

Intelligence MEMOS



From: Ryan Manucha

To: Canadians Concerned about Jobs

Date: July 22, 2020

Re: **TEN RECOMMENDED REFORMS FOR THE CANADIAN FREE TRADE AGREEMENT**

COVID-19 has highlighted just how economically interdependent Canadians are with one another, and the extent of the nation's intertwined domestic supply chains. As the economy re-opens, and with global protectionism looming, interprovincial trade barriers take on heightened significance.

Modern barriers to trade often consist of minor variations in regulations and processes that amount to a tyranny of small differences – different rules for truck weights, construction, health and safety, upholstered goods, drug scheduling or food labeling, to name a few.

Economic estimates suggest that Canada's GDP would grow 4 percent by eliminating internal trade barriers, and that the patchwork-nature of the Canadian regulatory landscape imposes the equivalent of a near 7 percent tariff on goods crossing provincial boundaries.

In my recent C.D. Howe Institute [Commentary](#), I focus on improving access to justice under the Canadian Free Trade Agreement (CFTA) through reforms to the dispute resolution mechanism.

Adversarial litigation plays an important role in domestic trade liberalization efforts, even if the heavy lifting is done chiefly through extensive and exhaustive inter-governmental reconciliation.

I outline 10 reforms to the existing process.

1. If a private complainant launches a CFTA claim and ultimately obtains an adjudication in its favour, the respondent government should bear all operational costs of the panel. More generally, the “loser-pays” principle should apply in respect of the panel's operational costs.
2. Allow private parties to apply for grants from the Internal Trade Advancement Fund to cover at least some of the legal costs in excess of the Tariff Cost caps at both the panel and appellate panel stages.
3. CFTA Article 1029 should be amended to incorporate the language found at Article 1012(2) (a) and Article 1030(2) (a), making monetary penalties awarded to private parties enforceable in a court of law.
4. The CFTA should be amended to allow for governments to opt in to a reciprocal arrangement of allowing the CFTA monetary penalties (or a portion thereof) awarded against them in favour of private parties be kept by those private parties, instead of passing through to the Internal Trade Advancement Fund. This would give private parties from Province A the ability to themselves keep monetary penalties, so long as Province A gives a similar privilege to private parties from Province B. Such a reform both propels the CFTA further in the direction of serving as an institution of justice, but also ensures that parties must offer such a privilege to out-of-province Canadians before allowing their own private parties to take advantage of it elsewhere inside the country.
5. The CFTA parties should endow in the Internal Trade Secretariat the funds and direction to create and enhance its public-facing communications and information dissemination role. An annual conference and an annual publication for a general lay audience are two potential, concrete, suggestions.
6. Amend CFTA Article 1015(3) to reduce the number of days given to a government to respond to a request to initiate proceedings by a private party.
7. Amend CFTA Articles 1004 and 1018 to reduce the minimum number of intervening days between the request for consultations, and the request to form a panel.
8. Amend CFTA Annex 1007.1(65) and 1024.1(65) to limit the number of days an appellate panel has to produce its report to 45 days.
9. Amend the CFTA Annex 1007.1(66) and 1024.1(66) to cap the number of days a compliance panel complaint recipient may take to make submissions to 45 days.
10. If Canada's trade policy community truly desires a network of 1203 Agreements, which experience suggests works over time to spur greater liberalization across the country, the ambiguous language of CFTA Article 1203 should be re-written in the fashion of General Agreement on Tariffs and Trade Article XXIV in light of the CFTA's Most Favoured Nation obligation.

The reforms proposed here are consistent with and advance the purposes undergirding the CFTA, and appropriately balance the competing concerns of regulatory autonomy with trade liberalization.

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