ASSOCIATION DES BANQUIERS CANADIENS | CANADIAN BANKERS ASSOCIATION

Box 348, Commerce Court West
199 Bay Street, 30th Floor
Toronto, Ontario, Canada M5L 1G2
www.cba.ca

Alex Ciappara
Director, Credit Markets and
Economic Policy
Tel: (416) 362-6093 Ext. 271
aciappara@cba.ca

July 18, 2017

Global Affairs Canada
Trade Negotiations — North America (TNP)
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
NAFTA-Consultations-ALENA@international.gc.ca

Dear Sir/Madam:

Thank you for providing this opportunity for Canada's banking industry to comment on the upcoming renegotiation and modernization of the North American Free Trade Agreement (NAFTA). The Canadian Bankers Association (CBA)[1] and Canada's banking industry believes that strengthening and deepening trade relationships with the United States and Mexico is not only beneficial to the industry but also to its customers and the general economy.

The Benefits of NAFTA to Canada

Free trade benefits all parties, and, by encouraging competition and the efficient allocation of capital and productive activity, is a source of economic growth and higher living standards over the long-term. The implementation of free trade agreements first through the Canada-U.S. Free Trade Agreement (CUFTA) and later NAFTA has been an economic success story both for Canada and its North American partners. By uniting the U.S., Mexican, and Canadian economies, NAFTA created a highly integrated US$20 trillion regional market with some 484 million consumers.[2] During its 23 years of existence, North American trade has more than tripled[3] and the agreement has, on net, created jobs across all three member countries.[4]

NAFTA has had a positive impact on US, Canadian and Mexican gross domestic product (GDP). Since 1994, the North American economy has more than doubled. The agreement has also allowed North America to "punch above its weight" in economic terms: the NAFTA market accounts for 25% of global GDP in a region containing 6.5% of the world's population – comparing favourably to the European Union, with 24% of global GDP and 6.9% of the world's population.[5] This growth has had positive labour market effects: millions of North American jobs now depend on NAFTA.

[1] The Canadian Bankers Association works on behalf of 64 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness. www.cba.ca.
[2] Hills, Carla (1994) NAFTA's Economic Upsides: The View from the United States. Updated with 2015 figures.
[3] Scotiabank, The NAFTA Success Story, February 10, 2017.
[4] Ibid
[5] Ibid

North American free trade has been of enormous benefit to Canadian businesses and the overall economy. NAFTA expanded market access for goods and services, softened foreign direct investment rules, significantly reduced tariff rates, and created dispute settlement mechanisms. North American free trade has provided an impetus for Canadian businesses to think beyond their own border, attracted new business into the country and encouraged the establishment of cross-border economic relationships that have promoted globally-competitive value chains, businesses and industries. U.S. and Mexican investments in Canada have, for instance, tripled since NAFTA's approval.[6] North American free trade has also introduced beneficial competitive pressures on Canadian businesses, providing incentives to achieve scale, innovate, and improve productivity.

In addition to businesses, North American free trade has also benefited Canadian consumers. Imports have held inflation down, making day-to-day life more affordable. For instance, since 2000, the average cost of Canadian imports has risen just 27%, compared to a 39% rise in the Consumer Price Index.[7] Employment, too, has benefitted: when NAFTA came into force in January 1994, Canada's unemployment rate stood at 11.4%; it has dropped steadily since then, and, despite a rise in the rate during the Great Recession, the country has never returned to a similar level of joblessness.[8] A healthy and growing North American economy enables businesses and consumers to turn to their banks to make deposits, pay off loans, and seek financial advice.

NAFTA and Canada's Banking Industry

The Canadian banking industry has underpinned growth in the continent's economy and helped support Canadian businesses – through financing, advice and other products and services − to take advantage of the trade and investment opportunities provided by an integrated North American market. Canada's banks have either invested directly into the U.S. and Mexico, or participated in cross-border trade in financial services, which has grown to around $9.4 billion between Canada and the U.S. last year (up more than five-fold from $1.7 billion in 1993).[9]

As Canadian businesses have expanded their presence into the U.S. and Mexico, Canadian banks have grown their own footprint to meet their clients' needs. Because NAFTA's financial services provisions recognized that financial services firms should have equal access to customers in member countries[10] and should not be subject to discrimination[11], Canadian banks have been able to meet the needs of a wider cross-section of American and Mexican businesses and consumers. These benefits were evident during the financial crisis when Canadian banks purchased U.S. banks in financial difficulty, providing stability to local markets. As of last year, the Canadian financial services sector's direct investment into the U.S. stood at close to $187 billion.[12] Similarly, NAFTA has been a cornerstone to Mexico's economic development and a catalyst in liberalizing their financial services sector, enabling a major Canadian bank to achieve a leading role in the market. Today, within the U.S. and Mexico, Canadian banks have grown to employ 66,470 employees at more than 2,000 branches and offices with over $1.28 trillion in assets. Around 16% of Canadian bank income now originates from the U.S. and Mexico.

Similarly, within Canada, foreign bank subsidiaries and branches from North America benefit from NAFTA's equal access and non-discrimination provisions. For instance, U.S. direct investment in

[6] Ibid
[7] Speech by William Downe, Populism is not the problem, June 8th, 2017, Canadian Club of Toronto.
[8] Ibid.
[9] Statistics Canada, CANSIM Table 376-0033
[10] Either through rights of establishment or through cross-border trading.
[11] William White, The Implications of the FTA and NAFTA for Canada and Mexico, August 1994.
[12] Statistics Canada, CANSIM Table 376-0052

Canada's financial services sector now totals over $56 billion.[13] There are now 22 U.S.-based bank subsidiaries and branches with around $80 billion in assets established in Canada. And U.S. banks now make up more than one-quarter of all foreign bank exposure in Canada.[14] These banks specialize in a range of financial services − including corporate and commercial lending, treasury services, credit card products, investment banking and mortgage financing − and not only serve those customers with cross-border business activities, but also increasingly Canada's domestic retail market.

NAFTA Renegotiation and Modernization: Banking Industry Priorities

As has been highlighted, increased trade and investment between Canada, the United States and Mexico has benefited the North American economy. Canadian banks are increasingly operating on a continental platform to support the North American market. Canada's banks finance and support Canadian businesses taking advantage of cross-border integration, as well as U.S. and Mexican businesses and consumers in their home markets.

Preservation and maintenance of NAFTA's existing trilateral framework

Given the secure, commercially stable and efficiently integrated continental market for Canadian business and the economic growth this ecosystem has fostered, the banking industry strongly recommends that NAFTA's existing trilateral framework of rules and commitments be preserved and maintained. This trilateral framework has served the North American market well, enabling businesses in all three countries to take a continental approach to trade and investment. Where changes to NAFTA are made, they should be additive, transparent and done with the objective of updating and modernizing an agreement that was negotiated more than twenty years ago.

Continued support for Prudential Carve Out

The banking industry is strongly in favour of maintaining the longstanding federal government policy of the prudential carve out.[15] As witnessed during the financial crisis, alongside the risk management practices of Canadian banks, Canada's supervisory and regulatory framework for financial institutions was credited globally for the industry's strong performance under stress.[16] Indeed, while there was significant turmoil in the global financial system during the crisis and a number of banks in other countries became insolvent and either failed or received taxpayer-funded bailouts in order to survive, no Canadian bank was in danger of failing and no government bailouts were needed. This highlighted not only the prudence of Canada's banks but also the efficacy of the country's prudential supervision and regulation.

Better coordination of regulations affecting cross-border activity

The financial crisis ushered in an unprecedented amount of regulatory change. Differences in the regulation of cross-border activity has led to a fragmented global regulatory regime, which has created inefficiencies, uncertainty, and imposed undue costs on market participants.

[13] Statistics Canada, CANSIM Table 376-0052

[14] BIS Statistics

[15] The prudential carve out enables signatories to a trade agreement to adopt or maintain measures for prudential reasons (i.e. safety, soundness, integrity or financial responsibility) including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system.

[16] Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future – A Consultation Document for the Review of the Federal Financial Sector Framework, The Department of Finance, August 26, 2016. p. 8.

The breadth and complexity of recent U.S. financial services regulatory reforms has only exacerbated these frictions. These reforms have had a particularly acute impact on Canadian banks as they grow their U.S. presence. The North American financial services market would benefit from greater alignment of U.S. legal and regulatory requirements with those in Canada and Mexico, particularly when those requirements apply to cross-border transactions and institutions with an international presence.[17]

We encourage the use of NAFTA's Financial Services Committee to better coordinate and standardize regulations as well as implementation schedules of cross-border activity by implementing mutual recognition and substituted compliance, while preventing the extraterritorial application of laws. Consideration should be given to a more formalized, principles-based and consultative Financial Services Committee.

Expansion of rules regarding the Temporary Entry of Business Persons

Since NAFTA was negotiated, Canadian, U.S. and Mexican banks have expanded their continental footprint to serve a growing market. With this expansion, banks now operate cross-functional teams with employees that are located in different countries. This requires bank employees to cross borders more frequently to support their affiliates. At the same time, the workplace environment has evolved to reflect new technology, practices and markets. Indeed, the federal government has acknowledged this with the introduction of the Global Talent Stream of the Temporary Foreign Worker Program which will help high-growth Canadian firms attract the specialized talent for in-demand occupations by streamlining the application process.[18] The banking industry believes that NAFTA's categories for temporary entry of business persons should be expanded to reflect this evolution.

The CBA would like the federal government to consider making it easier for Canadian companies to utilize the skills of American or Mexican citizens whether they are an employee of the company or not. For instance, there has been at least one situation where a bank employee from a NAFTA country was unable to cross the border to train employees in Canada because their job title was listed as "processor" rather than "trainer". In addition, there have been difficulties not just with intra-company transfers, but also with bringing a person from one jurisdiction to work in another jurisdiction (for example, bringing in Americans or Mexicans who do not work for the bank in their home jurisdiction to work at the bank's Canadian operations). To address this particular problem, consideration should be given to adding an "executive level" category to the Professionals category list (Appendix 1603.D.1) to reflect the unique skills and experiences of senior executives.

Consideration of Ecommerce provisions

When NAFTA was first implemented in 1994, ecommerce was still nascent. As a result, NAFTA contains no reference to online activities. Modernization of NAFTA provides an ideal opportunity to provide greater legal certainty around the current digital trade ecosystem. Indeed, Trans Pacific Partnership (TPP) negotiators included a section on ecommerce covering a variety of pertinent issues including provisions on the: prohibition of customs duties on electronic transmissions; legal validity of an electronic signature; adoption and/or maintenance of consumer protection laws to protect personal information; prohibition of data localization (with an exemption for financial services); and prohibition of fraudulent and deceptive ecommerce activities. The TPP should be considered a starting point for NAFTA negotiations on ecommerce-related provisions.

---

[17] Examples of current U.S. regulations which would benefit from greater cross-border coordination include Title VII of the Dodd-Frank Act / OTC derivatives measures (relating to mandatory clearing, transaction reporting, and business conduct)

[18] News Release, Ministers Bains and Hajdu announce Canada's Global Skills Strategy, Innovation, Science and Economic Development Canada, March 9th, 2017.

Furthermore, the CBA would be supportive of extending the prohibition of data localization to financial services as long as it is consistent with the banking industry's domestic statutory and regulatory requirements.

We thank you for taking our comments into consideration and would be pleased to discuss these issues if you have any additional questions.

Sincerely,

Alex Ciappa

cc: Sven Linkruus, A/Chief, Financial Services and Trade Relations, Finance Canada
Michael Mosier, Senior Economist, Financial Services Trade and Relations, Finance Canada