

Expert Group on Canada-US Relations



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One Canadian Economy

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Disclaimer

This discussion paper is intended to stimulate discussion on important issues related to the Constitution and the removal of interprovincial trade barriers. The opinions in this paper solely represent the views of the authors. They do not necessarily reflect the views of other members of the Expert Group on Canada-U.S. Relations or the organizations of which both the authors and other members of the Expert Group are members. This discussion paper is a longer version of an article published by the Macdonald-Laurier Institute and available at this [link](#).

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Executive Summary

This paper argues that in the face of a hostile U.S. administration and damaging tariffs, Canada must now treat the removal of internal trade barriers as an urgent nation-building project. It describes how the Carney government has already used its constitutional trade and commerce powers to eliminate federal barriers through the One Canadian Economy framework, notably the Free Trade and Labour Mobility Act and the Building Canada Act, while extending mutual-recognition style agreements like the Canadian Mutual Recognition Agreement to ease cross-provincial trade and labour mobility. However, because these measures leave provincial protectionist laws intact.

Because cooperative federalism is constrained by separatist pressures in Quebec and Alberta, the paper contends that Ottawa should be prepared—when politics permit—to pass robust legislation invalidating provincial rules that inhibit extra-provincial commerce, drawing explicitly on the broad federal authority envisioned in the 1867 BNA Act (sections 91, 92, the declaratory power, and disallowance).

The piece concludes that revitalizing the original Confederation vision of a strong central government, now reinforced by modern jurisprudence recognizing federal “national concern” powers over issues like carbon pricing, is essential to create a truly national economy capable of withstanding current existential challenges.

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Faced with a hostile American administration, the Carney government, to its credit, has undertaken major initiatives on two important fronts: internationally, to diversify Canada's trade relations to lessen dependency on the U.S.; and internally, to remove impediments to the cross-Canada flow of goods and services, to strengthen Canada's internal economic well-being in meeting the U.S. challenge.

Regarding internal measures, Parliament passed groundbreaking legislation in mid-2025 to remove *federal* barriers to inter-provincial trade, freeing up the movement of goods and services regulated at the federal level. Provincial trade barriers, however, were left untouched. Instead of legislation, the Carney government engineered new interprovincial agreements to free up domestic trade, part of a decades-old approach that has been expedient and avoided constitutional battles but, over time, has achieved less-than-perfect results.

While the federal government could go further and exercise its constitutional authority and legislate to prevent provincial barriers, in today's environment, it is a non-starter because of the risks of a constitutional blow-up, especially with resurgent separatist forces in Quebec and new ones in Alberta at a time when maintaining national unity is more critical than ever.

But circumstances may change. At some point, federal legislation that directly prohibits *provincial* trade barriers could be actively considered, especially given the shattered trade and commercial relationship with Canada's southern neighbour and the corresponding need to improve Canada's internal economic fortunes. As the following will show, short-term expediency aside, Parliament has the necessary powers to do this. Ultimately, it's a matter of political determination to move in this direction.

Releasing Economic Potential

Internal fragmentation has long been seen as a major inhibitor to Canada's economy, even before the damage done by the Trump tariffs. As one recent example, a 2022 Macdonald-Laurier Institute study, *Liberalizing Internal Trade Through Mutual Recognition: A Legal and Economic Analysis* estimated that if all federal, provincial and territorial barriers to internal trade are removed, Canada could expand the Canadian economy by \$200 billion. This represents up to \$5,000 for every Canadian.¹

¹ There have been countless other analyses in the same vein, among them: Manucha, R., "Tangled in Red Tape: How Canada Can Free Its Internal Trade Market", *C.D. Howe Institute*, 1 April 2025 (<https://cdhowe.org/publication/tangled-in-red-tape-how-canada-can-free-its-internal-trade-market>).

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As to the added impact of Trump's tariffs, the federal government website states the issue clearly:

“The imposition by the U.S. of tariffs on Canada has underscored the urgency to quickly address longstanding barriers that have fragmented our economy and limited opportunities for Canadians. Action to remove trade barriers and advance major nation-building projects will help maximize our economic potential and make Canada stronger at home and abroad.”

The centrepiece of the Carney government's actions to address this fragmentation is two milestone pieces of legislation: the *Trade and Labour Mobility in Canada Act* and the *Building Canada Act*, both passed by Parliament in 2025. These measures utilize federal constitutional authority over trade and commerce to remove barriers to internal trade and labour mobility, and to advance nation-building projects crucial to driving Canadian productivity growth, energy security, and economic competitiveness.² These statutes break new ground.

While groundbreaking and highly important, the new laws apply only to *federal* trade barriers, leaving provincial laws unaffected. Instead, the Carney government has used the vehicle of agreements among the various provinces to dismantle internal trade barriers. Adding to the 2017 *Canadian Free Trade Agreement* (CFTA), the 2025 *Canadian Mutual Recognition Agreement* (CMRA) provides that a product certified in one province/territory will be accepted in all others.

This approach, following a long history of cooperative federalism, is pragmatic and expedient, getting things done through cooperation and avoiding a constitutional confrontation by mandated dismantling through federal legislation.

That said, there is an argument for going beyond this, perhaps when circumstances are less fraught, with additional legislation under the trade and commerce power that affirms the notion of a national economy and says any provincial law aimed at protecting local businesses by inhibiting extra-provincial commerce is null and void.

² These two statutes were passed under the umbrella of the *One Canadian Economy Act*. The *Free Trade and Labour Mobility Act* eliminates federal barriers by allowing goods, services, and certified workers from one province/territory to be recognized across Canada where these come under federal jurisdiction. The *Building Canada Act* enables the federal government to expedite approval processes for "nation-building" projects (e.g., energy corridors, transportation) deemed in the national interest.

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While not ignoring the highly political aspects, this piece offers some ideas for moving in this direction at the end.

Historical Context Is Critical

Before discussing some of these ideas, it is useful to recall that, withstanding the expediency of cooperative federalism, Canada was actually designed as a strongly centralized country under the 1867 *British North America Act*, with the federal government exercising paramount authority over all matters of national dimension. While much water has passed under the bridge since 1867, remembering those foundational principles is especially important in addressing the threat the country faces today.

It is not intended to review the arcane jurisprudential history of federal authority being attenuated over many years by the Supreme Court of Canada's judgements (and prior decisions of the Judicial Committee of the Privy Council). These decisions were written at a different time when the country's future was not under attack. There are hundreds of scholarly articles that have done this.

That said, it is important to remind ourselves that broad federal power to act in the national interest was a central feature in the pre-confederation debates in the United Canada parliament in 1864-1866, especially after witnessing the near collapse of the U.S. republic in the Civil War. As Eugene Forsey wrote in a seminal article some 50 years ago,

"The second main feature of Macdonald's Constitution was its emphasis on a strong central national government. This was a conscious revulsion from American experience. What was threatening to destroy American federalism? 'States' rights.' The American Founding Fathers had given the central Government and Legislature only a short list of specific powers; everything else was 'reserved to the states and to the people.' . . . So the Canadian Fathers did just the opposite: they gave the provinces only a short list of specific powers; and

. . . everything not distinctly and exclusively conferred upon the local governments and legislatures, shall be conferred upon General Government and Legislature . . . This is precisely the provision which is wanting in the Constitution of the United States We thereby strengthen the Central Parliament and make the Confederation one people and one government, instead of five peoples and

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five governments .. one united province, with the local governments and legislatures subordinate to the General Government and Legislature.”³

This view was reiterated when the BNA Act was under consideration in the British Parliament. In the second reading in the House of Lords, 19 February 1867, Lord Carnarvon, the Colonial Secretary responsible for the Bill, had this to say:

“... I ought to point out that just as the authority of the Central Parliament will prevail whenever it may come into conflict with the Local Legislatures, so the residue of legislation, if any, unprovided for in the specific classification which I have explained, will belong to the central body. It will be seen, under the 91st clause, that the classification is not intended “to restrict the generality” of the powers previously given to the Central Parliament, and that those powers extend to all laws made “for the peace, order, and good government” of the Confederation—terms which, according to all precedent, will, I understand, carry with them an ample measure of legislative authority.”⁴

Charles Adderley, Under-Secretary of State for Colonies, in presenting the Bill for second reading in the House of Commons, 28 February 1867, gave more content to the rationale for a strong central government as spelled out in Canada’s pre-Confederation debates in the mid 1860s:

“Was there ever, let me ask, a country so composed by nature to form a great and united community? By their mutual resources—by the assistance of their different interests, they would make together a powerful and prosperous nation. *As long as they remain separate, they are a prey to the commercial policy of other nations, and mutual jealousies among themselves. Disunion saps their liberty as well as their power, and paralyses their self-reliance. On the other hand, one united Government would be able to keep the peace, and would remove every temptation to aggression.* One national Government composed of the best men out of all the Provinces, would draw out and develop the resources of the country for the common interest; and, at the same time, a combined revenue would give larger credit, and enable greater economy.”⁵
(emphasis added)

³ United Canada Confederation Debates, 1865: quoted in Forsey, E., “In Defense of Macdonald’s Constitution” (1976-1977) 3 *Dalhousie Law Journal* 529.

⁴ <https://primarydocuments.ca/second-reading-lords-february-19-1867-uk/>

⁵ <https://hansard.parliament.uk/Commons/1867-02-28/debates/1bb368ad-d39d-4ff9-96af-365fd1fb142b/BritishNorthAmericaBill>

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This foundational underpinning of the Canadian Confederation, creating a united country with a strong central government, as expressed by Canadian and British leaders in 1865-1867, needs to be resurrected today to confront the aggression the country faces from its hostile neighbour to the south.

Distribution of Constitutional Powers

In considering an expanded interprovincial trade law, a brief look at the division of powers in the BNA Act – now part of Canada’s 1982 Constitution - is necessary⁶. As is well known, section 91 gives the federal Parliament authority over the “peace, order and good government” (POGG) of the country as a whole, meaning over matters of broad national concern.

Less well known is that section 91 goes on to say that “without restricting the generality” of those powers, the federal government has specific jurisdiction over a list of matters of national importance, such as banking, currency, defense, criminal law, as well as “trade and commerce” – and not just foreign trade and commerce, but trade and commerce generally, external and internal. And since nothing in the enumerated list in section 91 restricts the generality of Parliament’s POGG jurisdiction, it has over-arching authority to remove provincial trade barriers that impede the realization of a truly national economy.

Compare this with the provincial lane, which is much narrower, restricted under section 92 to an enumerated list of local matters - things like municipalities, hospitals, property and civil rights, education. And, to underscore the limits of that authority, section 92 says provincial jurisdiction is confined to matters “merely” of a local or private nature. The word “merely” is an important qualifier.

There is more in the BNA Act that underscores the intention to have strong governance from the centre:

First, section 92 specifically excludes provincial jurisdiction over any works that connects one province with another.

Second – and this is important – under section 92 the federal government can take over any work, even one entirely within a province, that Parliament declares to be

⁶ The 1867 BNA Act was incorporated into Canada’s *Constitution Act 1982* but re-entitled the “Constitution Act, 1867”. But to avoid confusion, this article uses the term “BNA Act” in reference to the original 1867 statute.

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for the “general advantage” of the country as a whole⁷. While not used for several decades, the declaratory power illustrates the broader point – that Canada’s constitution was designed to ensure a strong central government.

Finally, added to the declaratory power is the federal government’s authority to disallow any provincial law – without restriction – to make it absolutely certain that federal authority predominates⁸.

For the sake of political harmony, successive federal governments have refrained from exercising the trade and commerce power, instead negotiating internal trade agreements as if the provinces were independent countries. At a time when Canada was not under extraordinary external threat and while there was less urgency to strengthen the domestic economy, this pragmatic approach, while inhibiting the development of a true national economy, made some sense. The world has changed.

Internal Barriers – Meeting the Challenges

Considering today’s circumstances, with the need to surmount the shattering of trade and commercial relations with the U.S. and to make serious internal economic adjustments, the issue is the extent to which Canada’s constitutional architecture would permit federal legislation that disallowed protective provincial trade barriers. The outline in this piece suggests that the federal government’s authority is there, but has been left in the wings, unutilized for several decades.⁹

There are many possibilities for formulating a federal override of provincial barriers, and it is not the intention here to prescribe how those might be drafted and packaged.

⁷ Once declared, any local work falls under federal jurisdiction, overriding provincial law, although the province still retains ownership of the individual project. Since 1867, the power has been used several hundred times, although less frequently in recent decades. Nonetheless, the power remains intact. Hanssen, K: “The Federal Declaratory Power under the British North America Act,” (1968) *Manitoba Law Journal* 87.

⁸ This power is found under sections 56 and 90 of the Constitution Act. While it has not been used since 1943, it remains intact as a constitutional power.

⁹ Worth noting is the SCC’s 2021 ruling that the *Greenhouse Gas Pollution Pricing Act* was a valid exercise of Parliament’s power in addressing vital national concerns. While not a decision based on the trade and commerce power, the Court ruled that the federal government has jurisdiction to establish minimum national standards for carbon pricing under the POGG power, acknowledging climate change as a matter of national concern.

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As a sampler, however, one suggestion would be to elaborate on the words used in section 8 of the *Free Trade and Labour Mobility Act* by amending it say something like,

“... a good produced, used or distributed in accordance with a provincial or territorial requirement is considered to meet any comparable requirement of any other province or territory.”

The precise legislative approach and detailed language can be discussed and elaborated on in the days ahead. The object of this overview is to suggest that more needs to be done to extend the scope of the *One Canada Act* to include a remedy for urgently needed internal economic adjustments to create a strong national economy. The time has come to consider re-vitalizing the intent of ensuring a strong national government when the country was put together in the 1860s.

While Confederation was well over a century ago, the vision of a strong central government to unify a new country across a large geographical space, faced with the challenges of an expansive southern neighbour even in those days, is more relevant than ever. It is a vision that needs to be revitalized by using our Constitutional underpinnings to overcome the existential challenges that Canada now faces.

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Expert Group on Canada-US Relations

The Expert Group on Canada-U.S. Relations is focused on developing the key elements of a comprehensive Canadian strategy for Canada-U.S. relations. Its work is supported by The Norman Paterson School of International Affairs, Carleton University, and the Canadian Global Affairs Institute.

Co-chairs

The Honourable Perrin Beatty, PC, OC, is a director and business advisor. He is the former President and CEO of the Canadian Chamber of Commerce and served as minister in seven portfolios, including Treasury Board, National Revenue, Solicitor General, National Defence, National Health and Welfare, and Communications and External Affairs.

Fen Osler Hampson, FRSC, is the Chancellor's Professor and Professor of International Affairs at Carleton University and President of the World Refugee & Migration Council. A graduate of the University of Toronto, the London School of Economics, and Harvard University, he is a Fellow of the Royal Society of Canada and the author and co-editor of 48 books on Canadian foreign and economic policy, as well as international relations.

Members

Thomas d'Aquino is the Founding CEO and Distinguished Life Member of the Business Council of Canada, formerly known as the Canadian Council of Chief Executives. He is also a founder and Chair Emeritus of the North American Forum and has served as a director of several of Canada's leading global enterprises. He has also served as a Special Assistant to the Prime Minister of Canada and as a Professor of International Trade and Business Transactions at the University of Ottawa Law School. He is the author of the #1 national best-seller, *Private Power Public Purpose*.

Louise Blais served as Ambassador and Deputy Permanent Representative of Canada to the United Nations from 2017 to 2021 and was responsible for the 2030 Agenda and the campaign for the Security Council. She also served on the UNICEF Executive Board, which has a \$7 billion budget, where she was elected Vice Chair in 2019. She was appointed co-facilitator by the President of the UN General Assembly for the 31st Special Session on COVID-19. She began her career as an Art Theft Analyst at Interpol. She then served as Program Manager for the National Archives Development Program from 1992 to 1996 before joining the Department of Foreign Affairs in 1992. Abroad, she was first posted to the Washington Embassy, then to Tokyo and Paris. During her 5-year mandate in France, she and the team at the Embassy were responsible for preparing Canada's participation in the G8 Summit in Deauville and the G20 in Cannes. In Ottawa, she held the positions of Director of Public Diplomacy and Executive Director of Human Resources Management, overseeing over 2,000 rotational employees worldwide.

Carlo Dade is the Director of International Policy at the University of Calgary's School of Public Policy. He was previously the founder and Director of the Trade and Trade Infrastructure Policy Research Centre at Canada West Foundation. Among other notable accomplishments, he made significant contributions to developing a national trade infrastructure plan and revitalizing Canada's trade corridors.

Laura Dawson is the Principal Program Manager (Americas) at Amazon Web Services Institute at Amazon Web Services. Named one of Canada's Top 100 foreign policy influencers by the Hill Times in 2014, Dawson is a speaker, writer, and thought leader on Canada-U.S., NAFTA, TPP, and international trade issues. Previously, she served as the Director of the Wilson Centre's Canada

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Institute, was a senior advisor on economic affairs at the United States Embassy in Ottawa and taught international trade and Canada-U.S. relations at the Norman Paterson School of International Affairs. Dawson continues to serve as Emeritus Advisor at Dawson Strategic, which provides advice to businesses on cross-border trade, market access and regulatory issues. She is a Fellow at the Canadian Defence & Foreign Affairs Institute and serves on the board of the Council of the Great Lakes Region.

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Gary Mar is President and CEO of the Canada West Foundation and the former President and CEO of the Petroleum Services Association of Canada (PSAC). He has had broad experience in government, having served as a Member of the Legislative Assembly in the Province of Alberta from 1993 to 2007 and held several senior Cabinet portfolios.

Marie-Lucie Morin is the Vice-chair of the Board of the Asia Pacific Foundation of Canada. She served as Executive Director for Canada, Ireland, and the Caribbean at the World Bank from 2010 to 2013. Before joining the World Bank, Ms. Morin pursued a 30-year career in the Federal Public Service. She was appointed National Security Advisor to the Prime Minister and Associate Secretary to the cabinet (2008 – 2010); previously served as Deputy Minister for International Trade and as Associate Deputy Minister of Foreign Affairs (2003 -2008). During the earlier years

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of her career with the Department of Foreign Affairs and International Trade, Ms. Morin completed assignments in San Francisco, Jakarta, London, and Moscow. She was appointed Ambassador to the Kingdom of Norway with concurrent accreditation to the Republic of Iceland (1997 – 2001). Ms. Morin was awarded the Governor General's 125th Anniversary of the Confederation of Canada Medal, was named Chevalier de la Légion d'honneur in 2012 and became a member of the Order of Canada in 2016.

Vice-Admiral (Retired) Mark Norman retired from the Royal Canadian Navy in the rank of Vice-Admiral in August of 2019 after over 39 years of service. Norman started his naval service as a reserve diesel mechanic in 1980 and rose through the ranks to be the Vice-Chief of Defence. His military career has seen him serve at sea domestically and internationally, command a warship, the Canadian Atlantic Fleet, and ultimately the Royal Canadian Navy itself. Since retirement, Norman has applied his energy to a variety of pursuits, including as Champion for the Royal Canadian Benevolent Fund, Senior Defence Strategist at Samuel Associates, contributing to the critical debate about security and defence issues in Canada as both a fellow with the Canadian Global Affairs Institute and as a member of the Conference of Defence Associations Board.

Vincent Rigby is the Slater Family Professor of Practice and, formerly, the McConnell Visiting Professor for 2022-2023 at McGill University. He recently retired from Canada's Public Service after 30 years in senior posts across various departments and agencies, including the Privy Council Office, Global Affairs Canada, Public Safety, the Department of National Defence, and the former Canadian International Development Agency.

Colin Robertson is a former Canadian diplomat and Vice President and Fellow at the Canadian Global Affairs Institute and hosts its regular Global Exchange podcast. He is an Executive Fellow at the University of Calgary's School of Public Policy, a Distinguished Senior Fellow at the Norman Paterson School of International Affairs at Carleton University and a member of the Defence Advisory Board of the Department of National Defence.

Tim Sargent is a senior fellow and Director of the Domestic Policy Program at the Macdonald-Laurier Institute. He is also a distinguished fellow at the Centre for International Governance Innovation, a Waterloo-based think-tank that addresses significant global issues at the intersection of technology and international governance. Before joining MLI, Sargent was deputy executive director at the Centre for the Study of Living Standards. He also spent 28 years in the federal government, where he held deputy minister and associate deputy minister positions at Fisheries and Oceans, International Trade, Finance, and Agriculture and AgriFood, as well as senior positions at the Privy Council Office. At Fisheries and Oceans, he oversaw the Passage and implementation of major overhauls to the Fisheries Act and the Oceans Act, as well as the Canadian Coast Guard's multi-billion-dollar fleet renewal plan. At International Trade, he oversaw the successful negotiations for the Canada-US-Mexico Agreement (CUSMA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Sargent has a PhD in Economics from the University of British Columbia, an MA in Economics from Western University and a BA (Econ) from the University of Manchester.

John Weekes is an international trade policy adviser with experience in trade agreements and the settlement of trade disputes. From 1991 to 1994, he served as Canada's chief negotiator for NAFTA. He was Ambassador to GATT during the Uruguay Round of multilateral trade negotiations, as well as Chair of the GATT Council in 1989 and Chair of the Contracting Parties to the GATT in 1990.