

Lawrence L. Herman for Inside Policy

Ottawa may have to seriously consider federal legislation that directly prohibits provincial trade barriers.

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Faced with a hostile American administration, the Carney government has, to its credit, acted on two fronts. Internationally, it has moved to diversify Canada's trade relations to reduce dependence on the US. Domestically, it has sought to remove barriers to the cross-Canada flow of goods and services to strengthen economic resilience in the face of the US challenge.

In mid-2025, the federal government enacted [groundbreaking legislation](#) to remove federal barriers to interprovincial trade and free the movement of federally regulated goods and services.

Provincial trade barriers, however, were left untouched, especially the most notoriously protectionist ones, like agricultural marketing boards under supply management, trucking and transportation, professional engineering, alcohol distribution – to name but a few. Instead of pursuing legislation, the Carney government engineered new interprovincial agreements to free up domestic trade – an expedient, decades-old approach that has avoided constitutional battles but delivered less-than-perfect results over time.

The federal government could go further and invoke its constitutional authority to override provincial trade barriers. But in today's political climate, that is a non-starter: the risk of a constitutional blow-up – especially with [resurgent separatism](#) in Quebec and nascent stirrings in Alberta, underscored by the recent referendum announcement by Premier Danielle Smith – makes national unity too fragile to gamble.

Circumstances may change. At some point, Ottawa may have to seriously consider federal legislation that directly prohibits provincial trade barriers – especially in light of the fractured trade and commercial relationship with Canada's southern neighbour and the urgent need to strengthen the country's internal economy.

Parliament has the necessary powers to do this. Ultimately, it is a question of political will.

Releasing Economic Potential

Internal fragmentation has long weighed on Canada's economy, well before the added damage of Trump-era tariffs. Study after study has reached the same conclusion. In response, the Carney government introduced landmark legislation in mid-2025: the [Free Trade and Labour Mobility in Canada Act](#), passed by Parliament as part of a broader reform package.

Groundbreaking though it is, the statute removes only federal trade barriers, leaving provincial laws intact. To close that gap, Ottawa turned to interprovincial agreements. Building on the 2017 Canadian Free Trade Agreement (CFTA), the 2025 [Canadian Mutual Recognition Agreement](#) (CMRA) ensures that a product certified in one province or territory is accepted in all others.

This approach, following a long history of co-operative federalism, is pragmatic and expedient, getting things done through co-operation and avoiding a constitutional confrontation by enacting federal trade legislation.

There is a case for going further: new legislation, grounded in the constitutional trade and commerce power, could render any provincial law that blocks interprovincial trade to protect local businesses null and void. Some of the more egregious were noted previously, starting with protectionist supply management marketing boards. The following sections outline ideas for moving in this direction, while acknowledging the political sensitivities involved.

Historical Context Is Critical

It's important to recall that, notwithstanding the expediency of co-operative federalism, the Fathers of Confederation actually designed Canada as a strongly centralized country during the lead-up to the 1867 [British North America Act](#). These founding principles remain especially relevant in addressing today's national challenges.

Certainly, Parliamentary authority has been weakened over the years by Supreme Court of Canada judgments (and prior decisions of the Judicial Committee of the Privy Council). Hundreds of scholarly articles have reviewed these judgments. The key point to remember is, those decisions were written in different times when the country's future was not under serious attack as it is today.

Facing today's challenges – which some describe as existential – it is worth recalling that a strong central government was central to the 1864–66 pre-confederation debates in the United Canadas' Parliament, especially in light of the devastating and bloody US Civil War. As Eugene Forsey noted in a [seminal article](#) some 50 years ago, these debates, including in the United Canadas' legislature in 1865, highlight this enduring principle.

This view that Parliament should have overarching jurisdiction to unify a small, dispersed population was reiterated during the BNA Act debates in the British Parliament in February 1867, first in the [House of Lords](#) and later in the [House of Commons](#).

The Confederation principle of a strong central government, articulated by Canadian and British leaders in 1865–67, needs to be resurrected today to counter the aggression the country is facing from its unfriendly southern neighbour, strengthen Canada's internal economy, and address disruptive policies aimed at creating a "sovereign" Alberta promoted by Premier Danielle Smith and – as politically difficult as it may be – some of Quebec's protectionist policies that go beyond safeguarding the French language.

Distribution of Constitutional Powers

Examining the BNA Act's division of powers (now part of the 1982 *Constitution Act*) shows that it says nothing about provincial "sovereignty." Section 91, moreover, grants Parliament overarching authority over the country's "peace, order, and good government" (POGG), covering matters of broad national concern.

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, defence, 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 broad authority to remove provincial trade barriers that impede the realization of a truly national economy.

Premier Smith talks about the federal government staying in its own constitutional "lane" when dealing with Alberta. Contrary to her assertions, however, it's the provincial lane that is the narrow one, restricted under section 92 to an enumerated list of purely local matters – things like municipalities, hospitals, property and civil rights, and 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. Section 92 excludes provincial jurisdiction over any interprovincial work. It also allows the federal government to take over any work, even one entirely within a province, declared to be for the "general advantage" of the country as a whole. In addition, the federal government has authority under sections 56 and 90 of the BNA Act to disallow any provincial law – without restriction – to make it absolutely certain that federal authority predominates.

Although these powers are embedded in the Constitution, successive federal governments have, for the sake of political harmony, refrained from exercising that authority. Instead, they have negotiated internal trade agreements with provinces as if they were independent countries. In calmer times, this pragmatic approach – while limiting a true national economy – made some sense. Today, the world has changed.

Internal Barriers – Meeting the Challenges

Given today's urgent challenges – from repairing shattered US relations to reshaping the domestic economy – the question is how far Canada's constitutional architecture allows federal law to override provincial trade barriers alongside the *Free Trade and Labour Mobility Act*. This article argues that the authority exists; it has simply been waiting in the wings for determined leadership.

There are many possibilities for formulating a federal override, and it is not the intention here to try to prescribe just how those might be drafted and packaged. As a sampler, however, one suggestion would be to elaborate on the words used in section 8 of the Act by amending it to 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 exact legislative details can be refined later. The purpose here is to highlight the need to expand these laws, providing additional tools for urgently strengthening Canada's national economy. The time has come to revive the 1860s vision of a strong central government and give it real force against the existential challenges Canada faces today.

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