

## POLICY FRAMEWORK

### Introduction

The Canada/U.S. relationship is unique in the world. Our geographic proximity results in cultural and familial ties along the longest unmilitarized border on earth. Our mutually beneficial commerce has given rise to deep economic integration. Our shared values and shared interests promote collaboration on the global stage. We enjoy common ground, both literally and figuratively. In the wake of the COVID19 pandemic with its resulting health innovations and strained supply chains, it is more important than ever that Canada and the US work together to help solve the world's greatest challenges.

The Canadian American Business Council (CABC) was founded in 1986, 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 ties between Canada and the United States. Continental free trade once again emerged as an animating dynamic between North American countries with the re-negotiation of the NAFTA, and the implementation of its successor agreement which is slated to begin to sunset, if not renewed, in 2026. Renewal of the Columbia River Treaty and modernization of the North American Aerospace Defense Command are two additional examples of bilateral cooperation which serve as a model to the world, and there are many more examples beyond these.

In an increasingly connected global market, it is essential that our nations maintain a coherent framework of rules that facilitate digital trade, harmonize regulations, and promote investment in new technologies and business models.

Now in our fourth decade, the CABC reaffirms four core principles:

- ❖ Common Ground (shared air, land and watersheds and ecosystems)
- ❖ Shared Prosperity (competitiveness, trade and regulatory cohesion)
- ❖ Joint Safety & Security (physical and cybersecurity, intelligence sharing and defense)
- ❖ Innovation & Global Competitiveness

## **Common Ground**

The efficiency of our air, land and seaports is critical to the livelihoods of millions of Canadians and Americans and integral to our common prosperity. For decades, Canada and the US made continuous improvement in the movement of goods and people through programs like pre-clearance and trusted traveler and shipper initiatives as well as cross-border law enforcement cooperation. In 2020, the border closed to all but essential commerce for the first time in modern history due to a global pandemic. In the intervening years, border crossing has become more onerous, less uniform, and more costly, turning what was once a competitive advantage in North America into a fraught puzzle for people and businesses in an otherwise integrated common economic space.

The CABC is a strong advocate for returning synchronous border management. We advocate for a risk-based approach border enforcement that allows for innovation, infrastructure improvements and streamlined processes which will facilitate the efficient movement of goods and people. The 49th parallel separating our two countries does not divide the ecosystems we share. CABC works to ensure our shared continental ecosystem is protected via bilateral agreements, joint watershed and waterway management, sustainable development of resources, and the transition to achievement of the Paris Accord climate goal of net-zero carbon emissions by 2050.

## **Shared Prosperity**

The CABC stands for free trade and against protectionism. We advocate against “buy local” provisions that serve to disadvantage our continental trading partners.

We are champions 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 seamless flow of goods and services in our integrated economy.

We also seek to align voluntary standards. The CABC calls 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 skills development. Too many barriers prevent workers from moving with ease between Canada and the U.S. The CABC calls 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 the 2000s we also fought shoulder to shoulder in the war in Afghanistan. In 2022, we joined allies in the fight against Russian aggression in Ukraine. In light of shared values and our deeply interconnected security interests, the CABC advocates for policies that advance shared security, at home, abroad, in space and in cyber.

## **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 supported 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.

## Policy Framework EXAMPLES

### Common Ground

#### i. **Advocate for a Return to Synchronous Border Management**

While Canada and the United States work diligently to reduce the risk and spread of COVID-19, it is imperative that our two countries work alongside one another to develop a unified approach to border management economic recovery.

We need to find ways to learn from the experience of border disruptions of the COVID-19 pandemic, the border blockades, as well as extreme weather events which have required swift cooperation between Canada and the United States, to ensure that we instill policies which allow for a nimble and resilient approach to the cross-border flow of people and commerce.

We need to improve flexibility in cross-border commerce by increasing transparency and information gathering requirements of governments. Sudden and/or delayed policy changes create uncertainty and negatively impact commercial flows. Emerging technologies such as blockchain and artificial intelligence to enhance border processes should be explored as tools to support border processing innovation.

Greater utilization of systems and technology that can use information previously collected and ease traffic flows by reducing duplicative requirements. Border measures and restrictions must be able to adapt in a manner that is clear, safe, and effective to all.

#### ii. **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.[1]

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.[2]

A key method of collaboration since 2000 has been the creation of the Nexus program, operating within the sphere of the Trusted Business Travelers program. The Nexus program has continued to demonstrate that with proper utilization of Government resources and sound

stakeholder feedback, the Canada-US border can operate efficiently and practically. However, the continued delay of processing on the Canadian side has hampered efficiency, reduced tourism levels, and made for a more difficult economic rebound as our two nations leave the COVID-19 pandemic behind.

The CABC calls for both nations to commit to restarting their application processes and providing more resources to reduce any backlogs to enhance the accessibility of NEXUS. The COVID-19 pandemic has severely impacted cross-travel and cross-trade and it is vital that both nations maximize their potential and make full use of the resources available to them. Effective utilization of bureaucracy, stakeholder feedback, and legislative tools will ensure that small and medium sized businesses of both nations recover faster, stronger, and are more prosperous.

### **iii. Removal of the Canadian Digital Services Tax**

The CABC welcomed the agreement signed by Canada, the US and over 136 countries at the OECD in October 2021 to modernize tax rules and remove digital service taxes (DST). Digital service taxes have the effect of penalizing entrepreneurs, employers, and companies from investing in online resources and serving the needs of new consumers. The OECD acknowledges that and states that a DST "...could effectively penalize start-ups and other growing firms with losses or limited profitability and provide a competitive advantage to mature profitable incumbents".<sup>1</sup> Our bilateral economies are based around the principles of a strong free market, which includes healthy competition and incentives for growth. Considering the economic impacts of the pandemic, the CABC supports empowering entrepreneurs through incentives, not disincentives such as the DST.

Particularly, for Canadian companies, a DST includes a possibility of being taxed twice on the same source of revenue. The OECD also acknowledges this possibility. Issues such as this highlight the counter-intuitiveness of a DST, which aims to tax corporations not ordinarily subject to taxation under existing rules.

With the multilateral agreement in place, we question the rationale for Canada to backtrack and enact its own digital services tax, which occurred in the 2022 Canadian federal budget which provided that a 3% tax would be added on revenue earned by large businesses from certain digital services. We are especially concerned with the retroactive nature of the policy and the impact it has on business planning and public reporting requirements, as well as the signal Canada's action sends to global partners about its intention to abide by multilateral agreements.

## **Shared Prosperity**

### **i. 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 calls 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.

### **ii. 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 opposed to policies which promote the sale of local goods or hiring of a local workforce, and the levying penalties as an alternative.

### **iii. Remove Barriers Preventing Data Flows Between Countries**

The flow of data is a necessary dynamic in today’s global economy. Data movement across borders is essential to digital service offerings and represents an increasing share of modern trade. However, Governments have long been concerned about issues of privacy and their ability to exercise authority over cross-border actors.

One response to this concern has been the creation of laws seeking to limit cross-border data flows—actions that the CABC has repeatedly rejected as counter-productive—while encouraging our two nations to work towards a solution that promotes the continued growth

of the digital economy.

The recent establishment of the Global Cross-Border Privacy Rules Forum (the “Global CBPR Forum”), of which the U.S. and Canada are founding members (along with Japan, the Republic of Korea, the Philippines, Singapore and Chinese Taipei) is charged with promoting interoperability and helping bridge varying regulatory approaches to data protection and privacy. This represents a welcome step towards the harmonization of international standards for cross- border data flows.

The CABC urges governments to continue to work with the private sector as they engage in the development of new regulatory frameworks that impact the digital economy. It is important to consider the economic impact that new measures may have on Canadian and American businesses and consumers.

#### **iv. Resilient and Flexible Supply Chains**

Global commerce relies upon broad, geographically diverse global supply chains. The Canadian and U.S. governments’ focus should remain on flexibility, redundancy, and resiliency to manufacture the goods that are used globally. Governments should also respect the long-standing relationships manufacturers have fostered with trusted partners with a strong track record of providing components and equipment which are high quality and delivered on time.

The pandemic has led governments around the world to recognize the importance of creating and maintaining global supply chains. There is significant interest by governments to strengthen supply chains, incentivize local production, and attract health investment. Certain prerequisites underpin the establishment of a well-functioning environment that allows for robust private investment in health and resilient supply chains. This includes:

- refraining from unnecessary export restrictions,
- maintaining low or zero tariffs,
- refraining from discriminatory localization policies,
- implementing Intellectual Property systems that align with international best practices,
- Maintaining open, transparent, predictable, and value-based procurement systems in compliance with international standards.

#### **v. Reduce Costs of Trade 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. 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 should be avoided

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 the personal exemptions for returning travelers, maintain low value thresholds for customs processes, and preserve competitive de minimis thresholds for sales tax and duties on imported goods. Major customs modernization initiatives such as the Canada Border Service Agency (CBSA) Assessment and Revenue Management Project (CARM) should enable greater trade facilitation for U.S-Canada goods movement. 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.

**vi. Greater Action with the Canada-US Regulatory Cooperation Council**

Canada and the US have long shared a physical, economic, and social border. The economic impacts on one nation will directly affect the other. For this reason, it is vital that when interacting with industry and economic stakeholders that both governments commit to reducing imposed duplication efforts which result in a larger cost to organizations and therefore a higher price to consumers. When entrepreneurs, small-business owners, and larger firms are interacting with both governments it is vital that if mandated to undergo a testing or inspection requirement efforts are made to reduce the duplication of that cost if both countries share similar processes. Furthermore, relationships must continue to be developed amongst stakeholders and both governments to ensure that legislation – whether proposed or already enacted – examines previous attempts or current legislation to determine if the standards can be equal.

The CABC continues to support the mandate of the Regulatory Cooperation Council and encourages them to ensure greater harmonization, particular in industries adversely impacted by COVID-19. Specifically, risk assessment methodologies within pesticide manufacturing were harmonized due to the support of the RCC and it is vital for shared prosperity that in other areas – such as vaccines or testing – those onerous requirements are harmonized with the feedback from stakeholders. The CABC supports these measures because it is our belief that both countries can come to consensus on appropriate safety mechanisms applicable to both nations which encourage greater economic growth and integration. Particularly with the effects of COVID-19 and a weakened supply chain, it is vital that more efforts be placed on how to reduce duplicative regulations.

**Joint Security**

**i. 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.[6] 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.[7]

It is in the mutual interest of both countries to improve the security of critical minerals and ensure competitiveness in Canada and the U.S. Such collaboration would attract investment in exploration and mining projects and would further encourage economic growth and job creation.

We welcome the Canada-U.S. Joint Action Plan on Critical Minerals Collaboration and encourage both countries to expeditiously move forward in securing these key supply chains.

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.

## ii. **Develop and Operationalize Common Can-US Strategies on Cyber Security**

The amount and impact of traditional security threats are quickly being overtaken by cyber security threats. The cyber threat environment is dynamic and constantly evolving. Sophisticated threat actors are highly organized, well-resourced, and closely coordinated – and the attack landscape has no borders and reaches into every connected device in the world.

1. Quickly move to operationalize the cyber security risk framework outlined in USMCA
2. The NIST Framework is currently being updated; Consider a NIST initiative to consult and collaborate with Canada as it is developing NIST 2.0
3. Develop a common framework and mechanism to align how Canada and the US secure its critical infrastructure, especially infrastructure that interconnects between Canada and the US (rail, ports, electricity grids, digital infrastructure, energy/electricity assets, etc)
4. Develop a common initiative to close the gap on cyber security workforce and training (WH already looking at this)
5. Harmonize timing and method for mandatory reporting of cyber incidents (ie: 72 hours for incidents; 24 hours for ransomware, etc)
6. RE: WH E.O. on development of software: Governments of Canada and US to develop common standards re: cyber that the govts would demand for public sector purchasing ie: multi-factor authentication, etc.

#### **iv. 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.

### **Fostering Innovation**

#### **i. 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.

#### **iii. 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 are 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.

#### iv. **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.

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[1] <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>

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

[3] <https://www.oecd-ilibrary.org/sites/9789264293083-8-en/index.html?itemId=/content/component/9789264293083-8-en>

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

[5] <https://www.drugshortagescanada.ca>

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

[7] <https://www.usgs.gov/news/trump-administration-announces-strategy-strengthen-americas-economy-defense>

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

[9] <https://www.cNBC.com/2018/02/14/china-we-are-a-near-arctic-state-and-we-want-a-polar-silk-road.html>

[10] <https://newsinteractives.cbc.ca/longform/putin-arctic>