

New U.S. leader assembles team as Canadians ponder future trade

Former foreign affairs minister warns of plying 'uncertain waters' for months, even years

JEFF BUCKSTEIN

Donald Trump's surprise election presents the world economy with some big question marks, along with a level of uncertainty the markets hate. Could that prove especially disruptive to Canada, America's largest trading partner, after the 70-year-old real estate developer is sworn into office as America's next president in January?

"Let's hope that we can navigate ourselves in these uncertain waters over the next few months [and] years," said John Baird, a senior adviser at law firm Bennett Jones LLP in Toronto and a former Canadian foreign affairs minister.

Trump has signalled the U.S. will effectively kill the Trans-Pacific Partnership (TPP), which requires ratification from countries representing at least 85 per cent of the collective GDP of its 12 participants. They include the U.S. (which alone comprises more than half of the group's GDP), Canada, Mexico, Chile, Peru, Australia, New Zealand, Japan, Malaysia, Singapore, Vietnam and Brunei.

"I have asked my transition



United States president-elect Donald Trump speaks at an election night rally in New York City. Canadian experts are weighing just how far the incoming president will go in reshaping cross-border commerce given his criticism of the North American Free Trade Agreement and Trans-Pacific Partnership during the bitterly fought election.

EVAN VUCCI / CANADIAN PRESS

team to develop a list of executive actions we can take on day one to restore our laws, and bring back our jobs...on trade, I am going to issue a notification of intent to

withdraw from the Trans-Pacific Partnership, a potential disaster for our country," Trump said.

While this will lay waste to nearly five years of Canadian

negotiating efforts, it doesn't preclude Canada from trying to negotiate new, bilateral treaties with intended TPP partners such as

Baird, Page 23

News

Baird: Carbon tax 'very problematic' for manufacturing

Continued from page 1

as Japan, Australia and New Zealand, experts note.

But Trump was silent on the fate of the North American Free Trade Agreement (NAFTA) with Canada and Mexico, which has been in force since Jan. 1, 1994. Trump frequently criticized NAFTA on the campaign trail as being the worst trade deal ever signed by the U.S.

"The question is 'will he invoke the article [2205 of NAFTA] to give six months' notice of departure, or will he try to negotiate beforehand?' Certainly that's going to be held over our heads," warned Baird.

Baird said he expected Trump will at least seek major concessions from NAFTA. Furthermore, the Trump administration will emphasize "America First," reflecting the more inward thinking of a large portion of U.S. voters, and that will pose a serious challenge to political and diplomatic leaders, as well as business communities, he predicted.

Cyndee Todgham Cherniak, founder of LexSage Professional Corporation, an international trade law and sales tax firm in Toronto, does not believe Trump will rip up the NAFTA agreement outright.

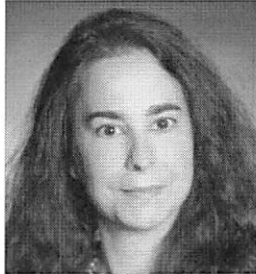
"There's too much North American trade and industry for that to be the right solution," she stressed, noting that the states that tipped the scales for Trump electorally were in the northern industrial "rust belt" like Iowa, Wisconsin, Michigan, Pennsylvania and Ohio—jurisdictions which also conduct significant cross-border commerce with Canada.

"Those states want fewer jobs transferred to Mexico, more good manufacturing blue-collar jobs, [and] more security," said Todgham Cherniak.

Canada and the U.S. traded more than US\$690 billion in goods and services in 2015, according to the Canadian government.

Trump will be under a lot of pressure from the business community not to pull out of NAFTA, said Baird. Another unknown is how much independence the Republican controlled House of Representatives and Senate will exert. Some key members, including House speaker Paul Ryan, have historically supported free trade, he noted.

Vern Krishna, counsel for TaxChambers LLP in Toronto, said the trilateral NAFTA has generated difficulties not so much between Canada and the U.S., although there have been a few rough spots with respect to, for example, softwood lumber and autos—as it has created friction between low wage,



“There's too much North American trade and industry for that to be the right solution. Those states want fewer jobs transferred to Mexico, more good manufacturing blue-collar jobs. [and] more security.”

Cyndee Todgham Cherniak
LexSage Professional Corporation

low cost Mexico, and the high wage, high cost U.S.

Making major changes to NAFTA will be difficult, said Peter Hatges, a partner with KPMG LLP in Toronto, who cited the auto sector as an example of one of the most integrated industries throughout the NAFTA corridor, from Canada to Mexico.

"There are a lot of goods being transported. We're producing something like 17.5 million vehicles a year. The amount of integration in the supply chain in North America is virtually mind boggling. Cars are pro-



duced very fast. That assembly line doesn't stop. It's not like you can have the luxury of saying 'I'd like to re-source the supply from, say Mexico, or Ontario, and I'm going to do it tomorrow morning.'" he said.

But some stakeholders see advantages to reopening NAFTA and making changes.

Sujata Dey, a trade campaigner with Council on Canadians in Montreal, would like to see stricter environmental and labour regulations in the agreement. She said Chapter 11 of NAFTA [Investment] has been used to attack Canada's environmental laws, and could also be used to target labour standards.

"There are co-operation mechanisms right now within NAFTA for that, but they have resulted in absolutely no sanctions. There's no floor for how low labour conditions and environmental conditions can go. Those are the kinds of things that we would be looking at if we are talking about renegotiating NAFTA," Dey said.

Dey would also like to see changes to NAFTA article 605, covering export measures. That establishes a formula under which Canada needs to maintain a proportion of energy exports relative to domestic consumption.

"In other words, if we wanted to scale back on exports to the U.S., we would have to also scale our domestic consumption. Because of this, it locks us into producing oil and gas in order to meet our NAFTA commitments. If there was an energy shortage, or environmental concerns where we wanted to cut back, we couldn't eliminate or scale back our exports to the U.S. and just meet domestic requirements," she explained.

Todgham Cherniak foresees different opportunities associated with reopening NAFTA—which Prime Minister Justin Trudeau has said Canada is open to discussing so long as Canadians continue to benefit.

Trump ran on the campaign slogan of "make America great again," she said. "I would say to President Trump...we want to make Canada great too. Let's



“There are co-operation mechanisms right now within NAFTA for that, but they have resulted in absolutely no sanctions. There's no floor for how low labour conditions and environmental conditions can go.”

Sujata Dey
Council on Canadians

contrast to outgoing President Barack Obama, who had rejected the pipeline running from Alberta to the U.S. Gulf Coast for environmental reasons.

"I'm very bullish on the Keystone pipeline going forward. There might be some minor tweaks to give the United States a better deal, but I'm very optimistic on that file. I do believe [Trump's] much less hostile to fossil fuels [than Obama]," said Baird.

The foremost benefit is that Canadian and American steel manufacturers would be tapped to manufacture the pipe for the project. That will be good for the

manufacture line pipe are located in Alberta. A number of oil worker jobs have been lost, and a number of people will go back to work," she added.

The real challenge for Canada from an energy and environmental standpoint is the Trudeau government's commitment to put a \$50 tax per tonne price on carbon, said Baird.

"When you have a government on the other side of the border going in the exact opposite direction that will be very problematic for the competitiveness of trade-exposed sectors, particularly manufacturing," he elaborated.

Todgham Cherniak also thinks Canada needs to reconsider its proposed carbon tax in light of the Trump victory. However on the issue of environmental regulation, she said there is a very complex balancing act involved between reducing unnecessary regulation to cut costs, while also recognizing that protection of the environment is a good thing.

"The second element you have to balance is if we're going to be [building] new plants, how do we make those new plants better for the environment? We want those plants to be creating jobs for the long term," stressed Todgham Cherniak, who added that Canada can work with the U.S. to make such decisions.

Dey said she is concerned that Trump has publicly considered pulling the U.S. out of the international Paris Agreement on Climate Change, signed by 195 countries in December 2015.

"Once you get into a situation where one person can just say 'I'm not going to do it,' it creates an incentive for everybody else in the global economy to [say] 'if they're doing it, if they're going to make more money, I'm going to do it as well. And then the planet is the biggest loser,'" she warned.

Another integral part of the Trump election platform was a promise to overhaul the *Dodd-Frank Act*, major financial reform legislation passed in 2010 to try to prevent another financial crisis.

"We want to know what revisions of Dodd-Frank he wants to repeal. He's not going to repeal all of Dodd-Frank. There's no doubt that the regulatory burden on the financial sector in the United States has become extremely onerous," said Krishna.

Major changes to Dodd-Frank could also have a potentially positive impact on Canadian banks operating in the U.S., noted Baird.

"I believe [Trump is] serious on that one. That will be real and substantial," he predicted.

We want to hear from you!

Send us your verdict:

comments@lawyersweekly.ca

“There are a lot of goods being transported. We're producing something like 17.5 million vehicles a year. The amount of integration in the supply chain in North America is virtually mind boggling. Cars are produced very fast. That assembly line doesn't stop.”

Peter Hatges
KPMG LLP

make the rust belt that extends into Canada...great again. How can we do this together? How can we find ways where we're not opposed?"

Trump has spoken in favour of the Keystone XL pipeline, in con-

Canadian steel industry, said Todgham Cherniak.

"Given that Alberta's had a rough time of it for the last few years, having this project under way will be good for the Alberta economy, because steel mills that