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NAFTA Consultations
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The Canadian Services Coalition (CSC) is pleased to submit comments to Global Affairs Canada on the upcoming renegotiation and modernization of the North American Free Trade Agreement (NAFTA). This consultation is timely given the magnitude and pace of change that has impacted the Canadian services sector since the NAFTA came into force. The members of the CSC are hopeful that this modernization effort will continue to build the sector's efficiency and competitiveness, regionally and globally.

The CSC is Canada's leading voice in promoting the importance of services to the Canadian economy. We have two core mandates:

First, the CSC promotes a greater understanding of the importance of services to the Canadian economy and advocates for the adoption of public policy aimed at encouraging competition and innovation in the Canadian services sector to ensure that it remains competitive in the global economy. We are strong advocates for up-to-date and evidence-based policy and decision-making.

Second, the CSC advocates for the liberalization of services markets internationally, through the removal of trade and investment barriers that impede the growth of the Canadian services sector, primarily through bilateral, regional and multilateral negotiations and agreements.

The services sector represents over 70% of the Canadian economy, employs four in five working Canadians, and is responsible for 90% of new job creation. Since 2014, nearly 250,000 new Canadian jobs were created in the sector. Services jobs are traditionally high-level, high value-added and among the highest paying in Canada. Moreover, income growth in the Canadian services industries has been markedly stronger than those in goods industries.

Services are also a growing contributor to Canadian exports and trade. Over the past decade, three out of the five fastest-growing Canadian export sectors were financial services, computer services and management services. Canada's export of services increased in 2014 for the sixth consecutive year, reaching \$99.2 billion in 2015.

Canadian services and NAFTA

The CSC is of a view that NAFTA has been a success. When it was first negotiated, NAFTA set a gold standard for preferential trade agreements, benefiting businesses across the continent. To this date, NAFTA allows for unrivalled preferential access to the American, Canadian and Mexican markets.

More than 20 years after its signing, there are several areas where the Agreement has fallen behind the pace of change, notably in the services sector. The services sector would greatly benefit from modernizing this crucial agreement.

Services inputs, from engineering and design to insurance, banking and marketing, are critical to the success of other industries engaged in international trade. High-value Canadian services have a multiplier effect on Canadian exports, enabling businesses to successfully conduct international operations. It is estimated that over 60 percent of global business services exports (in value added terms) are indirect, while half of financial and insurance exports are also indirect. Services provide a significant input to North America's exports to the rest of the world.

The United States is Canada's top market for services, accounting for a 55.6 percent share¹ of Canadian services exports. The U.S. is Canada's single largest recipient of Canadian foreign investment at US\$448bn – almost half of all of Canada's global FDI. Canada is also the fifth largest foreign investor in Mexico. Canada currently has a services trade deficit with the United States valued at US\$27.4 billion, a figure equivalent to double our trade surplus in trade of goods with the U.S.

Renegotiation principles

The CSC believes that, as Canada enters the renegotiation process, the following principles should be observed:

- Canada should oppose any move to backtrack from the existing benefits of NAFTA. Current benefits should be at the least maintained but ideally improved.
- An updated NAFTA should aim to boost the services sector's efficiency and competitiveness, regionally and globally, through improved terms for the services sector as outlined in the objectives below.
- Negotiations should allow for regular stakeholder consultations. In recent years, CETA and TiSA negotiations provided opportunities for such exchanges, an approach that we welcome for NAFTA.

Objectives

E-commerce

- The magnitude and speed of change since the entry into force of NAFTA are most evident in its lack of an e-commerce chapter. Reflecting the current (and future) business ecosystem under which companies operate and the growing importance of the digital marketplace, a new NAFTA should include a principles-based e-commerce and digital trade chapter to provide greater legal certainty.
- The Internet has allowed for a host of new services companies to grow and thrive in North America's increasingly technology-driven economy. The information communication technology sector has contributed to approximately 5.2% of Canada's GDP growth since 2007, and accounted for 4.3% and 6.2% of the respective GDPs of Canada and the US in 2014.

¹ World Trade Organization <http://stat.wto.org/ServiceProfile/WSDBServicePFView.aspx?Language=E&Country=CA>

- This level of growth would not have been achieved without the free flow of Internet data between NAFTA countries, especially since the US plays a central role as the hub for much of the Internet infrastructure (e.g. exchange points, servers, etc.) on which the Canadian and Mexican economies rely. Efforts to localize or restrict data to specific jurisdictions (known as “data residency” requirements) can have a measurable negative impact on national GDP, according to research from the European Centre for International Political Economy.
- Canada should resist any changes in the upcoming NAFTA renegotiation which would impose data residency requirements on companies, as they would create unnecessary burdens on many services businesses that exist by virtue of the free flow of Internet data. Moreover, the CSC would be supportive of removing the exemption for financial services when prohibiting data localization as long as it is consistent with the banking industry’s domestic statutory and regulatory requirements.
- Prohibiting data localisation, however, should not conflict with legitimate privacy obligations that governments should continue to uphold, either with respect to their own data or regarding data held by private companies, such as medical records. Instead, such concerns can be addressed by mandating strong digital security measures, such as encryption, or tailored data residency requirements for the most sensitive (and oftentimes classified) government data.
- NAFTA should also prohibit parties from imposing restrictions to security technologies used to safeguard against intrusions.
- An updated NAFTA should also ensure that the value of data transfers between the NAFTA partners remains free of customs duties. Recognizing that the digital marketplace will likely only grow its impact on goods and services industries, the three NAFTA partners will continue to have an interest in the taxation of the online market.

Worker mobility

- Canadian businesses of all sizes have much to gain from improved labour mobility, as the Government of Canada already recognized in its recently-launched Global Talent Stream program for highly-skilled workers, as well as through the expansions to labour mobility between Canada and Europe in CETA. Chapter 16 of NAFTA provides for the temporary entry of business persons and professionals, but the list of professionals eligible for NAFTA visa status has long been outdated. CSC views the NAFTA renegotiations as a crucial opportunity to address the efficient movement of people across borders in order to facilitate business in all three countries.
- Negotiations should seek to update NAFTA’s labour-related provisions to bring them in line with the changes to the North American economy since NAFTA’s signature. This can be accomplished in a variety of ways, such as by expanding the list of included “Professionals” or further opening up the categories of “Inter-company Transferee” or “Business Visitor” to allow more non-management personnel to benefit from the relaxed entry requirements.
- In expanding the list of professions eligible for temporary entry under NAFTA’s Chapter 16, a modern agreement should be flexible enough to allow for new, as-yet-to-be created professions to be added in the future.
- Canada should further consider proposing a NAFTA-backed platform for continuing Ministerial-level dialogue and regulatory cooperation among all three parties, including on worker mobility. This would help ensure that national laws and regulations surrounding visa qualification keep pace with the evolving nature of North America’s labour markets.
- Currently, Mutual Recognition Agreements (MRAs) can be established between two or more countries to permit the recognition of credentials (academic and/or professional) and are intended to foster mobility for highly skilled services providers looking to practice in other jurisdictions. Such MRAs should be preserved and improved upon during the renegotiations, at the federal and sub-national levels with the United States and Mexico in order to facilitate international mobility.

Regulatory Coordination

- Canada's financial services regulatory system was one of the main reasons our economy weathered the 2008 financial crisis so effectively.
- But as Canada's economy is increasingly interlinked with other economies through trade agreements like NAFTA, laws and regulations can work at cross-purposes, producing undesirable regulatory outcomes and limiting consumer access to affordable products and services.
- Many of CSC's members, for their part, have been active in spearheading supervisory and stability-focused reforms with international financial institutions and standard-setting bodies, such as the Financial Stability Board, the Basel Committee on Banking Supervision (BCBS) and the International Association of Insurance Supervisors (IAIS).
- The Government of Canada has recognized the need for structured forms of regulatory cooperation, such as through the US-Canada Regulatory Cooperation Council established in 2011, or more recently in Chapter 21 of the Canada-EU Comprehensive and Economic Trade Agreement (CETA). During NAFTA renegotiations, therefore, Canada should seek to build on both types of cooperation when initiating any kind of regulatory modernization reforms.
- The CSC recommends the inclusion of a regulatory cooperation chapter in a new NAFTA. A NAFTA-wide system of institutionalized regulatory dialogue should allow for input from businesses, trade associations, citizens, and regulatory bodies, not unlike the "Regulatory Cooperation Forum" created by CETA. In so doing, Canada would be able to foster ongoing information exchange, predictable regulatory design and enforcement across jurisdictions, and deepened economic collaboration among NAFTA members. This, in turn, will increase cross-border business ties and investment, and could spawn new forms of regulatory cooperation in the future.
- NAFTA already has an established Financial Services Committee, a useful tool to facilitate cross-border dialogue among industry-specific regulators. This model could serve as the basis for a more formalized entity that allows for increased regulatory coordination in other services sectors.
- As mentioned above, Canada should consider proposing a NAFTA-backed platform for continuing Ministerial-level dialogue and regulatory cooperation among all three parties, including on worker mobility.

Intellectual Property, online piracy and counterfeiting

- The CSC encourages Canada to increase its level of protection for creators and innovators under Canadian copyright and patent laws.
- In 2015 the USTR featured Canada on its "Notorious Markets" list, which identifies countries that host or permit online piracy and counterfeiting. In 2016 the focus shifted to Canada's weak response to in-transit counterfeit goods: *"The United States remains deeply concerned that Canada does not provide customs officials with the ability to detain pirated and counterfeit goods that are moving in transit or are transshipped through Canada."*
- Canada should strengthen the resources and authorities needed by Canada Customs to interdict counterfeit goods. The CSC further notes the WIPO obligations that Canada pledged to respect regarding online piracy and counterfeiting; undertakings made to all the signatories, not just the U.S.

Infrastructure

- Public infrastructure is critical to healthy and prosperous economies and societies. The lack of adequate infrastructure in North America is currently limiting the region's potential for economic growth.
- Given the recent commitments made by the Canadian, Mexican, and US governments to invest significantly more in infrastructure before the end of this decade, the upcoming NAFTA renegotiation presents an opportunity for the three countries to work towards a collective solution and collaborate on strategic infrastructure planning. The potential for investments, design, construction and operation of US infrastructure projects, recognized by Export Development Canada, would create a unique opportunity

for Canada's services providers. The opportunities soon to be created through the Canada Infrastructure Bank offer yet another incentive for collaboration on this subject.

- Canada should propose the formation of a NAFTA infrastructure investment pact inclusive of government procurement during the renegotiations. Such an agreement could provide for non-discrimination protections at the federal and sub-national levels, public-private partnership (P3) guidelines, and streamlined investment opportunities specific to the infrastructure sector. Not only would this help directly create economic opportunities in all three countries and lessen their respective infrastructure gaps but it would indirectly improve the efficiency and functioning of North America's economy.

In closing, CSC would like to take this opportunity to thank Global Affairs and the whole of the Government of Canada for providing this avenue for input from the services sector. Our membership supports Canada's efforts to modernize NAFTA, and we would be pleased to discuss any of these issues and recommendations in greater detail.

Yours truly

A handwritten signature in black ink, appearing to read 'Chris Donnelly', with a stylized flourish at the end.

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