The Historic 2016 United States Elections: Canada And The United States — Forward Together

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Canada and the United States enjoy a unique bilateral relationship. Our partnership is forged by shared geography, similar values, common interests, deep connections and powerful, multi-layered economic ties. The 2016 U.S. elections, and in particular the election of Donald Trump as the 45th President of the United States, have the potential to impact Canada-U.S. relations in several important respects, as more fully discussed below.

The Elections and the U.S. Separation of Powers Doctrine

In addition to the election of a new President and Vice President, there were elections for 34 senators and all of the House of Representatives. In addition, elections for the governors of 12 states and 2 U.S. territories also occurred. These also have substantial implications for Canada-U.S. relations. An important feature of the U.S. political system is the separation of powers between the Executive, Legislative and Judicial branches of the government. Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch. For example, the President appoints federal judges and departmental secretaries. But these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution.

Prior to the November 8, 2016 elections, the Republicans controlled both the Senate and the House of Representatives and held a majority of the governorships. The 2016 U.S. election maintained this balance of power. However, the election of Mr. Trump as President likely means that the gridlock — a visible element of U.S. politics during the Obama years — may dissipate. While there should undoubtedly be differences that will emerge on specific issues between the views of the U.S. Administration and one or both Houses of Congress, the potential for consensus and domestic reforms is now more

likely. One example is the appointment of an additional justice to the Supreme Court of the United States to fill the vacancy created by the death of Antonin Scalia.

Canada-U.S. Trade and Trade Agreements

Since the Canada-U.S. Free Trade Agreement came into force in 1989, Canada's two-way trade in goods and services with the U.S. has more than tripled. In 1994, the North American Free Trade Agreement ("NAFTA") was signed. In addition, the U.S. is the most important destination for Canadian direct investment abroad. Nearly nine million U.S. jobs depend on trade and investment with Canada. Around $2 billion worth of goods and services cross our borders each and every day.

In addition, NAFTA has been used by companies to facilitate the temporary entry of certain categories of workers such as intra-company transferees and professionals. Of significance, thousands of Canadians enter the U.S. and thousands of Americans enter Canada under the temporary employment status facilitated by NAFTA. Any changes to NAFTA could have significant impacts on business immigration between Canada and the U.S.

The election of Mr. Trump also creates new uncertainty in the Canada-U.S. and global trade and investment relationships. Although election promises do not always equate to post-election action, it can be expected that President-elect Trump will take action to further his international trade and investment promises. Although his actions will be tempered by the Republican Congress, his statements regarding the U.S. relationship with Mexico will inject uncertainty into the NAFTA region.

President-elect Trump was also very vocal during the elections about abandoning future trade deals, bringing into question the completion of the Trans-Pacific Partnership and U.S.-European Union trade and investment negotiations. If a U.S.-E.U. trade and investment agreement cannot be negotiated, the Canada-European Union Comprehensive Economic and Trade Agreement will put Canada and its exporters and investors at a competitive advantage vis-à-vis their U.S. competitors for trade and investment with the E.U.

During the election campaign, President-elect Trump also threatened to withdraw from the World Trade Organization and to take protectionist trade actions against China, actions that would destabilize global trade. Beyond trade agreements, the protectionist sentiments expressed by President-elect Trump during the election create uncertainty as to how he will address bilateral trade issues with Canada, in particular the ongoing dispute over softwood lumber.

Accordingly, in the short term, there will be increased risk associated with trade and investment between Canada and the U.S. in 2017.

Canada-U.S. Border

Close to 400,000 people cross our shared border each day for business, pleasure, or to maintain family ties. The secure and efficient flow of legitimate goods and people are vital to Canada's economic competitiveness and mutual prosperity. Canada and the U.S. have each indicated that they are committed to strengthening the security of the border by working cooperatively to: address threats early, facilitate trade, economic growth and jobs, integrate cross-border law enforcement, and bolster critical infrastructure and cybersecurity.

There was considerable discussion during the election campaign about the integrity of the U.S.-Mexican border. The Canada-U.S. border was not a matter for significant debate and we would expect that the two governments will continue to work cooperatively to achieve the shared objectives noted above.

Energy and the Environment

Canadians and Americans share the closest energy relationship in the world. Canada is currently the leading and most secure, reliable and competitive energy supplier to the U.S., including of crude oil and refined petroleum products, natural gas, electricity and uranium. Canada also imports a significant amount of energy from the U.S., particularly electricity and natural gas.

The 2016 U.S. election results, both Congressional and Presidential, have significant implications for Canada's energy sector. President-elect Trump does not yet have clearly formed policies on most energy issues. However, what is clear from the campaign is President-elect Trump's support for TransCanada Corp's Keystone Pipeline and a friendlier approach to fossil fuels. Energy security and affordability, rather than carbon reduction, are likely to be key themes of a Trump administration.

President-elect Trump's expected pivot away from President Obama's focus on global warming would have knock-on effects in Canada. One example is the Trudeau Government's climate change strategy. Canada's proposed national carbon price of $50 a tonne by 2022 now appears to be out of step with President-elect Trump. With the incoming President's stated hostility towards international agreements, there is a strong potential for a U.S. exit from COP 21 and little appetite for a harmonized North American carbon regime.

President-elect Trump's energy policy, and its implications for Canada, will likely be furthered by a Republican-held Congress. A significant block of Republicans in the House of Representatives have supported not just the Keystone Pipeline, but a friendlier regulatory framework for oilfield services industries, as well as domestic oil and gas exploration and production companies. It was the U.S. Congress, after all, that recently lifted a 40-year ban on crude exports.

President-elect Trump's proposed tax cuts and business friendly agenda may well extend to the energy sector and have strong Congressional support. Of particular interest will be whether economic or tax incentives to the U.S. oil and gas industry

impact the competitive position of high cost Canadian producers now entering their third year of battered commodity price — and the extent to which greater market access to the U.S. refiners makes a Trump win ultimately beneficial to the industry.

Where We Go From Here

The Canada-U.S. relationship is as old as our two countries. Canada and the U.S. are, and will always be, good neighbours with relations characterized by mutual respect and many shared interests.

BLG looks forward to monitoring and reporting on Canada-U.S. legal framework and policy under a new U.S. Administration and Congress.

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