

# Policy Framework

## Introduction

The Canada/U.S. relationship is unique in the world. Our geographic proximity results in the longest border on earth. Our mutually beneficial commercial ties have given rise to deep economic integration. Our shared values and shared interests promote collaboration on the global stage. We share unprecedented common ground, both literally and figuratively.

The Canadian American Business Council (CABC) was founded in 1987, amid a fierce debate on free trade between Canada and the United States. Since then, the CABC has been a staunch advocate for free trade and of deepening the strong historical ties between Canada and the United States. Continental free trade has once again become an animating dynamic between North American countries, within the U.S. states, and amid Congress and the Trump Administration. CABC advocates for the expeditious ratification of the new NAFTA deal, the United States-Mexico-Canada Agreement (USMCA).

The CABC also serves to highlight areas of Canada/U.S. collaboration that continue to make our bilateral relationship a model for the world. In an increasingly competitive global market, it is essential that our nations maintain a coherent framework of rules that facilitate digital trade, harmonize existing regulations, and promote investment in new technologies and business models.

Now in our thirty-second year, the CABC reaffirms four core principles:

- Common Ground (modernizing our border crossing and inter-related ecosystems)
- Shared Prosperity (competitiveness, trade and regulatory cohesion)
- Joint Security (intelligence sharing and joint defense)
- Fostering Innovation (particularly technology-driven transformation)

## Common Ground

The efficiency of our air, land and sea ports is critical to the livelihoods of millions of Canadians and Americans and integral to the unhindered flow of goods and services for all North American sectors.

The CABC has advocated for many years to expand customs preclearance beyond passenger clearance at a handful of airports in Canada into cargo clearance, and other modes of border crossing including maritime and rail. We will continue to work with governments and industry on the implementation of pre-clearance expansion and other ways to improve the efficient, effective and secure flow of goods and people across the border.

Border management, which is in itself complex, becomes even more so in light of the technological advancement in supply chains and logistics and the exponential increase in cross-border data flows. The CABC will continue to focus on the implications of such advancements.

The 49th parallel separating our two countries cannot divide the ecosystems we share. CABC works to ensure our shared continental ecosystem is protected via bilateral agreements on acid-rain emissions, air quality, joint watershed and waterway management, and the sustainable development of resources.

### **Shared Prosperity**

The CABC stands for free trade and against protectionism. As such, we look for expeditious ratification of the USMCA as well as an end to tariffs and “buy local” provisions that serve to disadvantage our continental trading partners.

We advocate for enhanced regulatory cooperation, and stand against policies that distort markets. Since the fur trade, the economies of modern-day Canada and the United States have been inexorably linked. Our founding pioneers, however, could not have anticipated the fruition of government bureaucracies in a manner that brings red tape and differing regulations between Canada and the U.S., with the unintentional consequence of hindering the easy flow of goods and services in our integrated economy. One of the CABC’s primary missions is to ensure both countries collaborate to reduce regulatory differences between Canada and the U.S.

We seek to align voluntary standards. The CABC has called on the U.S. and Canada to join forces in promoting their mutual interests and to work with internationally accepted principles of standardization.

We promote labor mobility and skill development. Too many barriers prevent workers from moving with ease between Canada and the U.S. The CABC is calling for an examination of those barriers, and collaboration with government, industry, and academia on the alleviation of issues.

### **Joint Security**

From our common border to the Arctic to taking part in joint operations through NORAD and NATO, our two countries have worked closely in the defense and security of North America. In light of our deeply interconnected security interests, the CABC advocates for policies that advance our shared security including improved information sharing, and against those that fail to recognize our mutually beneficial security arrangement.

For example, the CABC has advocated against tariffs that are disruptive to our joint defense and security arrangements, and in favor of programs that promote cross-border collaboration of our defense, security, and law enforcement organizations. The Permanent Joint Board on Defense is an important tool for the armed forces in Canada and the U.S. to exchange views and share information regarding joint security.

## Fostering Innovation

North America is home to many of the world's most innovative companies in sectors such as technology, financial services, pharmaceuticals, and natural resources. The CABC is committed to eliminating barriers that limit the mobility and access to data, IP, capital, and talent across the Canada/U.S. border. Policies that promote the free flow of innovative ideas would allow our two countries to leverage their combined potential and become the world's premier region for innovation.

We support the digital trade chapter of the USMCA and believe that for North America to succeed, the innovation potential of each country, each state, and each province must be fully realized. A more innovative Canada will directly benefit all of North America. For this, we recommend that Canada and the U.S. leverage our strong fundamentals to improve our innovation ecosystem to be fully competitive with peer countries in order to enhance continental competitiveness in the years ahead.

## POLICY FRAMEWORK EXAMPLES

### I. Common Ground

#### A. Facilitate Trusted Business Travelers

Canada and the United States share a unique and prosperous relationship. One of the ways this can be measured objectively is through an examination of the border we share – it is the longest non-militarized border in the world at 9,000 km, and approximately 400,000 people and an average of US\$1.7 Billion crosses it daily.<sup>1</sup>

Collaboration between U.S. Customs and Border Protection (CBP) and the Canada Border Services Agency (CBSA) to improve facilitated business travel will enable easier and more streamlined access to both countries for business travelers, helping to loosen logjams at the border and facilitate trade.<sup>2</sup>

#### B. Establish Canadian Air Passenger Preclearance in U.S. Territory

Increasing the efficiency of the cross-border movement of goods and people is critical. New pilot projects have established more U.S. customs offices on the Canadian side of the border, allowing travelers to be screened more quickly. This has served to break up the logjams that plague cross-border travel and commerce.

While improvements have been made, the Government of Canada has stated that it will proceed slowly with these and similar pilot projects despite the fact that the aviation industry is expecting traffic growth of nearly 2.5 times the current rate by the year 2038. The CABC advocates for the expeditious

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<sup>1</sup><https://www.canada.ca/en/global-affairs/news/2018/05/minister-of-international-trade-to-visit-ohio-to-highlight-strong-canada-united-states-trade-relations.html>

<sup>2</sup> <http://www.pnwer.org/border-issues.html>

implementation of air passenger preclearance as we are at risk of failing to keep up with increases in traffic flows.

### **C. Include Freight in a Preclearance Framework**

Despite a recent agreement between Canada and the U.S. on preclearance, freight still faces many challenges. The Government of Canada is concerned about ceding authority to CBP officials to conduct investigations on freight on Canadian soil and the U.S. government is concerned about diverting too many resources to the Northern border.

Canada and the U.S. should work together to implement preclearance measures for freight through entering into a partnership that allows Canadian law enforcement to conduct any investigations that CBP deems necessary for freight to enter the U.S.; this partnership would enable Canada to retain autonomy on domestic law enforcement and allow the U.S. to avoid diverting CBP resources.

## **II. Shared Prosperity**

### **A. Ratify the USMCA**

While ratified in Mexico, the USMCA still must have implementation legislation passed in both Canada and the U.S. before coming into force. The CABC advocates for this to be done in an expeditious manner and without further delay. The USMCA is a modernized agreement and it is a good deal for all parties.

CABC has advocated on a number of key policy areas impacting cross-border trade including the promotion of digital trade and enhanced protections for intellectual property. In many of these areas, USMCA provisions represent a positive step forward for all parties.

### **B. Align Voluntary Standards**

Approximately ten percent of standards between Canada and the U.S. are currently harmonized, yet the U.S. Department of Commerce has estimated that standards conformity has an impact on more than 80 percent of global commodity trade and can cost companies billions of dollars every year. CABC has and continues to call on Canada and the U.S. to work together to promote their mutual interests by voluntarily aligning standards.

The USMCA is a step in this direction – by encouraging voluntary standards alignment for regulatory harmony and further integration of energy markets. Canada and the U.S. have deeply-integrated infrastructure; the integration of electricity grids and pipelines, for example, enables economic growth. It is therefore within the best interest of both countries to work to align standards.

### C. Fight Back Against Exclusionary Procurement Policies

Policies such as “buy American, hire American” are predicated on the notion that local companies should hire local labor, that local contracts should go to local companies, and that local producers should be protected through trade agreements.

Openness, transparency, and competitiveness in procurement is important to the CABC and its members. We will continue to champion for more mutually beneficial and inclusive procurement frameworks, rather than protectionist policies which benefit one region at the expense of another.

Protectionism in procurement is a threatening notion as it is fundamentally contrary to that of free trade. The CABC is vehemently opposed to policies which promote the sale of local goods or hiring of a local workforce, and the levying penalties as an alternative.

### D. Remove Barriers Preventing Data Flows Between Countries

In the modern world, data is a necessary dynamic. It is essential to move data between countries in order to facilitate service offerings. As companies and economies become more interlinked and data flows become more common, governments have become increasingly concerned about the ability to exercise authority over cross-border actors.

One response to this concern has been the creation of laws requiring Internet-enabled companies to locate infrastructure in country. These laws present a threat to nearly every type and size of organization, as nearly every business is now a digital business.

Many companies centrally manage and process data and rely on cloud-based storage and a host of service providers and partners that may be located anywhere in the world. Data localization laws which focus on a single system in a specific place do not take into account the practical consequences of placing geographical barriers on something so intangible.

Data security is paramount to digital businesses and the selection of where to build data centers is heavily focused on security. Proliferating data centers may reduce the ability of businesses to maintain security as data is only as secure as its weakest link.

The CABC urges governments to work with the private sector to resolve any potential data protection or privacy concerns that might underlie regulatory requirements to house data in country. This includes rejecting proposals to impose privacy consent requirements on companies processing or transferring data outside of either Canada or the U.S.

We also encourage interoperability and reciprocity between nations so that there is comfort with private sector entities operating cross border and maintaining compliance. It is important to consider the economic impact that harsh localization measures would have on national businesses and consumers.

#### **E. Maintain Canada's Pharmaceutical Supply**

In the absence of a regulatory framework designed to explicitly support international demand for drugs, proactive measures should be taken to protect the integrity and availability of the Canadian supply. A recent study found that if 20% of American prescriptions were filled from Canada, Canada's drug supply would empty in 183 days.<sup>3</sup>

With Canada currently facing 2,000 drug shortages in critical disease areas, including cancer, epilepsy and diabetes<sup>4</sup> the Canadian government should carefully review any policies that may facilitate export of medicines needed by Canadian patients. With the prospect of drug importation by the U.S., the government should take swift action to ensure the security of supply for Canadian patients in order to avoid becoming a back-door source for the U.S. marketplace.

#### **F. Reduce Costs and Increase Choice for Consumers**

Customers on both sides of the border should be able to shop, stream, and access services without being mired in red-tape, protectionist regulations, and unnecessary costs. Similarly, businesses should be able to freely offer their products and services to customers wherever they are located in North America. Too often, customers – particularly those in Canada – face prohibitive taxes, tariffs, or digital barriers that either deter or outright prevent them from being able to access the same goods and services as their neighbors on the other side of the border.

The CABC calls on the Canadian and U.S. Governments to reduce artificial barriers that increase costs and reduce choice for consumers. Specifically, our two countries should continue to work together to harmonize and increase the de minimis threshold for sales tax and duty and the personal exemptions for returning travelers. Canada should improve choice for digital consumers and refrain from applying outdated, protectionist regulations to modern digital services, which could ultimately result in less choice and higher prices for Canadian customers.

### **III. Joint Security**

#### **A. Align Canada-U.S. Approaches to Foreign Investment Risk Determination**

Chaired by the Secretary of the U.S. Treasury, the Committee on Foreign Investment in the United States (CFIUS) is an inter-agency committee of the U.S. Government that reviews the national security implications of foreign investments in U.S. companies or operations. In 2018, the Foreign Investment Risk Review Modernization Act (FIRRMA) gave CFIUS new powers over foreign direct investment, which has implications for venture capital firms and others seeking to invest in the U.S.

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<sup>3</sup> <https://www.iomcworld.org/open-access/us-drug-importation-impact-on-canadas-prescription-drug-supply-2471-268X-1000146.pdf>

<sup>4</sup> <https://www.drugshortagescanada.ca>

FIRRMA arose from a valid concern that Chinese-backed actors would undertake minority investments with U.S.-based VCs and invest in U.S. companies to gain sensitive information. In order to prevent this kind of espionage, FIRRMA provided CFIUS with broad powers to prevent investments from taking place if there is a national security concern.<sup>5</sup>

The CABC calls for the alignment of Canada/U.S. approaches to foreign investment risk determination, in order to foster a more secure and financially independent economy from adversarial nations.

## **B. Establish Sustainable and Secure Supply Chains for Critical Minerals**

Currently the United States relies on other countries for 14 of the 35 “critical minerals” identified by the U.S. Department of the Interior that are necessary for the economy and defense.<sup>6</sup> With China and Russia as two of the largest producers and suppliers of critical minerals, it is integral that the U.S. develop a sustainable independent supply chain to mitigate the risk of disruption.<sup>7</sup>

The CABC suggests that the U.S. work with its allies, including Canada, to establish sustainable supply chains that are independent of high-risk nations.

## **C. Enhance Canada-U.S. Cooperation in the Arctic**

The impact of climate change on the Arctic has been dramatic. The melting of sea ice is resulting in increased access to shipping lanes and easier access to natural resources. This reality in the Arctic is a cause for geopolitical concern with many Arctic and non-Arctic states attempting to stake their claim to the region.

China and Russia have begun aggressive campaigns through the deployment of military equipment and the establishment of their own Arctic policies. China has begun calling itself a “Near-Arctic State” and has published a white paper on arctic policy which calls for a “Polar Silk Road”.<sup>8</sup>

Russia’s actions in the North include more overtly aggressive actions, such as the deployment of multiple nuclear-powered icebreakers, re-opening a Cold War-era military base in the region, and regularly flying TU-95 Bear bombers near Canadian and U.S. territory to test NORAD readiness.<sup>9</sup>

The Arctic is jointly a Canadian and U.S. concern. As tensions rise, it is critical for both countries to maintain cohesion, and stay steadfast in the joint interest of the protection of the Arctic from rising aggression. Joint efforts include active monitoring of the North, and military readiness which includes NORAD continental defense.

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<sup>5</sup><https://techcrunch.com/2018/08/17/a-new-foreign-investment-bill-will-impact-venture-capital-and-the-u-s-startup-ecosystem/>

<sup>6</sup> <https://www.usgs.gov/news/trump-administration-announces-strategy-strengthen-americas-economy-defense>

<sup>7</sup> <https://www.commerce.gov/news/reports/2019/06/federal-strategy-ensure-secure-and-reliable-supplies-critical-minerals>

<sup>8</sup> <https://www.cbc.com/2018/02/14/china-we-are-a-near-arctic-state-and-we-want-a-polar-silk-road.html>

<sup>9</sup> <https://newsinteractives.cbc.ca/longform/putin-arctic>

#### **IV. Fostering Innovation**

##### **A. Remove Price Control Barriers in Medication to Support Innovation**

CABC suggests removing barriers to innovation in the pharmaceutical industry. This includes removing price control barriers to drive sustained investments in the development of advanced new medicines and medical technologies.

Both Canada and the United States must look to balancing cost containment measures with rewarding manufacturers for innovation, in order to drive sustained investments in the development of advanced technologies that ensure patients' continued access to innovative medicines and medical technologies.

##### **B. Improve Access to Risk Capital**

Access to early-stage risk capital is integral for small and start-up firms to be able stay afloat and innovate in a competitive marketplace dominated by large corporations.

The CABC advocates for improving access to risk capital by innovative small and start-up firms for early stage commercialization of innovations. Giving consideration to measures such as the use of public pension assets to support innovation, tax incentives for venture capital investments, and new programs. Foreign best practices such as the U.S. SBIR program and Taiwan's measures to support venture investment should be studied with an eye to creating comparable structures in Canada.

##### **C. Enable Digital Innovation**

In order to enable digital innovation, it is vital that trade agreements provide clear and enforceable rules for digital trade. These rules should rely on internationally accepted technology principles, provide for free cross-border flow of data and prohibit forced data localization for all services sectors, including financial services.

Cross-border data flows generate trillions of dollars in economic value and fuel innovation. Digital technologies are enabling new business models, restructuring industries, and creating enormous opportunity. In our North American economy, not only is trade increasingly digital, we're leading the way.

The United States and Canada each maintain legal frameworks that provide for the protection of personal information and privacy. As both countries review their respective privacy frameworks, they should look to harmonize privacy rules across borders and ensure mutual recognition of standards, which will promote cross border trade, lower costs, create efficiencies, and enable more effective enforcement in both countries.

CABC urges governments to make harmonization of data regulations a top priority of the Central Regulatory Coordinating Body envisioned in Chapter 28 of the USMCA. As well, we encourage governments to work with the private sector to resolve any potential data protection or privacy concerns that might underlie regulatory requirements to house data in-country.

**D. Champion Multilateral Solutions to Taxation Challenges**

Canada should embrace its recognized role as a nation that champions multilateral solutions to complex global issues. This includes working through the Organization for Economic Cooperation and Development (OECD) to address tax challenges resulting from the digitization of the global economy. Canada should work through the OECD, rather than impose a unilateral Digital Services Tax (DST) that would contravene trade commitments under NAFTA and the USMCA, and undermine the spirit of the new USMCA Digital Trade Chapter.