

Canadian American Business Council (CABC)
Pre-Budget 2016 Submission

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Executive Summary

The Canadian American Business Council (“CABC”) is the voice of business in the world's most prosperous relationship. The CABC promotes the unique relationship between the world's two closest allies that leads to a prosperous expansion for business across North America and the world, thereby contributing to economic growth in Canada and the U.S. The CABC is pleased to offer the following recommendations for consideration by the Government of Canada to advance innovation and prosperity goals across multiple regions and sectors of Canada's businesses, helping to advance Canada's economic growth.

The recommendations that follow are achievable and affordable solutions that benefit both business stakeholders and the Canadian economy. This paper outlines our policy suggestions which include:

- Voluntary standards alignment;
- Joint regulatory initiatives;
- Improving the protection of intellectual property;
- Changes to the de minimus tariff threshold for e-commerce.

It is in the best interest of Canada and the U.S. to encourage growth and prosperity. This submission offers specific recommendations for consideration based on successful approaches taken by Canada's peer countries, which are doable, affordable, and with the clear potential for delivering the needed positive impact in the next three years. They do not have to entail further large public expenditures to stimulate innovation, investment and economic growth. The emphasis in this paper is to avoid adding to the projected Federal budget deficits by studying best practices abroad and adapting what is learned to the Canadian innovation ecosystem, by re-purposing existing programs, by innovations and legal reforms in the area of intellectual property protection, and by promoting a culture of innovation in Canada. They can be part of the broad effort to strengthen Canada's international competitiveness.

Recommendation I: Voluntary standards alignment

The CABC believes it is important to examine the misalignment of voluntary standards here in North America. Today, only about 10 per cent of standards between Canada and the US are currently harmonized. The US Department of Commerce estimates that standards and conformity assessment impact more than 80 per cent of global commodity trade. This kind of disjointed standardization affects every sector of industry and hinders bilateral trade having a direct impact on sectors' bottom line.

For example, 77 per cent of certification costs for manufacturers of water heaters come from inspection of their products, as they must use 19 different testing bodies to comply with just the requirements of the North American markets in which they sell their products. Additionally, the total cost of product testing and certification for the North American plumbing and heating industry is \$3.2-\$4.5 billion per year. At least 10 per cent of this cost is the result of duplicated requirements. The issue of standards harmonization is hurting businesses ability to operate effectively across North American borders and inhibiting business expansion and economic growth in both Canada and the US.

With an eye toward strengthening the Canada/US relationship through increased access to markets and noting past successes, the CABC recommends three actions that could significantly help in promoting voluntary standards alignment:

- Decide it is in our mutual national interest to take on voluntary standards alignment;
- Create a "North American Standards Strategy" confirming commitment to internationally accepted principles of standardization endorsed by the WTO, and;
- Formally request that Canadians be appointed to U.S. Technical Advisory Groups and vice versa, to promote bilateral dialogue on harmonization.

Differences in standards and regulations within Canada and between Canada and its trading partners costs the Canadian economy billions of dollars per year, and exacerbates the price gap on consumer products between Canada and the U.S.

With effective models in place and past successes to build on, standards harmonization can improve the Canada/US commercial flow and promote continued and expanded economic growth. The CABC applauds the Government of Canada for the inclusion of voluntary standards alignment in their 2016 North American Competitiveness Workplan, and encourages policy-makers to continue this important work that will have vast economic enhancements and improve the competitiveness of businesses in a global marketplace.

Recommendation II: Joint regulatory initiatives

First established in 2011, the Regulatory Cooperation Council works to diminish the negative impacts of regulatory differences between Canada and the United States. Because the North American economy shares a prosperous trading relationship, both countries must collaborate deeply in order to continue to flourish that joint prosperity. The Canadian American Business Council believes the bilateral initiative of the Regulatory Cooperation Council is an important driver of economic growth for the Canada-US trading relationship and should be institutionalized so that they survive successive governments.

Regulatory initiatives must also be cognizant of the impact of regulations state, provincial, and municipal governments. Fractured, multi-jurisdictional approaches to regulation that falls under shared or sole jurisdiction of these sub-governments can undermine the high level initiatives of the Regulatory Cooperation Council. Integrating goals of harmonization and cooperation at these levels will ensure ongoing competitiveness and prosperity for both Canada and the US.

Regulatory harmonization is central to enhancing cross-border business and stimulating job growth. With continued commitment to this harmonization from the two governments, civil society, and the private sector, the CABC believes joint regulatory initiatives have the potential to put Canada and the United States into a more competitive global economic position. We need to continue to call for timely progress against goals and hold regulators accountable for real, measurable progress in each of the working groups. The continued work of the Canada/US Regulatory Cooperation Council is key in maintaining and growing this prosperous trading relationship.

As of August 3, 2016, the RCC has not yet published its agreed upon work plans for 2016. We call upon the Treasury Board Superintendent to both release all the work plans and to define a clear path for receiving additional stakeholder input that is not contemplated in the current work plans. In addition, the RCC should commit to regular stakeholder dialogue that occurs more frequently than two times per year.

Recommendation III: Improving the protection of intellectual property

Patent law and policy provide the basic framework with which innovation does or does not take place. If the legal framework offers the innovator a reasonable certainty that he or she can reap the benefits of a commercially successful invention, innovation is likely to occur. To the extent that the law offers only uncertainty, innovations and the investments necessary for commercialization are less likely to occur. This is particularly true with respect to innovations involving high levels of risk and large initial investments.

Over the last four years, the Government of Canada has prioritized the modernization of Canada's IP regime. On copyright, in 2012, Canada completed one of its most significant policy reforms with the Copyright Modernization Act. In 2014, Canada's IP laws were amended to align with five international IP treaties to harmonize and streamline IP administration procedures.

Nevertheless, several aspects of Canadian patent law and policy magnify the uncertainty confronting innovators and arguably act as a drag on commercially-relevant innovation and venture investments. Through a series of decisions over the past decade, Canada's federal courts have developed the so-called "promise" interpretation of patent utility (the notion that a product must be useful to warrant issuance of a patent), in which the court finds an implied promise by the patentee that a patented technology will perform in a certain way in the future, or the patent may be invalidated.

Because the potential applications of new technologies cannot necessarily be foreseen at the time of patent issuance, the patentee faces the prospect of losing patent protection in the future due to the vagaries of evolving technologies and the rulings of whatever court or courts hears challenges to the patent. In order to support innovation and economic growth the federal Parliament in Canada should pass new legislation to clarify the rules and remove any doubt that might drive research and development activity away from Canada.

Recommendation IV: Changes to the de minimus threshold

Policy changes that raise the de minimus threshold (DMT) could be made that would significantly reduce regulatory barriers, strengthen Canada's economy, and lower prices for Canadians. Currently, Canada's DMT of \$20CAD is among the lowest in the world, and by far the lowest of any industrialized country; Canada has not increased the DMT since the 1980s, despite the fact that prices have nearly doubled.

While the DMT is intended to raise revenue through collected taxes and duties on foreign goods coming into Canada, the current threshold is so low that studies have shown the government spends as much collecting taxes from low-value shipments as it raises in revenues. A recent C.D. Howe report estimates that quadrupling the DMT to \$80CAD would reduce government revenue by \$39 million per year, but save the government \$166 million per year in collections costs, for an annual net savings of \$127 million. Under this scenario businesses and consumers receive annual net savings of \$108 million and \$156 million respectively, thanks to lowered compliance and brokerage costs. The economic gains are potentially even larger than this, as small businesses could focus their attention to growth, rather than dealing with customs brokers on small shipments.

Even a slight raise in the de minimus threshold would have vast positive benefits for the Canadian economy, and more importantly Canadian citizens. The current low de minimus threshold places an undue burden on Canadians and creates a penalty for seeking out necessary goods unavailable at their local brick-and-mortar retailers. While it is important for the Government of Canada to promote expansion and prosperous growth for businesses within Canada's borders, the ultimate concern is that of the Canadian individual. Canada and its residents benefit from economic growth throughout the country, but the country's economic growth truly begins when its citizens have the ability to reinvest in the Canadian economy. The raising of the DMT allows Canadians to continue to reap the many benefits of a strong Canadian economy while providing them the freedom to reinvest in the economy in ways that benefit them most

Conclusion

Canada enjoys many strong economic fundamentals. It is possible to leverage these advantages into an improved innovation ecosystem fully competitive with those of peer countries, but some additional steps will be need to be taken to attain more of Canada's full potential. None of the measures recommended in this submission are beyond reach, nor for the most part do they involve major or even additional expenditure, and it is hoped that these suggestions stimulate additions to Canada's positive agenda for reform that unleashes Canada's very strong innovation potential and enhances economic growth.