

LIFTING THE BARRIERS TO INTERNAL TRADE AND CONSUMER PROTECTION: The Example of the European Union

Executive summary
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For decades, Canadian companies that want to do business in several Canadian provinces have been decrying the barriers to internal trade – a problem that apparently was not resolved by the signing of the *Agreement on Internal Trade* in 1995.

Internal trade is presented as the ideal means to ensure Canada's economic health and foster our companies' prosperity and innovation. While external trade has grown by leaps and bounds following the conclusion of various free-trade agreements in the last thirty years, internal trade has reportedly not grown apace, particularly because of the persistent presence of tariff and non-tariff barriers, such as the differences between provincial regulations.

Among those non-harmonized regulations are the various consumer protection laws adopted by the provinces and territories to protect vulnerable parties in commercial transactions. In addition to the very existence of those laws, the differences between them can entail substantial costs to companies that must, depending on the province, comply with disparate regulations.

Meanwhile, the European Union, for example, has successfully undertaken the harmonization of consumer protection laws within Member States, while ensuring a high level of consumer protection.

After describing the state of internal trade in Canada, our report focuses on the approach advocated in Europe. Our analysis of European directives adopted to harmonize the consumer protection legislation of its Member States identifies the fields that this regional economic block has seen fit to harmonize, as well as the approaches taken.

The consumer protection harmonization agreements reached in Canada are paltry compared to the European Union's achievements, constituted by several hundred directives and regulations. We have analysed 13 directives pertaining to consumer protection in the strictest sense. Our report analyses the European approach, its principles, and the means and tools used for ensuring effective harmonization between the legislations of the autonomous Member States.

Our report studies the possibility and relevance of Canadian harmonization efforts in fields where other countries have deemed it appropriate to act. We examine the difficulties that those countries' harmonization undertakings would pose if applied in Canada, as well as possible solutions, and we discuss the harmonization process prevailing in Canada.

La force d'un réseau

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Our research leads us first to conclude that it is not the existence itself of consumer protection laws that erects internal trade barriers, but rather the divergences between the different regulatory frameworks of the entities shaping the marketplace. Second, although the Canadian harmonization approach – the best effort principle – can be adapted to Canada’s specific political structure and sensibilities, this process does not appear to have yielded the expected results in terms of lowering internal trade barriers. Although entirely conceivable, the harmonization of certain aspects of the regulatory frameworks of consumer protection in Canada will encounter a major pitfall if the necessary principles of our initiatives are not also reviewed.

The success of the European economic block in creating a single economic market rests on a vision and principles different from those chosen by Canada. Only after the EU proclaimed consumers as key players in the European economy did that economic block attain the desired success. Not only did the EU decree that all European policies, whatever their sphere, must first ensure a high level of consumer protection, but the Member States also assumed the primary duty of promoting and defending the rights and interests of consumers.

Our study leads to recommend the adoption of a similar approach to initiatives for establishing a freer market in Canada: that consumers should be at the heart of any process to lower barriers to interprovincial trade; and that the protection of consumers and their interests, economic and other, should preside over any development of a harmonization policy or initiative. We also recommend the adoption of a principle that henceforth, any reconciliation of the legislative, regulatory and administrative measures of the Canadian provinces and territories have as a priority to ensure a high level of consumer protection. Moreover, it appears essential that the Government of Canada ensure the institutional support and the resources necessary for concluding and implementing agreements to harmonize consumer protection measures. In addition, the next AIT undertakings should include the development and establishment of follow-up, monitoring and control measures for the transposition and compliance of harmonized consumer protection rules. Lastly, Union des consommateurs recommends that the CMC use relevant EU directives as a template for harmonizing Canadian laws on priority issues of consumer protection, particularly warranties, abusive clauses and access to justice.

French version available.

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