



# Policy Paper

## A New Canadian Partnership

THE PROMISING OPPORTUNITY FOR  
INTERPROVINCIAL FREE TRADE

**By Ian Brodie  
for  
One Country, One Market**

*Halifax, Nova Scotia,*

*March 2019*





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287 Lacewood Drive, Suite 204,  
Halifax, Nova Scotia, Canada B3M 3Y7  
Telephone: (902) 429-1143

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## About the Author

### IAN BRODIE

Ian Brodie is associate professor of political science at the University of Calgary. He is a fellow of the Atlantic Institute for Market Studies.

From 2003 to 2008, Brodie was a senior political aide to Stephen Harper. He was executive director of the Conservative Party of Canada, then chief of staff in both the Opposition Leader's Office and the Prime Minister's Office.

The views expressed here are Dr. Brodie's own and do not necessarily represent those of AIMS, the CCF, or the MEI – the three organizations that have sponsored the "One Country, One Market" program. They also do not necessarily represent the position of any other organizations with which Dr. Brodie has been associated. Dr. Brodie thanks the institutes' reviewers for their suggestions.

### ONE COUNTRY, ONE MARKET

The One Country, One Market movement is a collaborative campaign between the Canadian Constitution Foundation, the Montreal Economic Institute, and the Atlantic Institute for Market Studies. The movement is focused on bringing internal free trade and economic liberalization within Canada, for our collective economic benefit. The campaign began after a New Brunswick resident, Gerard Comeau, was fined for bringing alcohol across provincial borders. His case went all the way to the Supreme Court of Canada and was the launching point for the campaign which continues today. More information is available at [www.onecountryonemarket.ca](http://www.onecountryonemarket.ca).



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## Introduction

We Canadians earn our keep through trade. Millions of Canadians contribute to our international trade and their jobs, in turn, rely on Canadian businesses having secure access to many foreign markets.

That secure access depends on dozens of international trade agreements. Canada was an original party to the General Agreement on Tariffs and Trade (GATT) and a charter member of the World Trade Organization (WTO). We also have trade agreements with the United States, Mexico, several Latin American countries, most European nations, Israel, Jordan, Korea, and the major countries of the Pacific Rim. More agreements are under negotiation or at the exploratory stage. Given our reliance on foreign trade, the international rules-based system has been very good to Canada.

Canadians have an even longer history of getting secure access to domestic markets. The case for Confederation got a boost when the British North American colonies lost secure access to U.S. markets after the 1866 abrogation of the Reciprocity Treaty of 1854. Confederation's economic ambition is clear from the legal agreement that underpinned it – the *Constitution Act, 1867*. Delegates to the Confederation conferences agreed to allocate strong economic powers to the Dominion Parliament and drafted the document with the expectation that the union would soon expand beyond the four original provinces. Sir John A. Macdonald's National Policy, while not a blow for free trade *per se*, nonetheless depended on the free movement of goods between the provinces – between the industrial heartland and the hinterland.

As Canadians know, a strong and principled commitment to free trade can co-exist alongside strong commitments to family, neighbourhoods, and community. This means political leaders must make constant efforts to expand secure access to markets. Without a political commitment to strong rules and institutions, the normal preference for the local tends to win out. The cause of international free trade needs to be reinvigorated with regular doses of political momentum, as does the cause of domestic free trade.

As Canada has secured access to more and more international markets, many observers have wondered if it is easier for Canadian firms to do business across international boundaries than across provincial ones. In turn, the nagging doubt that globalization has proceeded faster than national economic integration makes the cause of domestic free trade an ongoing political issue. That nagging doubt helped propel the negotiations for the original Agreement on Internal Trade (1995), the Canadian Free Trade Agreement (2017), and the agenda of the recent meeting of first ministers.

In this paper, I investigate how Canadian political leaders can continue to bring momentum to this cause in the coming years, and show how can we progress toward a true common market for all Canadians.



## What are “interprovincial trade barriers”?

The first step in building a political agenda for domestic free trade is to be sure we understand our terms. What do we mean when we talk about impediments to interprovincial trade? Often, talk about “trade barriers” lumps together different kinds of problems into a single basket. That makes progress harder, not easier.

There are, in fact, only a handful of formal barriers to doing business in physical goods across provincial borders. Provinces have never been able to impose internal tariffs against each other’s products. Section 121 of the *Constitution Act, 1867*, requires that all articles of “growth, produce or manufacture” from one province be “admitted free” into the other provinces. Judicial interpretation has shifted the boundaries of that guarantee over time, and provinces might test new barriers following the recent *R. v. Comeau* decision, but the core meaning of section 121 has remained intact since 1867.

The exceptions to the rule of interprovincial trade in goods have usually been imposed by federal and provincial legislation working together. Take the interprovincial trade in alcohol: The federal *Importation of Intoxicating Liquors Act* (IILA) lets provincial governments control the movement of beer, wine, and liquor in and out of their territories. Provincial governments have used that power to impose taxes or markups at the expense of their consumers. Some provinces take their cut through provincially owned monopoly wholesalers; others do it through provincially owned retail monopolies. In April 2018, in the *Comeau* case, the Supreme Court of Canada upheld New Brunswick’s version of this scheme. As a result, in New Brunswick, it remains illegal to buy more than modest quantities of beer, wine, or liquor in another province and bring them home. In effect, the province protects its provincial liquor stores from competition so they can charge high markups. Provinces also use the IILA to protect local breweries, wineries, and distilleries from interprovincial competition (Knopff 2018).

In recent years, there has been some progress in rolling back barriers to the trade in alcohol. In 2012, Dan Albas, a member of Parliament from the Okanagan Valley, secured all-party support to pass Bill C-311, a private member’s bill which amended the IILA to let individual Canadians ship or bring wine across provincial boundaries if a province authorizes it. (To date, three provinces have changed their laws to allow this). Under the umbrella of the Canadian Free Trade Agreement, the provinces have also established a working group on liberalizing the internal trade on liquor. There is much more to be done on this front, but Albas’ effort suggests that if there is the political will to “free the wine,” it might be politically feasible to free the rest of the business.

Probably the most expensive interprovincial barriers to trade in goods involve the supply-managed agricultural commodities. Federal and provincial laws empower federal and provincial marketing boards to control the production and distribution of milk products, eggs, and poultry. Although there are different regulations for each supply-managed commodity, they



all have much the same impact. Each province's producers are allocated certain amounts they may produce and governments then restrict interprovincial trade accordingly. Since supply management is a trade irritant for some of Canada's biggest international partners, recent trade agreements have allowed some foreign producers to sell some of their goods in Canada's market without the burden of sky-high tariffs. Nonetheless, interprovincial trade in dairy, eggs, and poultry remains tightly regulated. Despite efforts by some think tanks and newspaper columnists, supply management enjoys solid support from the major federal parties and efforts to "free the milk" or "free the eggs" have not garnered much political appeal.

Still, these exceptions to the general rule of section 121 are minor. The cost of interprovincial barriers to alcohol and the supply-managed commodities is small relative to the size of Canada's economy. The much bigger challenge to doing business across provincial boundaries comes from less tangible barriers. When analysts calculate the cost of Canada's interprovincial trade barriers, they have in mind these less tangible ways governments impede business.

In 2016, Lukas Albrecht and my University of Calgary colleague, Trevor Tombe, produced a thorough study of the total cost of interprovincial trade barriers. They estimate that eliminating these barriers could add between \$50B and \$130B to Canada's GDP. Their analysis shows how intangible most barriers are. For instance, they highlight the impact of licensing requirements for the professions and trades, product safety, transportation regulations, and procurement policies that grant advantages to local suppliers. In a *Financial Post* article, Tombe pegged the cost of these barriers at \$7,500 per household per year, and highlighted such barriers as the requirement for safety inspections when moving a car from one province to another and the red tape involved in having multiple provincial securities regulators. Further, Laura Dawson's 2015 study came up with a similar list of ways to liberalize Canada's internal market, notably by improving labour mobility, harmonizing apprenticeship and training programs, moving to a single registry for corporations, promoting "regulatory coherence" in energy and environmental regulation, and liberalizing the dairy sector. Statistics Canada researchers estimate that interprovincial barriers are the equivalent of a tariff of nearly seven percent (Bemrose, Brown, and Tweedle 2017).

Some of these barriers to doing business between provinces may indeed range from old-fashioned protectionism to the result of inefficient regulation. But they are not traditional "trade barriers." The Confederation conferences only succeeded because the delegates agreed to give certain powers to the provinces. The exercise of those powers almost inevitably makes it harder to do business across provincial boundaries and certainly makes it harder to reduce those barriers. As provinces go about their legitimate work of regulating labour standards, highway transportation, automobile registration, the securities business, the professions and trades, and provincial and municipal procurement, all sorts of province-to-province differences will emerge. Even in 1867, there was no suggestion that section 121 might interfere with, say, provincial discretion in regulating the legal profession or establishing basic rules of road safety. Reducing the cost of federalism thus requires constant political attention.



## Isn't there a national solution?

In November, former federal Industry minister James Moore (2018) suggested resolving these problems with national political action. He suggested Parliament could invoke its seldom-used constitutional jurisdiction over trade and commerce to simply restate section 121 in federal legislation and create a Canadian version of the U.S. Interstate Commerce Commission (ICC) to sweep away provincial rules that make it harder to do business across provincial boundaries. But is this a way of permanently resolving interprovincial trade problems?

The constitutional powers of the federal government are not so clear. While the *Constitution Act, 1867*, gives Parliament broad economic powers, it also secures provincial jurisdiction over many of the areas of regulation that pose interprovincial problems. Take the regulation of securities markets, for example. In its 2007 throne speech, the Harper government made a high-profile commitment to pursuing “the federal government’s rightful leadership in strengthening Canada’s economic union.” The difficulty of moving goods and services between the provinces, it said, hurts Canada’s competitive position “but, more importantly, it is just not the way a country should work.” The speech promised follow-up legislation that would use Parliament’s constitutional powers to “make our economic union work better for Canadians” (Governor General 2007).

The first follow-up effort was a proposal for a single, national regulator for securities. As Jim Flaherty, one of the government’s toughest and most capable ministers, refined the proposal, he was able to convince several provinces to join the effort. Even so, some provinces resisted the centralization of these economic powers in federal hands and the Supreme Court of Canada unanimously ruled Flaherty’s effort was an unconstitutional overreach into provincial jurisdiction (*Reference re Securities Act*, 2011). In 2018, a less ambitious plan was upheld (*Reference re Pan-Canadian Securities Regulation*, 2018). As Dawson (2015) has cautioned, calls for national action to reduce interprovincial barriers must be cognizant of the constitutional context.

Clearly, the main problem here is not the lack of federal constitutional powers. Instead, this is fundamentally a problem of politics. Consider that the *Constitution Act, 1867*, already provides a pathway to standardizing provincial regulations. Section 94 allows the legislatures of the common-law provinces to surrender their jurisdiction to Parliament. Reinvigorating section 94, then, would eliminate regulatory barriers to interprovincial trade. Yet, it is impossible to imagine a province agreeing to any such arrangement. In the first instance, Canadian provinces have different economic interests, cultural outlooks, and political alignments. The less populous provinces chafe at any Ottawa-knows-best proposal to strengthen national economic powers because Ottawa naturally responds to the interests of the more populous provinces (Cooper 2009). The long federal-provincial battles over natural resources are a cautionary tale. Alberta and other oil-producing provinces are always suspicious about federal



energy plans and strategies, and with good reason, as the energy-consuming provinces elect more MPs to Parliament. Albertans of a certain age understand the threat of such centralized programs because they remember Pierre Trudeau's National Energy Program. The fact is, less populous provinces will always have unique economic interests even when they share a commitment to economic liberalization with whoever holds sway in Ottawa. Former Alberta premier Peter Lougheed was right to insist on adding section 92A to the Constitution to secure provincial jurisdiction over natural resources.

This political dynamic compounds the natural conflict of vision between the cosmopolitan "Anywheres" who see humanity as a global community of deracinated individuals able to live anywhere on the globe, and the "Somewheres" who are tied to local communities, neighbourhoods, and families (Harper 2018, Goodhart 2017). The globalist Anywheres are impatient with nation-states insisting that nation-states matter. In matters of international trade, they dream of a time when global authorities can impose their will on nation-states. In Canada, advocates of strong federal action like Moore risk becoming domestic Anywheres. Expanding the interpretive scope of federal powers eventually empowers national authorities to impose their will on recalcitrant provinces (such issues as the carbon tax come to mind).

The conflict between Anywheres and Somewheres is particularly challenging in the quest for "regulatory harmonization." Standardizing regulations is inevitably a detailed, bureaucratic exercise. The EU's supra-national authorities impose harmonized regulations on nation-states, with predictable results. The creators of *Yes, Minister* captured the problem when they made Jim Hacker's campaign against the EU's standardized "Euro-sausage" the key element vaulting him into the prime ministership (*Yes, Minister*, Episode 22, "Party Games," first broadcast Dec. 17, 1984). Hacker's uncharacteristically poetic public pronouncement is as fresh in the Brexit era as it was more than 30 years ago:

*"They turned our pints into litres and our yards into metres.  
We gave up the tanner, the threepenny bit,  
The two bob piece and the half crown.  
But they cannot and will not destroy the British sausage!"*

If reducing the barriers to doing business between provinces depends on having a stronger Ottawa, then the cause is hopeless. The constitutional and political challenges are nearly insurmountable.



## However, progress is possible

Fortunately, there are alternatives to national solutions. Provincially led progress has worked when it comes to reducing the cost of doing business between provinces, and 2019 might be the year for such progress on a large scale.

The New West Partnership (NWP) provides a model of provincially led progress. Signed in 2010, the NWP was originally an agreement between like-minded governments in British Columbia, Alberta, and Saskatchewan. It aimed to reduce the cost of doing business across their boundaries by improving labour mobility, recognizing out-of-province business registrations, standardizing regulations, and opening up provincial/municipal procurement. In 2016, Manitoba also joined the NWP after a new provincial government took office.

The coalition of like-minded provincial governments that negotiated the NWP has disappeared and the political momentum that propelled it dissipated in 2011 when Christy Clark's election as B.C. premier ignited a dispute with Alberta over energy and oil pipelines. Nonetheless, the NWP is still in force and it remains easier to do business among the four NWP provinces today than it was in 2010. Even Alberta's threat of retaliation against B.C. wines over the pipeline impasse did not cripple the arrangement. The NWP shows that political vision and smart implementation at the provincial level can create rules and institutions with a lasting impact. Pragmatic, market-oriented premiers can put a pragmatic, market-oriented idea into place and make it stick.

In 2019, an even more powerful alignment of like-minded governments could emerge, and every province should be ready to take advantage of it.

In 2018, Saskatchewan's Scott Moe, Ontario's Doug Ford, and New Brunswick's Blaine Higgs joined Manitoba's Brian Pallister in the ranks of market-oriented provincial premiers. Nova Scotia's Stephen McNeil and Prince Edward Island's Wade MacLauchlan have also pledged their support for interprovincial free trade. Moe remains committed to the NWP and Pallister brought Manitoba into the partnership. Higgs is exploring options to secure New Brunswick's economic growth. Ford has declared that his province is "open for business" and has met with Moe to discuss freer trade between their two provinces. François Legault was elected premier of Quebec on a similar platform, promising to seize opportunities for Quebec to grow rich enough to escape equalization payments.

In the coming weeks, Jason Kenney could become premier of Alberta. Kenney (2018) has made aggressive promises to pursue interprovincial free trade and will need to lay the groundwork for interprovincial agreement to build pipelines. He already has close links to Pallister, Moe, Ford, and Higgs. If those five premiers can entice Legault into joining a provincial coalition for domestic free trade, they would have considerable clout (the six provinces together constitute more than 82 percent of the Canadian economy). It's even conceivable the group



could be larger with the additions of Nova Scotia, P.E.I., and even Newfoundland and Labrador. Together, this group has more than double the economic clout of the New West Partnership and will have a strong incentive for an even more ambitious effort at reducing interprovincial barriers to trade from the Rockies to the St. Lawrence.

Given the size of the possible market, and using the New West Partnership agreement as a starting point, how far could those six provinces go? Could they agree to a mutual recognition of each other's professional licences and trade tickets? Could they make it easier for lawyers, accountants, engineers, and others to do business across their borders? Could they open up bidding on all public-sector contracts? Could they harmonize transportation rules and create a highway corridor with the same trucking regulations from the Rocky Mountains to the Atlantic Ocean? Could they let provincially regulated financial institutions do business across provincial boundaries? Thinking of the future workforce, could the six governments make it as easy to transfer college and university credits between their institutions of higher learning as it is to move those credits between institutions within Alberta? Could their agreement include a chapter on energy that builds confidence in safety standards for fracking, pipelines, and electric power lines? Could that arrangement let Canada unlock more of its natural resource wealth?

Here is the reason to be optimistic: The original New West Partnership reduced barriers across three provinces with about 36 percent of the Canadian economy. A new Canadian partnership could go further if it included 80 percent of Canada's economy. A deeper, broader agreement would powerfully reignite the country's business agenda and brighten prospects for the entire country. It would give Canadians more control over the country's shared economic future. And, done right and done quickly, eventually the other provinces and territories would have to join.

Between now and the Alberta election, supporters of a stronger Canadian common market should make a list of areas where these six provinces can agree to harness the potential of the current opportunity that exists across Canada, and be prepared to take advantage of it. If Kenney becomes premier of Alberta, there will be a short window of opportunity for the provinces and territories to craft that new Canadian partnership.

The New West Partnership negotiations took a year. The interested premiers should instruct their negotiators to have a new Canadian partnership agreement in principle ready by Labour Day of 2019. An urgent schedule would let the premiers use the resulting momentum to present a united front during the fall's federal election campaign. In signing the new Canadian partnership, they should challenge the federal parties to publish their plans for making it easier to do business in Canada during the election. The new Canadian partnership should eliminate provincial barriers and preferences for beer, wine, and liquor, a move that would be popular and give the effort a political boost. The premiers could then challenge the federal parties, at a minimum, to promise to outright repeal the IILA's restrictions on provincial alcohol imports.



That move would ensure there could be no backsliding in freeing the beer, the wine, and the rest of the liquor store. The premiers could press the federal parties to reduce growth-killing regulations and taxes at the federal level, and bring federal regulations into line with the standards of the new Canadian partnership.

There will be challenges in negotiating such a partnership. Quebec's language requirements for professions and trades, as well as its civil law, will need to be considered. Some provinces might not want to apply standard safety rules to every one of their highways. A new Canadian partnership might involve temporary licences for professionals in Quebec and limit its impact to certain highway corridors. But given the size of the market, the provincial partners should be able to find a way to harness the potential benefits. And just as Confederation was designed from the beginning to admit new provinces to the union, the new Canadian partnership should be designed to admit new provinces easily, too. It should also establish a team of officials to measure the agreement's economic impact, recommend new areas to add to the agreement, and make the case for other provinces to join.

Since 1945, Canada has benefited tremendously from the liberalization of international trade. This did not happen because nations unilaterally dismantled trade barriers, as many libertarians might have hoped. Nor did liberalization happen because a global institution imposed a solution, as some global governance enthusiasts might have hoped. Instead, nations that recognized that they would benefit from freer trade negotiated a rules-based approach and created institutions to encourage everyone to abide by those rules.

Those rules and institutions worked. Free trade between nations was built over time by deliberate government action. It has paid uncountable dividends for billions of people in every country that agreed to join. Nation-to-nation, rules-based liberalization has brought us wealth, health, and a cleaner environment.

In 2019, it is time to take advantage of the opportunity to press ahead with interprovincial trade liberalization at home.



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