

June 15, 2012

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Mr. David Heyman  
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### **Facilitating the Conduct of Cross-Border Business**

The recent consultation meetings between United States representatives, the Canadian government and representatives from business organizations in both countries regarding improving cross-border business processes is an important step towards facilitating labor mobility between our two countries.

The signatory organizations to this document applaud the Beyond the Border Action Plan, under which the Canadian and U.S. governments have committed to ensuring business travelers benefit from more efficient and predictable border clearance processes.

The U.S. and Canada are vitally important partners. The movement of skilled workers between our two countries supports that partnership.

The business community plays a critical role in fostering a legal immigration system that facilitates trade, the movement of key personnel, and national security. One way the business community contributes to cross-border security and prosperity is by identifying areas where governing rules of entry for policy and operations could be refined.

The signatory organizations to this document represent the interests of several thousand corporations that have operations in the U.S. and Canada, employing millions of employees. They require access to an adequate supply of well-skilled, highly trained workers to grow their businesses. Skilled workers help both economies develop and remain competitive in the global marketplace. With an aging workforce and the emergence of the “new economy” in both countries, access to skilled workers is essential to maintaining that competitiveness.

A shared objective of our respective organizations is to reduce the barriers that hinder the movement of skilled workers between our two countries.

We welcome this opportunity to provide an outline of the measures we believe will have a substantive impact in removing those barriers to benefit both economies.

1. Given that both the U.S. and Canadian governments are looking at risk-based approaches to managing the border, both countries should explore the development of a program that will help facilitate entry for qualifying employers of all sizes and industries by providing officials at ports of entry with assurance that the applicant is a bona fide employee and that the employer is aware of its compliance obligations.

2. Improved decision making at ports of entry in both countries. Clarity is needed to reduce ambiguity and the need for interpretation by border officials. Rules need to be clear, and staff must have access to the tools needed to ensure consistency in their decisions relating to questions of employment or profession. This includes improved training and education on industry needs.
3. Support and where needed expansion of administrative processes whereby requests for Trade NAFTA status may be requested and adjudicated prior to the actual date of travel, including initial acquisition of Trade NAFTA status. Such processes would allow immigration agencies of both countries the ability to identify and resolve potential issues in advance of travel, which is key for employers sponsoring employees for work authorization in the destination country.
4. Employer attestation for specialized maintenance and repair personnel to ensure expedited entry to operational critical personnel
5. Modernization of classifications under NAFTA Appendix 1603.D. 1 Professionals List. Measures are needed to ensure these classifications are consistent with the changing nature of business where new and emerging industries are creating new occupations and professions. Examples of occupations most urgently requiring attention include, but are not limited to, the following:
  - a. Computer software engineers should be accommodated under either the "Engineer" and/or the "Computer Systems Analysts" occupational classifications.
  - b. Financial analysis should be accommodated under the "Economist" classification.
  - c. Scientific Technicians.
  - d. Operations research analysts should be accommodated under the "Computer Systems Analyst" position.
  - e. Management consultants should be expanded beyond independent contractors or employees of consulting firms under contracts to U.S. entities.
6. Encourage greater access to the Business Visitor classification for certain short-term skilled workers.
7. Establish a framework for a cross-border working group comprised of representatives from government and business to measure and report on progress made in improving cross-border mobility.

In addition to the above recommendations for the adjudication of entry, U.S.-based non-resident employers and their employees face burdensome withholding tax and reporting requirements when they send employees to work in Canada for short periods of time. In surveys of members of our respective organizations, many companies have identified this as a major impediment to sending their employees to work on projects in Canada.

Possible solutions to this situation include:

1. Non-resident employers should be able to apply for a program where they do not have to comply with the Canadian tax rules on an employee by employee basis for individuals they send to Canada for short periods of time to work on projects.
2. A program should be developed where they could deal with all their employees as a group, and only have to deal with Canadian withholding tax and reporting requirements for employees who were ultimately subject to Canadian tax on their employment earnings (because the salary from services performed in Canada exceeded available tax treaty exemptions).
3. This program could be administered by the Canada Revenue Agency and employers who participated would be subject to the audit of their processes to ensure that Canada was collecting the appropriate amount of tax from these employees.
4. This type of solution would simplify the compliance burden on non-resident employers and also benefit the Canadian government as there would be better compliance with Canadian tax law.

We appreciate the opportunity to provide these comments and look forward to working with your respective departments to identify ways the movement of skilled workers can be improved between the US and Canada.

Given the rather short time frames that have been set for written submissions, we suggest an extension to the June 15 deadline to allow for further input from the business community and other interested parties.

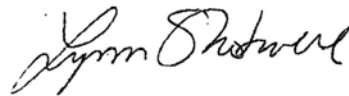
We applaud this initiative to improve trade between our two countries and look forward to further consultations and input.

We would welcome an opportunity to discuss these recommendations in further detail and provide any additional background information you may require.

Sincerely,



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