



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.



Warren L. Creates

Head of Immigration Law Group

wcreates@perlaw.ca

613.566.2839

The Dawn of the USMCA Era: Facilitating Trade, Mobility, and Revisiting COVID-19 Temporary Travel Restrictions

DATE: 30 JUNE 2020

The *United States-Mexico-Canada Agreement (USMCA)*, replacing the *North American Free Trade Agreement (NAFTA)*, will come into effect on 1 July 2020. On its face, all its provisions dealing with the mobility of people – Chapter 16 on temporary entry for business persons – remain substantively unchanged compared to Chapter 16 in the *NAFTA*. Nevertheless, it might be a bit early to jump to the conclusion that the new Agreement, or how it will be interpreted and applied by border officers, will have no new affect on the mobility of people.

The *USMCA* primarily aims to facilitate trade among the three signatory parties to the benefit of their local industries. However, when we are talking about trade in services or goods, are we able to exclude the human aspect? It is people who are negotiating deals, who are making the investments, who are managing the businesses, who are operating the machines, and who are transporting the goods. This is especially noteworthy under current circumstances, where the border closure under COVID-19 has substantially limited the travel between Canada and the United States. The intent behind the border closure is obvious: to stop the spread of the COVID-19 virus by minimizing the influx of people. This seems to be a logical precaution to protect public health. But what is the cost of this seemingly inflexible measure? The dawn of the *USMCA* era might be a suitable time for us to revisit this matter.

It is obvious that the current lockdown has taken a toll on our economy. Many people are out of work, many businesses are shut down, and many tenants (both commercial and residential) can no longer afford to pay their landlords. These are all vivid examples of the economic harm that we now witness in our daily lives. Canada has for many decades enjoyed the benefits of its intimate economic connection with the United States. People used to be able to conveniently cross the border for work, tourism and shopping. Canadian companies also cooperate closely with

Perley-Robertson, Hill &
McDougall LLP/s.r.l

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022

F: 613.238.8775

www.perlaw.ca



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

Perley-Robertson, Hill &
McDougall LLP/s.r.l

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022
F: 613.238.8775

www.perlaw.ca

their United States counterparts on trade and supplies. However, for the time being, other than the small number of people who qualify under the short list for “essential travel”, the expediency of cross-border travel which has played such an important role in the Canadian economy no longer exists.

The advent of the **USMCA** should cause us to think about border closure and the mobility of people because the Agreement contains new measures that will further the economic relationships between the signatory countries. There has not yet been any signs that the travel restrictions will soon be altered in any meaningful or substantive way. Given the inseparability between trade and the movement of people, the more benefits that the parties of the Agreement had intended, the more we are losing by prohibiting people from travelling across the border.

The **USMCA** has innovations that will incentivize broader participation in cross-border trade, which likely entails more frequent movement of people on a new larger scale. For example, the **USMCA** is raising the *de minimis* threshold for the exported goods to enter another country duty-free. This will exempt customs duties and taxes for lower-value shipments. As a result, this change encourages smaller businesses to participate in export, since it can now save them the duties and taxes which had been previously too burdensome. The trade in goods is essentially about the people working on various links in the supply chain, including investing, managing, manufacturing and marketing. In a world without COVID-19, people would freely make in-person business trips to negotiate deals, inspect their manufacturers’ facilities, or study their target markets. It is however paradoxical that while the **USMCA** is proactively taking new steps to promote trade and vitalize the economies of our three countries, the current travel restrictions are frustrating that objective by rendering virtually all cross-border travel impossible.

Notably, at the negotiation stage of the **USMCA**, Canada was seeking to modernize and expand **NAFTA**’s original list of professionals and business persons who can be granted easy access, but this endeavor did not succeed. The Trump White House would have nothing to do with it. It is a pity that the **USMCA** has lagged behind the pace of modernization by maintaining a list of professions that represented the economy 30 years ago. Canada’s priority has always been to maintain and promote a smooth influx of people, which is an indispensable component of our economic development. Unfortunately, because of current travel restrictions, statistics have already shown that both business travel and immigration have plummeted during the pandemic, which will likely further negatively impact the Canadian economy.

Economic benefits intended by the **USMCA** cannot be effectively achieved if we disregard the human aspect that is so critical to free trade. In order to uphold robust trade and commerce across borders, a flexible and efficient mechanism must be found to facilitate the mobility of people. This is especially worth noting during this lockdown period. A border closure



PERLEY-ROBERTSON,
HILL & MCDUGALL LLP/s.r.l.

appears to be an easy and immediate solution to the health crisis, but perhaps it is now time to work towards more flexible measures. No one can precisely estimate how long our battle against the virus will last. Maintaining the current state and allowing the economy to deteriorate indefinitely is too high a price. Risk can never be eliminated altogether but can be managed. The new opportunities brought by the implementation of the **USMCA** are urging us to consider gradually lifting the travel restrictions in regions and by ways where and how feasible.

Perley-Robertson, Hill &
McDougall LLP/s.r.l

1400-340 Rue Albert Street
Ottawa, ON
K1R 0A5

T: 613.238.2022
F: 613.238.8775

www.perlaw.ca