

Intelligence MEMOS



From: Lawrence Herman
To: Canadian Trade Watchers
Date: April 27, 2021
Re: EFFECTING CHANGE WITHOUT GOVERNMENT RULE-MAKING

Even before the COVID-19 pandemic, there was talk in Western countries about supply-chain vulnerability and the need for reshoring, as it's called. The issue arose not only in Canada, but in the United States – especially when Donald Trump was president – and in Europe.

It was therefore interesting to read recently about some former Canadian politicians and several key industry associations [launching an advocacy group called Reshoring Canada](#), formed to promote the return of critical manufacturing to Canada and rebuilding supply chains in this country.

The group styles itself as non-partisan and a “repository and advocate of ideas” aimed at promoting reshoring by educating the business sector, rather than calling for government regulation or legislative measures to reach its goals. That's what is most noteworthy about this initiative.

One problem with governments ordering supply-chain localization through legislative measures is that they could run up against the World Trade Organization (WTO) agreement and its strictures forbidding discriminatory measures that favour domestic suppliers over foreign providers of goods or services.

A key question in recent discussions has been about fashioning approaches to protecting and encouraging national supply chains that can be shielded from WTO trade challenges and, ultimately, from retaliation by other countries whose trade interests are injured.

WTO rules are designed to keep borders open and prevent trade barriers and discriminatory preferences. Even so, the rules allow a degree of protective measures as exceptions. But these are carefully circumscribed to cases in which local products are in short supply or where the measures involve conserving exhaustible natural resources, protecting human life and health or – controversially, as we saw under Mr. Trump – safeguarding national security.

There is a history of WTO panel decisions on these exceptions, and while some panels accepted governments departing from open market requirements, others found domestic preferences to be contrary to the WTO agreement. Government mandated supply-line preferences or reshoring is therefore not without risk of a trade challenge.

The point about the Reshoring Canada venture, as far as one can tell, is that it will employ advocacy, education and encouragement to channel corporate behaviour, rather than lobbying governments for legislative action. As a private-sector enterprise, it is not subject to WTO rules. Nor are any corporate business decisions that result from those advocacy efforts.

This illustrates a forceful and efficacious phenomenon that has grown over the past couple of decades, but is not terribly well documented, in which private actions and guidelines have a direct bearing on international trade and global markets, but are independent of treaties or agreements, and are not the result of laws, regulations or governmental policies.

These private sector standards and best practices guidelines have an undeniable influence on corporate behaviour and, hence, on global trade and investment.

Think of corporate social responsibility (CSR) and its impact on business operations outside Canada. Emerging in the late 1990s, CSR standards were first adopted by the mining and extractive sector in response to shareholder pressures for responsible environmental and labour relations practices abroad. CSR behaviour is now widespread and a major influence on offshore manufacturing in the apparel and fashion sectors, food processing and many other industries.

CSR standards and practices are not mandated by laws or by treaties. Rather, they arise from market forces, advocacy and investor expectations, and demand companies behave in certain ways in their overseas operations. While governments have encouraged the adoption of CSR standards, they have generally avoided legislating in this area. To a remarkable degree, then, CSR and its effect on international trade is private-sector driven.

The same is true of environmental, social and governance (ESG) standards. While directed to risk disclosure and thus on a different plane than CSR, here again the operation of private-sector standards, independent of state regulation, has a direct impact on corporate behaviour.

A related phenomenon operates in consumer products, such as endorsements and certifications for responsible fishing practices, ethical farming, environmental and green production methods, and the like. Consumers respond to products with these certifications not to comply with legislation or treaties, but because of private-sector action driven by the market. Even if commercial self-interest is at the core, decisions of big box retailers to only source products that have these certifications and endorsements can affect trade flows as much as tariff reductions resulting from trade agreements.

Reshoring Canada and its advocacy role is part of the same phenomenon of private-sector responses to social, political, competitive and self-preservation pressures.

It is a good illustration of private sector action aimed at channelling and modifying corporate behaviour to meet non-legislated societal objectives.

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A version of this memo first appeared in [The Globe and Mail](#).