in these three sections of the CFTA, adjusting to account for official announcements eliminating these exceptions (see Table 2-1).

**Not including exceptions noted in many Articles, nearly half the pages in the CFTA—171 pages—are made up of schedules of exceptions.**

Figure 2-1 shows the tally in a more visual way. Alberta is in first place, followed by Manitoba and British Columbia tied for second, and Saskatchewan coming in fourth. Quebec is in last place, with almost six times as many exceptions as first-place Alberta, and Yukon and New Brunswick are not much better.

## Remedies: How Provinces and Territories Can Improve Their Scores

In broad terms, there are three possible remedies to internal trade barriers.

- **Option One: Negotiate.** Federal, provincial, and territorial governments continue to refine and remove exceptions from the Canadian Free Trade Agreement.
- **Option Two: Reciprocate.** Provinces and territories make increased use of the “passport” system of mutual recognition where it is not already used.

36. *Ibid.*, pp. 19-20.

37. *Ibid.*, Section 320-3; 321-2.

38. *Ibid.*, Section 503-4 (a) (b).

39. *Ibid.*, Section 504: 11 (a).

40. *Ibid.*, Annex 520: 1(A) (B).

41. *Ibid.*, pp. 62-87.

42. *Ibid.*, pp. 97-103 and 207-345.

Table 2-1

Ranking the provinces and territories on internal trade barriers, exceptions to the CFTA					
Province/Territory	Procurement exceptions	Existing exceptions	Future exceptions	Total	Rank
Alberta*	0	1	5	6	1
Manitoba*	0	8	3	11	2
British Columbia	1	6	4	11	2
Saskatchewan	2	9	2	13	4
Nova Scotia	3	9	5	17	5
Northwest Territories	8	1	9	18	6
Nunavut	9	1	10	20	7
Prince Edward Island	7	9	4	20	7
Newfoundland and Labrador	5	11	5	21	9
Ontario	3	19	2	24	10
New Brunswick	22	3	4	29	11
Yukon	11	13	8	32	12
Quebec	10	19	6	35	13

**Note:** Totals reflect 2019 liberalization announced by Alberta (July, September) and Manitoba (October).

**Sources:** *Canadian Free Trade Agreement*, Consolidated version, April 19, 2017; Alberta Government, "Alberta takes bold step to increase free trade in Canada," News release, July 10, 2019; Alberta Government, "Another bold step on free trade," News release, September 21, 2019; Manitoba Government, "Manitoba Continues to Lead on Reducing Barriers to Internal Trade," News release, October 4, 2019.

- Option Three: Immediate liberalization. A province or territory acts unilaterally and ends barriers and regulations that act as a hindrance to a truly free internal market.

**Option One: Negotiate.** Federal, provincial, and territorial governments continue to refine and remove exceptions from the Canadian Free Trade Agreement.

The history of free trade between the provinces has resulted in progress in some years and reversals in others.

An example: When Alberta, under the previous government in power between 2015 and 2019, sought to protect and then subsidize provincial craft beer producers, it did so in defiance of the New West Partnership and also

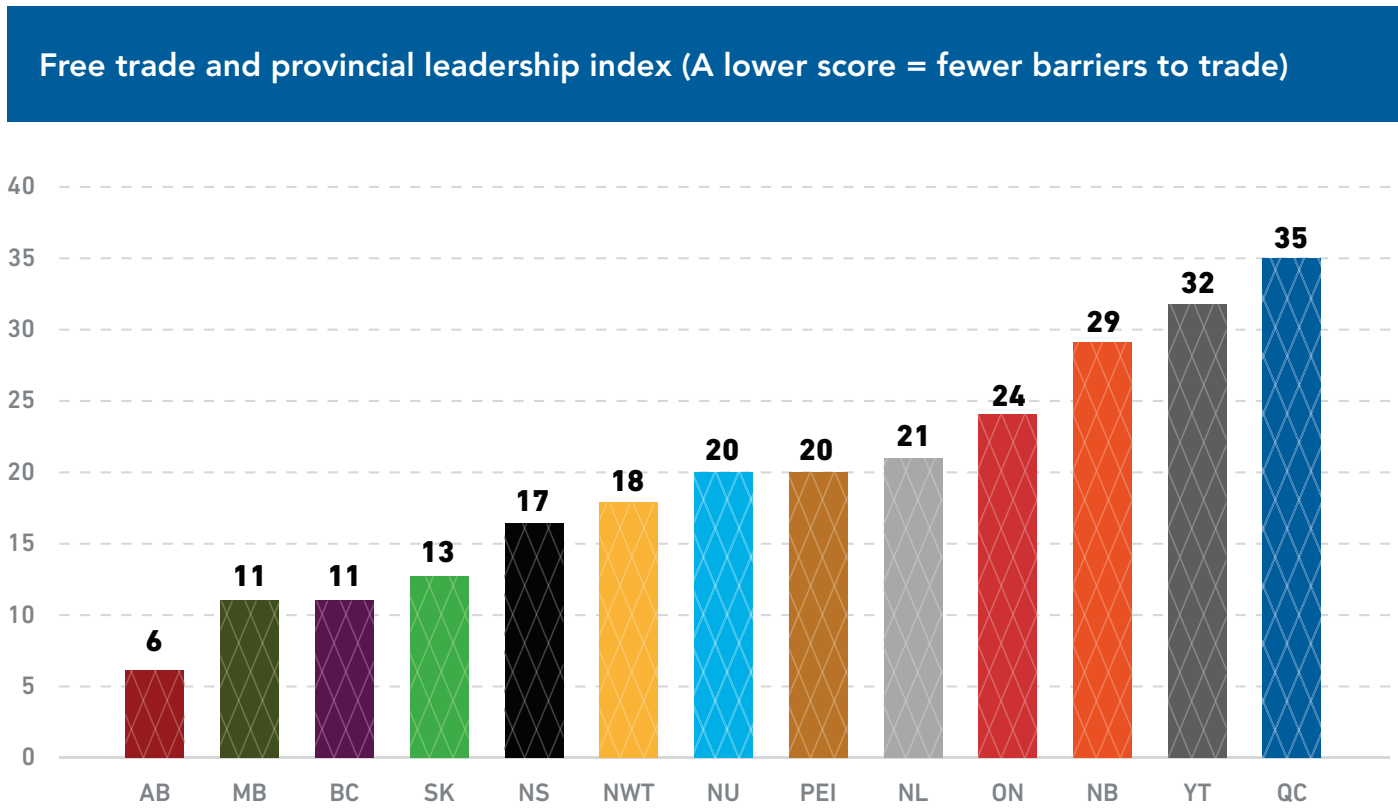
Alberta is in first place, followed by Manitoba and British Columbia tied for second, and Saskatchewan coming in fourth. Quebec is in last place, with almost six times as many exceptions as first-place Alberta.

the Constitution.<sup>43</sup> It was an obvious reversal in progress toward interprovincial free trade.

Option One is a path that could be chosen, but it is not clear why provinces and territories that have had, depending on their entry into Confederation, up to 152

43. In 2018, the Honourable Madame Justice Gillian Marriott found the subsidy program in violation of the constitution, specifically Section 121, which prohibits a province from enacting protectionist policies against businesses from other provinces: "The grant program," she wrote, "discriminated between craft brewers and craft beer based on provincial origin." See Madame Justice Gillian Marriott, Court of Queen's Bench of Alberta, *Steam Whistle Brewing Inc. v Alberta Gaming and Liquor Commission*, 2018 ABQB 476, June 19, 2018, para 109.

Figure 2-1



Sources: See Table 2-1 of the present paper.

years to abandon domestic protectionism, and have not done so would now suddenly take decisive action.

**It may be easier to decrease barriers if provinces and territories offer what amounts to a “passport” system to recognize standards, registration, and credentials (for workers) already in effect and recognized in other provinces.**

The reason why Option One is likely sub-optimal is that, as the late Tip O’Neill, the one-time Speaker of the U.S. House of Representatives, once observed, “All politics is local.” By that, he meant that politicians respond to and favour voters in their district—or their territory or province, as the case may be. This is why Option One will be forever held hostage to provincial governments responding to local voters—or, even when most provincial voters favour free trade among the provinces, local interests who have undue influence upon their governments.

Option One is therefore not an ideal option, but it is an option.

**Option Two: Reciprocate. Provinces and territories make increased use of the “passport” system of mutual recognition where it is not already used.**

It may be easier to decrease barriers to internal trade in Canada if provinces and territories offer what amounts to a “passport” system to recognize standards, registration, and credentials (for workers) already in effect and recognized in other provinces.

An example of the “passport” system is already in effect as regards capital markets, due to individual provincial regulators that require in-province registration.<sup>44</sup> This model could be replicated in other areas of provincial jurisdiction.

44. Canadian Securities Administrators, “Canadian Regulators Implement Passport Expansion and Automatic Cease Trade Orders in Multiple Jurisdictions,” News release, March 3, 2016.

**Option Three: Immediate liberalization. A province or territory acts unilaterally and ends barriers and regulations that act as a hindrance to a truly free internal market.**

Option Three likely holds the most promise. There is no reason provinces cannot simply drop their trade barriers, to open procurement to businesses across Canada.

The Alberta government under Premier Jason Kenney has already moved on Option Three. In July 2019, the Alberta Premier announced that all previous exceptions to procurement (listed in the 2017 CFTA) were unilaterally withdrawn and abolished. He also announced that his government was launching a fast-track review of the remaining exceptions.<sup>45</sup> In September 2019, the Alberta government announced further eliminations of exceptions.<sup>46</sup> And in October 2019, the Manitoba government followed suit.<sup>47</sup>

**A unilateral approach may work to spur reform by example, especially if Canadians begin to press their own provincial and territorial governments to move toward one country, one market.**

The Alberta and Manitoba examples could be a model for all other provinces and territories, and for the federal government, to follow. Indeed, when the Premiers met in the summer of 2019, they each committed to reviewing their own CFTA exceptions by the end of the year.<sup>48</sup> Yet Option Three suffers from the same political dynamics as Option One: Politics is local and not all provincial and territorial governments—due to local opposition to free trade, or a government’s ideological opposition to open markets—will necessarily follow the example.

Nevertheless, a unilateral approach may work to spur reform by example, especially if Canadians begin to press their own provincial and territorial governments to move toward one country, one market, as per the vast majority

of the public’s preferences and in line with the stated wishes of Canada’s founders.

## Specific Reforms by Province/Territory

Each province could improve its record on interprovincial trade, for instance with the following reforms:

- Alberta could improve by allowing direct-to-consumer wine shipments.
- British Columbia could improve with reform of basic automobile insurance (subjecting it to a competitive market) and by reversing opposition to the transportation of oil from Alberta.
- Manitoba could improve with reform of basic automobile insurance (subjecting it to a competitive market) and a clear statement in favour of natural gas pipelines.
- New Brunswick could, among other measures, improve by opening up to cross-border beer, wine, and liquor transportation for consumers.
- Newfoundland and Labrador could improve by opening up to cross-border beer, wine, and liquor transportation for consumers as well as allowing direct-to-consumer wine shipments.
- Nova Scotia could improve by reducing its exceptions in the CFTA and also by unilaterally removing barriers to trade.
- Ontario could improve by opening up to cross-border beer, wine, and liquor transportation for consumers as well as allowing direct-to-consumer wine shipments.
- Prince Edward Island could improve by opening up to cross-border beer, wine, and liquor transportation for consumers as well as allowing direct-to-consumer wine shipments, and offering a clear statement in favour of pipeline infrastructure for oil and natural gas.
- Quebec could improve by reversing opposition to the transportation of oil from Alberta, and opening up to cross-border beer, wine, and liquor transportation for consumers as well as allowing direct-to-consumer wine shipments.
- Saskatchewan could improve by allowing direct-to-consumer wine shipments and with reform of basic automobile insurance (subjecting it to a competitive market).

45. Alberta Government, “Alberta takes bold step to increase free trade in Canada,” News release, July 10, 2019; Jason Kenney, “Alberta will lead on internal trade and hopes all Canada joins us,” *National Post*, July 11, 2019.

46. Alberta Government, “Another bold step on free trade,” News release, September 21, 2019.

47. Manitoba Government, “Manitoba Continues to Lead on Reducing Barriers to Internal Trade,” News release, October 4, 2019

48. *Ibid.*

The territories:

- The Northwest Territories could improve by opening up to cross-border beer, wine, and liquor transportation for consumers as well as allowing direct-to-consumer wine shipments.
- Nunavut and the Yukon could improve by opening up to cross-border beer, wine, and liquor transportation for consumers as well as allowing direct-to-consumer wine shipments, and offering a clear statement in favour of pipeline infrastructure for oil and natural gas.

## Conclusion

Canada was founded in part to create, out of the different provinces, one single country with one market. Politicians of the day like John A. Macdonald and George Brown were clearly in favour of unrestricted trade between the provinces, and our constitution contains a clause that specifically endorses this. After 152 years, it is high time to let Canadians fully enjoy the benefits of free internal trade.







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Mark Milke, Ph.D. is a political scientist, independent policy analyst, author, and columnist. With six books and dozens of studies, Mark's work has been published by policy institutes in Canada, the United States, and Europe. Mark's policy work has touched on everything from taxes, civil rights, and private property to airline competition, insurance, aboriginal policy, government monopolies, and corporate welfare. His newest book is *The Victim Cult: How the culture of blame hurts everyone and wrecks civilizations*.



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