

# Exporting to the United States

A Guide for Canadian Businesses 2008



Government  
of Canada

Gouvernement  
du Canada

Canada

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Aussi offert en français sous le titre Exporter aux États-Unis : Guide pour les entreprises canadiennes 2008.

This document is available in alternative formats on request.

Catalogue No. FR5-26/2008E

ISBN: 978-0-662-48360-1

Printed in Canada.

## Is This Guide for You?

Yes, it is, if your business has a product or service that you feel could compete in the United States. Even if you're already exporting to the U.S., we think you'll find information, tips and resources here that will help you succeed more quickly and easily in the U.S. market. To take just a few examples, the guide examines:

- tools you can use to analyze U.S. markets and their characteristics;
- the effects of NAFTA on Canadian exporters;
- financing your exports to the U.S.;
- managing cross-border travel;
- border security and its effects on Canadian exporters; and
- U.S. Customs procedures and regulations, and how to deal with them.

The guide does assume that you already have some basic knowledge of exporting. If you feel you need a better grounding in the subject, we'd like to recommend the *Step-by-Step Guide to Exporting*; you can download a copy of the document or read it online at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp).

The U.S. market is vast, complex and highly competitive, and can be intimidating to enter. But thousands of Canadian enterprises—small, medium, and large—have been very successful south of the border. More join them every year, and there's no reason that your company can't be among them.

### Please Note

The information provided in the guide is not exhaustive. To ensure that your needs are met, always consult specialists such as the trade commissioners of the Canadian Trade Commissioner Service; you'll find contact details at [tradecommissioner.gc.ca/ie-en/InCanada.jsp](http://tradecommissioner.gc.ca/ie-en/InCanada.jsp). For general information and assistance, you can call a Canada Business Network Information Officer at 1-888-5h76-4444 or visit the Canada Business Network website at [www.canadabusiness.ca](http://www.canadabusiness.ca).

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# 1

## Before You Head South

With a market of more than 300 million people, the United States is the world's largest economy. Its size gives it the power to influence global acceptance of everything from consumer goods to industrial standards, and makes it a magnet for exporters all over the planet. Simultaneously, the U.S. is a major supplier of goods and services both to its own domestic markets and to markets around the world.

Because of its vast size and range of needs, the U.S. can be a very good market for Canadian exporters. But the same characteristics that make it attractive can also make it a difficult market, because exporters to the U.S. must compete not only with each other but with U.S. domestic suppliers. Moreover, the wide variety of market segments can make it hard for an exporter to focus on the areas where the company can best apply its strengths.

Canadian exporters must also face the challenge of treating the U.S. as a market separate from Canada. While the similarities of language, standard of living and attitudes give Canadians a unique advantage over exporters from other countries, they can also cause us to overlook the many ways in which the two nations are different.

Our business cultures, for example, diverge in subtle ways. American business people tend to be more opportunistic than Canadians and more willing to take chances; they're used to making up their minds quickly and decisively, and expect others to do the same. They are comfortable with giving an outright "no" in response to a proposal, while Canadians in similar circumstances will often try to avoid a direct refusal. They value innovation very highly, being more interested in the future than the past, and they're extremely persistent in looking for solutions that will allow them to close a deal.

These are generalizations, of course, and there are many exceptions, but Canadian business people who understand the prevalence of these attitudes will greatly improve their chances of success south of the border.

### 1.1 The Canada-U.S. trade and economic relationship

The United States is Canada's largest trading partner and is the largest market for Canadian goods. The Canada-United States Free Trade Agreement (1989) and the North American Free Trade Agreement (1994) have both been crucial to increasing market opportunities for Canadian exporters in the U.S.

Ultimately, however, it is Canadian exporters—of all sizes and in all industries—that make this relationship as successful as it is. According to Canada's International Market Access Report 2007 (available at [www.international.gc.ca/trade-agreements-accords-commerciaux/cimar-rcami/cimar2007.aspx?lang=en](http://www.international.gc.ca/trade-agreements-accords-commerciaux/cimar-rcami/cimar2007.aspx?lang=en)), the huge volume of our trade with the U.S. in 2006 is reflected in the following statistics:

- Total bilateral trade was worth more than \$626 billion.
- The United States purchased 79 percent of all Canadian goods exports, and was the source of 65 percent of Canada's goods imports.
- Canada exported \$35.9 billion worth of services to the United States.
- Canada remained the United States' most important market, importing 22.5 percent of all U.S. goods exports and about 9 percent of all U.S. services exports.
- Canada is the leading export market for 36 of the 50 U.S. states, and we ranked in the top three markets for another 10 states. In all, Canada is a larger market for U.S. goods than the European Union.

### 1.2 Understanding Canada-U.S. relations

Trade is only part of a larger network of relationships between our two countries. This network changes in response to many complex influences, and exporters need to be aware of how this can affect their activities. To take just a few examples:

Evolving U.S. concerns about border security have affected border waiting times, shipping regulations, reporting requirements and many other export-related issues.

The Canada-U.S. trade relationship is not static. Political and business strategies change on both sides of the border, and events occur—such as the softwood lumber dispute—that can have drastic effects on Canadian exporters.

Many Americans are not aware of the political and economic value of the Canada-U.S. relationship, and Canada is consequently not a priority for them.

For more information, you can visit Foreign Affairs and International Trade Canada’s Canada–United States Relations website at [www.can-am.gc.ca](http://www.can-am.gc.ca). This has links to many resources covering various aspects of the bilateral relationship, including visas and immigration, border cooperation and politics, and trade. The site also includes a handy link to a list of Government of Canada offices in the U.S.

### 1.3 Understanding the North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement provides comprehensive disciplines for trade in goods and services, investment, intellectual property and dispute settlement. One of its major achievements has been to eliminate the tariffs on most goods originating in the member nations. Another has been to liberalize regulations affecting matters such as investment and cross-border trade in services. These have provided many excellent business opportunities for Canadian exporters and continue to do so.

We will examine NAFTA’s impact on Canadian exporters at various places in this guide, particularly in [Section 4.1](#), “The North American Free Trade Agreement.” In the meantime, you can find useful information about NAFTA, including the full text of the agreement, at [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/index.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/index.aspx).

### 1.4 Understanding the U.S. market

There is actually no single “U.S. market.” What you will actually find in the U.S. are *markets*—lots of them, segmented by race, religion, age, geography, nationality, citizenship status, income bracket, occupation, political persuasion, industry, profession, trade and so on.

This is hardly surprising: given the size and affluence of the United States, the needs and desires of its population are not likely to be the same across the country. Oregonians probably will not have the same preferences for goods as North Carolinians; not all industries will operate in all states; and products are altered for different climatic regions.

To put the size of these markets into better perspective, we can think of each state as a nation, with a Gross State Product (GSP) equivalent to a country’s Gross Domestic Product (GDP). In this framework, California’s GSP is close to the GDP of France, and Texas’ GSP is approximately equal to the GDP of Canada.

But looking at states as a whole, although it helps us understand market size, does not tell the entire story. Sometimes commonalities spread across state borders; conversely, people in one part of a state will sometimes have tastes that are not shared by people elsewhere in the same state.

This variety presents Canadian exporters with a myriad of opportunities. It also implies a need for very careful market research and a well thought-out export strategy that will precisely target the best markets for your company.

*California’s GSP is close to the GDP of France, and Texas’ GSP is approximately equal to the GDP of Canada.*

### 1.5 Market access issues

Exporters should be aware of the impediments to trade presented by non-tariff barriers, security issues and “buy American” policies.

Barriers to trade are usually classified as “tariff” or “non-tariff” barriers. A tariff is a tax applied to merchandise imports and, less frequently, to exports. The tax may be levied either on an *ad valorem* basis (a fixed percentage of the value of an imported product) or on a specific basis (a fixed levy per unit of imported product). Following a final tariff reduction between Canada and Mexico, which took effect on January 1, 2003, virtually all trade in the NAFTA region has flowed tariff-free. Issues such as the following, however, remain:

U.S. anti-terrorism and domestic security measures have raised a number of barriers to the smooth flow of cross-border trade. These measures continue to evolve and may



complicate your export business, by, for example, slowing traffic across the border or requiring more documentation and monitoring. We will examine the most important of these measures in [Section 9](#), “Border Security.”

“Buy American” policies can present access problems to Canadian exporters. As an example, one of the largest markets in the U.S. is the public-sector procurement market. This includes the federal-level General Services Administration (GSA) and Department of Defense (DoD), as well as state procurement agencies. These organizations are mandated to “buy American” whenever possible. We will look more closely at the government procurement market in [Section 3.7](#), “U.S. government procurement.”

Small business set-asides can raise other barriers. A set-aside is a requirement that a specific product or service needed by the U.S. government can be supplied only by small U.S. businesses, regardless of NAFTA provisions. This means that Canadian suppliers can be abruptly shut out of U.S. government markets that they have spent time and money to develop.

Non-tariff barriers (NTBs) are government measures or policies, other than tariffs, that restrict or distort international trade. As tariffs are lowered or eliminated, by a free trade agreement, for example, it becomes more important to address non-tariff measures that can be used to frustrate trade. Examples of NTBs include import quotas, discriminatory government procurement practices and discriminatory measures to protect intellectual property. A further class of non-tariff barrier is that of technical barriers to trade (TBTs), such as government requirements for the unnecessary duplication of tests and certifications for a product.

In spite of these access issues, almost all our exports flow into the U.S. without incident, a remarkable achievement for a trading relationship worth more than a billion dollars a day. Our two countries, however, do have some key differences in economic policy, and respond in different ways to world economic conditions. In cases where we have not been able to resolve our differences through consultation, Canada has relied on WTO and NAFTA dispute settlement procedures.

From the practical point of view, you should find out as early as possible if there are any barriers that will affect your exports. If a barrier does exist, you should determine how it may affect your access to your U.S. market, the pricing of your product or service, and your costs of doing business in the United States.

## 1.6 Global value chains and the U.S. market

Globalization has caused companies worldwide to divide their products or services into components and, instead of obtaining those components domestically, acquire them from other countries through international trade. This business model is called a global value chain, and comprises all the linked activities needed to bring a product or service from conception to consumer.

### 1.6.1 The growth of global value chains

According to the Office of the Chief Economist of Foreign Affairs and International Trade Canada, three major forces are driving the growth of global value chains:

#### Declining costs of transportation

- As transportation costs fall, companies can move their goods and services over greater distances without losing competitiveness in their target markets. There is consequently less need for a company to be close to its suppliers or consumers, so it can establish its facilities in a location that offers the most competitive advantages.

#### Improved information and communication technologies

- More flexible, adaptable and cheaper information and communication technologies (ICT) mean that companies are much less constrained by distance when operating in foreign markets. Advances in ICT have also made it possible to trade in services that depend on the very rapid movement of large volumes of data (such as software development or financial services) or real-time communications (such as online medical diagnosis or teleconferencing).

#### Reduced barriers to trade and investment

- The number of bilateral trade and investment treaties has been increasing quickly during the past 20 years; for Canada and its trade with the U.S., NAFTA is the key agreement.

### 1.6.2 Joining a global value chain

If you are exporting to the U.S. or are interested in doing so, how can you take advantage of these new and expanding global value chains? There are several options, including these:

### Provide an intermediate input for a U.S. company

- If your product can be sold as an intermediate input for a U.S. company that is already part of a global value chain, you could link into that chain by becoming a supplier to the U.S. firm. This approach closely approximates the traditional model of production and exporting. Its advantage is that you are linked to the chain through the relatively familiar U.S. market, rather than a more distant one like that of China or India. For SMEs, especially for those with niche technologies or specializations, new opportunities are emerging to sell to U.S.-based multinationals or their suppliers, especially as these firms outsource activities that were previously carried out internally.

### Start your own global value chain

- If your company manufactures finished products, perhaps you can acquire your intermediate inputs from the U.S. and use these to produce your goods in Canada (or in a third country, for that matter). If your product is an intermediate input that you ship abroad, the same strategy can apply.

### Use investment in the U.S. to connect to a global value chain

- By investing in the United States, you can gain immediate access to the enormous U.S. market and the global value chains that are linked to it. There is a broad spectrum of investment approaches, ranging from the passive to the active.
- You might, for example, opt for a passive strategy and become part of a global value chain simply by investing in a U.S. company, while taking little or no part in its operations. Alternatively, you might take a more active approach and purchase a U.S. firm or set up a joint venture or partnership with one; this would allow you to take advantage of the other firm's assets and experience, thus increasing your competitiveness and giving you better control of your U.S.-based production and distribution networks. This approach can be very cost-effective if you obtain existing production and distribution capabilities through the investment and do not need to build them from the ground up.
- At the most active end of the spectrum, you could become a full participant in the U.S. market by establishing a wholly owned subsidiary there. This investment strategy presents a range of advantages that can help you not only benefit from U.S.-linked global value chains, but also drive their activities and development.

- Perhaps the most important of these advantages is that you are not dependent on a partner, so you control the direction your subsidiary will take. You also have direct contact with your end users, which is good for developing new products and for building solid customer relationships. Your company and its role in the value chain are likely to become better known, since your identity is not obscured by the presence of a partner. Finally, your U.S.-based staff answers only to you, and all data related to your U.S. operation is at your sole disposal.

## 1.7 Information sources for the U.S. market

### 1.7.1 Government resources

- The Agri-Food Trade Service provided by Agriculture and Agri-Food Canada provides centralized access to market information, trade counselling and export support activities. Refer to [www.ats-sea.agr.gc.ca/general/home-e.htm](http://www.ats-sea.agr.gc.ca/general/home-e.htm).
- The Canada Business Network is a government information service for businesses and entrepreneurs in Canada. It is intended as a single entry point for information about federal, provincial and territorial government services, programs and regulatory requirements. Refer to [www.canadabusiness.ca](http://www.canadabusiness.ca) or call 1-888-576-4444.
- Canada's International Market Access Report website provides an overview of the government's priorities for improving access to foreign markets, including the United States. Refer to [www.international.gc.ca/trade-agreements-accords-commerciaux/cimarcami/index.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/cimarcami/index.aspx).
- The Canada–United States Relations website provides links to many resources covering various aspects of the bilateral relationship, including visas, immigration, border cooperation, politics and trade. Refer to <http://geo.international.gc.ca/can-am/main/menu-en.asp>.
- The Canadian Commercial Corporation (CCC) provides international contracting services to Canadian exporters selling to foreign governments, as well as special market access to Canadian companies targeting U.S. government procurement markets. Refer to [www.ccc.ca](http://www.ccc.ca).

- The Canadian Trade Commissioner Service (TCS) is Canada's most comprehensive network of international trade professionals and provides services to Canadian businesses that have researched and selected their target markets abroad.
- The TCS can help you with your export initiatives by preparing your company for international markets, assessing your market potential and providing qualified contacts and support to solve problems. Trade commissioners are available whenever and wherever your company needs them, in more than 150 cities worldwide and in offices across Canada. For more information, refer to [tradecommissioner.gc.ca](http://tradecommissioner.gc.ca).
- The Virtual Trade Commissioner, another TCS resource, is a personalized, online tool that provides current market reports, sector-specific news, information on trade events and access to assistance from trade commissioners located in Canada. For free registration, visit [tradecommissioner.gc.ca/registration/RegistrationMain.jsp?lang=en](http://tradecommissioner.gc.ca/registration/RegistrationMain.jsp?lang=en).
- Export Development Canada (EDC) offers innovative commercial solutions to help Canadian exporters and investors expand their international business. EDC's knowledge and partnerships are used by 6,400 Canadian companies and their global customers in up to 200 markets worldwide each year. Refer to [www.edc.ca](http://www.edc.ca).
- Foreign Affairs and International Trade Canada provides information related to foreign affairs, foreign policy, international trade and more. Refer to [www.international.gc.ca](http://www.international.gc.ca).
- Industry Canada provides general and specific information of use to exporters, including market reports and the Trade Data Online research tool. Refer to [www.ic.gc.ca](http://www.ic.gc.ca).
- Statistics Canada is Canada's central statistical agency. It produces statistics and statistical reports on Canada's population, resources, economy, society and culture. Refer to [www.statcan.ca](http://www.statcan.ca).
- Stat-USA/Internet is available by paid subscription only. It provides trade-related statistics and information, and includes Globus (Global Business Opportunities) and the National Trade Data Bank (NTDB). It is part of the U.S. Department of Commerce. Refer to [www.stat-usa.gov](http://www.stat-usa.gov).
- The U.S. Bureau of Economic Analysis is also part of the U.S. Bureau of Commerce and provides statistics and analyses of U.S. economic performance. Refer to [www.bea.gov](http://www.bea.gov).
- The U.S. Census Bureau provides coverage of the statistical data collected in the U.S. Census, including detailed demographic data. Refer to [www.census.gov](http://www.census.gov).

### 1.7.2 Private-sector resources

- Chain Store Guide: [www.csgis.com](http://www.csgis.com)
- Consumer USA: [www.euromonitor.com/USA](http://www.euromonitor.com/USA)
- Europa World Plus: [www.europaworld.com](http://www.europaworld.com)
- Manufacturers' Agents National Association Directory: [www.manaonline.org](http://www.manaonline.org)
- ThomasNet: [www.thomasnet.com](http://www.thomasnet.com)
- Tradeshow Week: [www.tradeshowweek.com](http://www.tradeshowweek.com)



# 2

## Preparing to Export to the U.S.

To prepare for your entry into the U.S. market, you must ensure that your company has the financial, human and production capacity to meet its demands. For a general introduction to becoming “export-ready,” you might want to read Chapter 1 of the *Step-by-Step Guide to Exporting*, available at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp).

### FORUM FOR INTERNATIONAL TRADE TRAINING

The Forum for International Trade Training (FITT) is Canada’s international trade training and professional certification body. It sets the standards and designs the training programs through which you can acquire the professional designation of Certified International Trade Professional (CITP). Delivered by a broad network of educational partners, FITT’s training programs will provide you with the knowledge and practical skills that are essential for engaging in international trade. Refer to [www.fitt.ca](http://www.fitt.ca) for more information.

### 2.1 Is there a market for your company?

Your first step is to find out whether there is, in fact, any U.S. demand for what you are offering. A good way to start this research is to look at Canada’s annual exports of the type of goods you manufacture, and identify how much of this went to the U.S. This will help you estimate the size of the U.S. market for your particular product(s).

The Trade Data Online tools on Industry Canada’s website, at [www.ic.gc.ca/sc\\_mrkti/tdst/engdoc/tr\\_homep.html](http://www.ic.gc.ca/sc_mrkti/tdst/engdoc/tr_homep.html), will help you determine how much export business your sector carried on in the U.S. over various time periods. However, this only tells you how much of your type of product was imported into the U.S.

from Canada. For a complete picture of the U.S. import market, you will need a U.S. statistical source, such as the Bureau of Economic Analysis at [www.bea.gov](http://www.bea.gov). Remember, also, to examine how U.S. domestic production fills the needs of the U.S. market.

These statistics still might not tell the whole story. For example, goods may be officially recorded as imports into one state, but be really destined for another. If you do not do your research, you may end up targeting the wrong market.

To retrieve the Trade Data Online information—and for many other purposes—you will need to determine the Harmonized System code (HS code) of your product. If you are not familiar with HS codes, they are an international description and coding system for commodities, and the tariffs of most countries are based on them. We will examine HS codes in more detail in [Section 7.2](#), “Harmonized System (HS) codes.”

Also valuable at the early stages of market research are the Canadian Trade Commissioner Service sectoral market studies and country-specific reports, available at [tradecommissioner.gc.ca/ie-en/MarketReportsAndServices.jsp](http://tradecommissioner.gc.ca/ie-en/MarketReportsAndServices.jsp). Provided free of charge, the reports are prepared by International Trade Canada’s Market Research Centre and by Canada’s offices abroad.

The website of the Canadian Embassy in Washington, D.C. is at [www.canadianembassy.org](http://www.canadianembassy.org) and gives contact information for Canadian trade specialists both in the U.S. capital and in Canadian consulates across the U.S. The embassy site at [www.canadianembassy.org/offices](http://www.canadianembassy.org/offices) has a list of Canadian government offices in the U.S. Be sure to look at the Trade and Investment section of the site and at the State Trade Fact Sheets that are available there.

Another resource for targeted research about potential exports is Industry Canada’s sector information page at [www.ic.gc.ca/epic/site/ic1.nsf/en/h\\_00066e.html](http://www.ic.gc.ca/epic/site/ic1.nsf/en/h_00066e.html). It is a handy gateway to information about major Canadian business sectors, their markets, strategies and so on.

## 2.2 Researching specific target markets

You will develop a better export strategy if you investigate potential markets from the very beginning of your export initiative; as you close in on the market segment that seems best for you, your research will simply become more focused. You can obtain an overview of the market research and selection process from the *Step-by-Step Guide to Exporting* at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp).

*You will make better decisions about your export strategy if you have been investigating potential markets from the very beginning of your export initiative.*

This step involves reading and analyzing as many relevant market reports and publications as you can manage. Here are several Canadian and U.S. sources to help you better understand your potential market (some are repeated from [Section 1.7](#), “Information sources for the U.S. market”):

- The Canadian Trade Commissioner Service provides many types of market reports. Refer to [tradecommissioner.gc.ca](http://tradecommissioner.gc.ca).
- Agriculture and Agri-Food Canada provides various analyses and statistics. Refer to [www.ats-sea.agr.gc.ca/stats/stats-e.htm](http://www.ats-sea.agr.gc.ca/stats/stats-e.htm).
- The Virtual Trade Commissioner (VTC), also available from the Canadian Trade Commissioner Service, is a personalized, online resource that will notify you of new information related to your industry and markets, and can make information on your company available to the 900 trade commissioners who are located in TCS offices worldwide. Through the VTC, you can also request services from trade commissioners who deal with your type of industry and its markets. Registration is free at [tradecommissioner.gc.ca/registration/RegistrationMain.jsp?lang=en](http://tradecommissioner.gc.ca/registration/RegistrationMain.jsp?lang=en).
- The Canada–United States Relations website of Foreign Affairs and International Trade Canada has links to many resources on business development in the U.S. Refer to <http://geo.international.gc.ca/can-am/main/menu-en.asp>.
- Export Development Canada (EDC), at [www.edc.ca](http://www.edc.ca), has a good range of research tools and resources.
- CanadExport, at [www.canadexport.gc.ca](http://www.canadexport.gc.ca), is a free, on-line publication of Foreign Affairs and International Trade Canada. You will find news about U.S.-related trade opportunities, export programs, trade fairs, business missions and more.
- The State Trade Fact Sheets, prepared by the Canadian Embassy in Washington, D.C., furnish trade-related backgrounds for all states. Refer to [www.canadianembassy.org/statetrade](http://www.canadianembassy.org/statetrade).
- The U.S. Census Bureau, at [www.census.gov](http://www.census.gov), provides coverage of the statistical data collected in the U.S. Census, including detailed demographic data.
- The Bureau of Economic Analysis, part of the U.S. Department of Commerce, provides statistics and analyses of U.S. economic performance. Refer to [www.bea.gov](http://www.bea.gov).
- American Demographics, a subscription website, is a gold mine of marketing and demographic information, especially for trends and consumer analysis. It is at [www.adage.com/american demographics](http://www.adage.com/american demographics).
- The U.S. National Technical Information Service (NTIS), at [www.ntis.gov](http://www.ntis.gov), is part of the U.S. Department of Commerce and is a repository of more than two million titles of government-sponsored scientific, technical, engineering and business-related publications.
- Stat-USA/Internet, part of the U.S. Department of Commerce, provides trade-related statistics and information by subscription only. It includes Globus (Global Business Opportunities) and the National Trade Data Bank (NTDB); refer to [www.stat-usa.gov](http://www.stat-usa.gov).
- FedBizOpps, at [www.fedbizopps.gov](http://www.fedbizopps.gov), provides a single point of entry for the U.S. government’s product and services procurement process. Foreign Affairs and International Trade Canada also provides information about this market on its Sell2USGov website at [www.international.gc.ca/sell2usgov](http://www.international.gc.ca/sell2usgov).

## 2.3 Assessing your company's readiness

After identifying a market segment—perhaps a demographic or a region where your product might do well—your next step is to decide whether your company has the financial, human and production capacity to supply a market in the United States. You might consider this in the light of the following questions:

The U.S. is a ferociously competitive market. What advantages does your product or service have that will set it above its competition?

Can you obtain the capital needed for any necessary expansion, such as staff or production facilities?

Do you have enough cash flow to sustain your operations until you receive payment for your goods or services?

Will your product or service need to be adapted to the U.S. market? For example, will your oak cabinets warp in the humid conditions of the South?

Will your product or service need different packaging and promotional materials? For example, will brochures need to be in English and in Spanish?

Can you obtain the financing needed to promote your product or service in the U.S.?

What further research are you doing to identify your intended market? Is it time, for example, for an on-the-ground survey of the territory?

Another key export-readiness resource for service providers is “Export Your Services” at [www.canada-business.ca/servlet/ContentServer?pagename=CBSC\\_FE/display&c=Services&cid=1081944199778&lang=en](http://www.canada-business.ca/servlet/ContentServer?pagename=CBSC_FE/display&c=Services&cid=1081944199778&lang=en). It covers everything from locating international business opportunities to market entry methods for service firms.

Export Development Canada (EDC) provides a further angle on your export readiness through its free EXPORTable diagnostic, available in the Tools section of the EDC website at [www.edc.ca/edcsecure/exportable/intro.asp?lang=E](http://www.edc.ca/edcsecure/exportable/intro.asp?lang=E).

This is not an exhaustive list of readiness-assessment tools, so you may want to investigate other government and non-government resources in this area.

## 2.4 Creating your export plan

The next step is to create your export plan, because a good plan will vastly improve your company's chances of success in the United States. Your plan will also be crucial if you need financing, because financial institutions will not lend to a business that has not developed one. The *Step-by-Step Guide to Exporting*, available at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp), has an overview of export plans that you may find useful.

Your export plan will be similar in many ways to your business plan, except that it will concentrate on the conditions of the U.S. market. Among other things, it will include:

- a description of how you will organize your export activity;
- an analysis of your product and its suitability to the U.S. market;
- an overview of your market research;
- a description of the methods by which you will enter the U.S., such as promotion and distribution;
- an analysis of U.S. regulatory, logistical and risk factors and how you will deal with them; and
- an implementation plan and a financial plan.

*A good export plan will vastly improve your company's chances of success in the United States.*

We will examine money matters in more detail in [Section 5](#), “The Basics of Export Financing.” However, financial planning is part of your export plan, so it bears mention here.

First, it may take months or even years for your U.S. export venture to show a positive return on investment. Be sure your plan accounts for this and that your operations can be sustained until either they become profitable or you choose to leave the market.

Second, a solid financial plan for your export initiative is a must. In addition to including a capital budget and a cash budget, it must allow for fluctuations in the value of the Canadian dollar that may affect your profitability in the U.S. market or at home. A good financial plan is also essential if you need to approach lenders for working capital, letters of guarantee or other kinds of financial assistance.

## 2.5 Selecting your market

The selection of your market or markets is among the most crucial decisions of your export initiative. At this point, you will need to undertake non-documentary research such as person-to-person contacts, specialist advice and on-the-ground investigation to confirm that you are making the right choice.

To help achieve this, you can:

- Contact the Canadian Trade Commissioner Service, which will introduce you to a trade commissioner in your province. The trade commissioner will help you identify U.S. markets where your company has the most potential, and will work with colleagues in Canadian consulates in the U.S. to give you information on business conditions and recent developments in the local market. The TCS offers expert advice, problem-solving skills and a U.S.-wide network of contacts. For further information, refer to [trade commissioner.gc.ca/regions](http://trade.commissioner.gc.ca/regions).
- Contact potential U.S. buyers, partners, agents and distributors.
- Approach the chambers of commerce in your prospective markets.
- Visit the particular region of the U.S. in which you are interested.
- If you have not already done so, visit the Canadian Trade Commissioner Service website at [trade commissioner.gc.ca](http://trade.commissioner.gc.ca) and register with the Virtual Trade Commissioner.

The above list is not exhaustive; for more information, contact a Canada Business Network Information Officer at 1-888-576-4444.

*You will need to undertake non-documentary research such as person-to-person contacts, specialist advice and on-the-ground investigation to confirm that you are making the right choice.*

## 2.6 Developing your export marketing plan

Export marketing plans are always works in progress, and successful exporters begin developing them almost as soon as they decide to go into international trade. Assuming you have done this, the final selection of your market means that you can now put the finishing touches on your own plan.

Whole books have been written about this subject, and we will not try to compete with them here; for a general overview, you might read the “Reaching the Customer” chapter of the *Step-by-Step Guide to Exporting*, available at [trade.commissioner.gc.ca/ie-en/ExportingGuide.jsp](http://trade.commissioner.gc.ca/ie-en/ExportingGuide.jsp).

In the meantime, remember to consider the following in your export marketing plan:

- exchange rate fluctuations between the U.S. and Canadian dollars (for more information on managing our strong dollar, see [Section 5.8](#), “Currency fluctuations”);
- the expense of business travel to and from the U.S.;
- costs involving third parties such as U.S. customs brokers, freight forwarders and possibly U.S. representatives or agents;
- possible modifications to your product because of U.S. standards, regulatory requirements or consumer preferences;
- insurance for travel and shipping;
- delays at the border and the costs of these delays; and
- extra packaging to cope with increased handling and travel time.

You will also need to research the price trends for your particular product or service in the target market, so that you will understand both your competitors’ pricing strategies and the buying patterns of your potential customers. At this stage, you can obtain valuable assistance from trade commissioners at the appropriate Canadian consulates in the U.S., who will be familiar with the local business environment. For a general discussion of the factors involved in establishing prices, you can also refer to the “Setting Prices” section of the *Step-by-Step Guide to Exporting* at [trade.commissioner.gc.ca/ie-en/ExportingGuide.jsp](http://trade.commissioner.gc.ca/ie-en/ExportingGuide.jsp).



## 2.7 Government services for exporters

There are many government programs and services for Canadian exporters who are selecting a target market.

- For general guidance in identifying government services and programs suitable for your business, contact a Canada Business Network Information Officer at 1-888-576-4444.
- Regional offices of the Canadian Trade Commissioner Service can help you find the services you need. Located across Canada, the TCS regional offices provide expert advice, problem-solving skills and a global network of contacts. Services are provided free of charge. For contact information, refer to [trade.commissioner.gc.ca/regions](http://trade.commissioner.gc.ca/regions).
- Export Development Canada (EDC) has a wealth of country information available on its website at [www.edc.ca/reports](http://www.edc.ca/reports). These reports provide current market intelligence for a wide range of countries.
- Another valuable resource is Canadian Commercial Corporation's market access services at [www.ccc.ca](http://www.ccc.ca), which can help you sell to U.S. public-procurement markets. The help available includes advice on preparing international bids and contract-related services that will help you obtain the best terms for your export sale.

Your approach to advertising and promotion also requires careful thought and research. American attitudes to matters such as the environment, politics, religion and political correctness often diverge from Canadian viewpoints; attitudes also vary considerably across the U.S. As a result, marketing that works in New Brunswick may fail in Montana, and what works in Montana may fail in Louisiana. And if you decide to use an agency to handle your promotional materials and marketing campaign, make sure the firm—whether Canadian or U.S.—clearly understands the market you are entering.

## 2.8 Government training programs for U.S.-bound exporters

New exporters to the U.S., and exporters seeking to expand their existing U.S. markets, can find hands-on, practical training through ExportUSA, which focuses on export education and targets Canadian companies considering exporting to the United States. ExportUSA consists of three programs:

- The New Exporters to Border States (NEBS) program introduces the essentials of exporting, including practical export information and first-hand exposure to markets in the United States.
- The Exporters to the United States (EXTUS) program serves Canadian companies already exporting to the U.S. By combining sessions with industry experts, entry to a major national/regional trade show, and a networking opportunity with distributors, representatives and buyers, EXTUS focuses on expanding the markets of successful exporters to other regions of the U.S.
- For Canadian companies not yet exporting to the United States, the Reverse NEBS program provides seminars in Canada that cover the essentials of exporting.

Missions and seminars may vary by Canadian province or by region in the U.S., depending on the location, the industry sector and the interests of the participants. A program may include the following:

- information on exporting and export services and programs;
- briefing on border procedures;
- presentations by U.S. manufacturers' representatives, sales agents, distributors or buyers;
- briefings by industry experts and an overview of regional U.S. markets; and
- distribution of an exporter's information guide.

The NEBS and EXTUS programs (only) may also include:

- travel to a Canadian Consulate in the United States;
- a meeting with Canadian Consulate trade officers, plus networking opportunities with potential agents and distributors; and
- visits to trade shows and/or meetings with local wholesalers and retailers.

For further information and for a list of upcoming events, refer to the ExportUSA website at [www.international.gc.ca/can-am/export/menu-en.asp](http://www.international.gc.ca/can-am/export/menu-en.asp). To register or to ask about the details of the programs, contact the nearest regional office of the Canadian Trade Commissioner Service; these are listed at [trade.commissioner.gc.ca/regions/contact-en.html](http://trade.commissioner.gc.ca/regions/contact-en.html).

## 2.9 Sourcing business opportunities

It is a good idea to keep informed about foreign bids or business opportunities for your product or service. An excellent way of doing this is to register with SourceCAN.

SourceCAN is a secure electronic doorway to the global e-marketplace. It matches Canadian products and services from a comprehensive capabilities database with thousands of business opportunities posted by domestic and foreign companies and governments. It operates on a fee-for-service basis, although registration is free.

SourceCAN members can:

- respond to requests for proposals and quotations;
- post opportunities;
- develop strategic partnerships;
- showcase products and services in a virtual trade show; and
- browse financial services.

The above services are just a selection of what is offered. For more information and to register, visit [www.sourcecan.com](http://www.sourcecan.com).

# 3

## Entering Your Chosen U.S. Market

Your research may suggest several ways of entering your new market. Depending on your product, service and resources, you might establish a United States business presence to sell directly to your buyers. Or you might use a manufacturer's representative or set up a partnership with an American business.

These are just two of several possible approaches. In the sections that follow, we will examine these and other methods of entering the U.S., and what they might offer you. For more background information on market entry, you can consult the *Step-by-Step Guide to Exporting* at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp).

### 3.1 Direct selling

Direct selling is a simple concept—you sell directly to your American end users. This end user might be another company, a level of government or an individual.

There are several modes of direct selling:

#### ■ Establish a U.S. presence

You can do this either by opening a U.S. branch of your company or by establishing a separate U.S. subsidiary, such as a corporation. While having a U.S. presence makes your operations more complex, it can be advantageous—for example, it could allow you to operate a retail outlet in the heart of your U.S. market. In addition, some types of U.S. business entity can protect your company's Canadian assets by restricting your U.S. legal liabilities to your American operations. Your business will also be seen as more "American," and that may attract buyers who might avoid a perceived foreign product or service.

If you decide to set up a business presence in the United States, you should obtain the services of an American lawyer or a lawyer well acquainted with U.S. law. He or she can recommend the best type of entity to establish and the state whose business laws are most favourable to your type of company. Your lawyer will also manage the set-up process, which includes:

- establishing the business, which might be a branch of your Canadian company, a U.S. limited-liability company, a U.S. corporation or some other kind of business entity;
- obtaining Certificates of Authority for each state in which you will do business;
- registering with local, state and federal tax authorities; and
- obtaining any professional licences necessary.

You can familiarize yourself further with the basics of American business law at [BusinessLaw.gov](http://BusinessLaw.gov). Refer to [www.business.gov](http://www.business.gov).

*If you do decide to set up a business presence in the United States, you should obtain the services of an American lawyer or a lawyer well acquainted with U.S. law.*

#### ■ Sell by catalogue

This involves obtaining a well-targeted mailing list, and producing and distributing a catalogue. You will also require a mechanism to take orders and payments, and a way to deal with returns and warranties. (We will examine payment methods, returns and warranty issues in more detail in the next section.)

#### ■ Sell by direct mail

With this approach, you send brochures and other promotional material to many potential customers. As with catalogue sales, you will need a targeted mailing list, an order-taking procedure and a returns procedure.

#### ■ Sell through e-business

The Internet may be a very fruitful sales channel for your company. Even when doing business online, though, you will still have to deal with matters like shipping and customs regulations. Furthermore, you will need to convince potential customers that any electronic transactions they make with you are secure, and that their privacy and personal information will be protected.

### ■ Take orders at American trade shows

Unless you have a U.S. work visa, you cannot accept money for your goods when showing them at a trade event being held in the U.S. However, you can take orders for your products and then ship them from Canada to your buyers.

## 3.2 Payments, returns and warranties

If you intend to sell directly to your U.S. customers, you will need efficient methods of handling payments, returns and warranties. Your solutions will vary according to your particular business and product, but the list below describes some of the factors you will need to consider.

### ■ Payments

You might deal with payments in U.S. funds by:

- converting them to Canadian funds when you receive payment;
- using a U.S.-dollar bank account at your Canadian bank; or
- using a U.S. bank account.

Remember to account for any fees the bank will charge for handling the payments.

### ■ Returns

You might deal with returns by:

- having the returns shipped directly back to Canada by the buyer;
- renting a U.S. warehouse to store returns until there are enough to merit a shipment back to Canada; or
- subcontracting with a U.S. company that will collect your returns and either deal with them in the U.S. or ship them back to Canada.

Remember that you might have to pay customs-brokerage fees and shipping costs when the goods are returned to Canada (although you can require the customer to pay the shipping costs). While these costs might make a return policy prohibitively expensive, do not forget that a “no returns” policy could make your customers go elsewhere.

### ■ Warranties and guarantees

Since you might incur customs-brokerage and shipping costs to have a returned item shipped back to Canada, it might be cheaper to have a U.S. subcontractor handle warranties and guarantees, including

the repair of the product if necessary. Again, these cumulative costs might force you to consider whether such policies are feasible. Remember, though, that many buyers will not purchase anything if it does not come with a warranty or guarantee.

You should be aware that U.S. law can be very strict about warranties and guarantees, either express or implied, and that courts can (and do) award large penalties against companies that are judged to have violated these agreements. The laws governing warranties and guarantees vary from state to state, so you should consult legal counsel to find out how you can best protect yourself.

Product liability is a loosely related issue, since a company can be held liable for injuries and damages sustained by any consumer using its product. Refer to [Section 4.11](#), “Product liability litigation” for more information.

### ■ Service and support

Many kinds of exports can require after-market service and support ranging from routine maintenance to emergency repairs. You may be able to provide these services by sending staff from Canada to your customers, an approach that can work well in many situations.

However, if your customers require local access to service personnel or demand rapid response to requests for support, you may have to establish a U.S.-based service presence. For a larger company with a high volume of U.S. sales, setting up a subsidiary to deal with customer service might be cost-effective. However, if you are a smaller business, it can be preferable to arrange servicing through a U.S. subcontractor that is geographically close to your customers and can react quickly to their needs.

## 3.3 Selling through intermediaries

The most common intermediaries are distributors, trading houses and representatives (these last are also called agents, manufacturers’ agents or manufacturers’ representatives). One advantage of using an intermediary is that you get an immediate presence in the United States market without setting up your own sales operation. Disadvantages include, but are not limited to, a greater separation from your customer base and less control over the marketing of your product.

### ■ Distributors

A distributor will buy your product, import it into the U.S. and sell it to its end users. Depending on your product, the distributor may also offer after-sales and warranty service. The drawback is that your profit margins may be lower; you will also have less immediate control over your product. You may also not know who your customers are, which can affect your manufacturing decisions and marketing approaches. Moreover, if you stop using the distributor, you will probably have to rebuild your customer base.

### ■ Representatives

These agents work on commission and usually specialize in related kinds of products. Unlike distributors, they do not at any point own the products they represent. They often have particular territories and sell to a particular set of customers. A representative will contract with a U.S. customer on your behalf and monitor the progress of the deal until its completion.

### ■ Trading houses

If you want to be an exporter without actually doing the work of exporting, a trading house may be the answer. These are Canadian- or U.S.-based firms that will handle the entire process of exporting your product to the U.S., from initial market research onward. However, you will not have a chance to develop your own exporting expertise, and you will have very little control over the way your product is represented and sold.

## 3.4 Finding and checking out an intermediary

Contacts at U.S.-oriented trade fairs, on either side of the border, can often introduce you to potential intermediaries. The Canadian Trade Commissioner Service, trade associations and local chambers of commerce (both American and Canadian) can be very helpful as well, and you can ask other companies in your sector about their experiences with intermediaries.

There are also online sources of information about U.S. intermediaries. For manufacturers' representatives, a good place to begin is with the Directory of Manufacturers' Sales Agents (MANA) at [www.manaonline.org](http://www.manaonline.org); it is a subscription-based service that allows you to search its listings by state, territory or sector.

No matter how you find potential intermediaries, it is essential to carry out your due diligence before choosing one. Do not sign up with the first candidate who looks

suitable, even if he or she has a good track record and reputation. You will make better choices if you know what the competition has to offer.

To evaluate a prospective intermediary in detail, you can use the checklist in the "Choosing an Intermediary" section in the *Step-by-Step Guide to Exporting*, available at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp).

*No matter how you find potential intermediaries, it is essential to check them out before choosing one.*

## 3.5 Working with your intermediary

No matter whether you use a distributor, trading house or manufacturer's representative, the usual principles of good business relationships apply. In the case of a representative, you will get the best service if you pay attention to:

- providing suitable product literature, case studies, application information and promotion;
- giving speedy attention to the representative's questions and requests;
- supplying accurate information about company policies, competitive factors and product development; and
- paying commissions promptly and at competitive levels for your industry.

## 3.6 Partnerships, investments and acquisitions

A solo entry into the United States market may not always be the best approach for an exporter. You might find it preferable to form a partnership with an American company to operate in a particular U.S. market, or acquire (or invest in) a U.S. firm whose strategic position complements or enhances your own.

These approaches can make operating in the U.S. considerably easier for both goods and service exporters, because it can help resolve problems related to professional accreditation, movement of personnel across the border, and U.S. tax and legal status. Moreover, combining the technical and financial strengths of two businesses can make you more competitive—a big advantage in the aggressive U.S. business environment.

When setting up such arrangements, however, it is very important to make appropriate use of lawyers, accountants, bankers and other professionals, so that all parties are absolutely sure who holds which rights and which responsibilities.

*When setting up a partnership, acquisition or investment, it is very important to use the expertise of lawyers, accountants, bankers and other professionals, so that all parties are absolutely sure who holds which rights and which responsibilities.*

### 3.6.1 Partnerships

There are several different approaches to partnerships. Your major options are:

#### ■ Licensing

A licence is the grant of rights to another business so that it can legally use your proprietary technology and/or intellectual property; for example, to allow an American company to manufacture a product of your design and sell it in the United States. It usually does not involve granting all the rights to the property—in the example above, the licence might be for the U.S. market but not for the European.

*Franchising* is a more specific form of licensing. The franchisee is given the right to use a set of manufacturing or service delivery processes, along with established business systems or trademarks, whose use is controlled by the licensing agreement.

#### ■ Cross-licensing

In this form of alliance, each firm licences products or services to the other for sales purposes. *Cross-manufacturing* is a type of cross-licensing in which companies agree to manufacture each other's products. It can also be combined with co-marketing or co-promotion agreements (see below).

#### ■ Co-marketing

Carried out on the basis of a fee or a percentage of sales, co-marketing lets you and your U.S. partner take advantage of each other's existing distribution networks and domestic markets.

#### ■ Co-production

This arrangement involves the joint production of goods, enabling your business to use its skills and resources to best advantage. It can also provide cheaper manufacturing through economies of scale.

#### ■ Joint venture

Joint ventures in the United States are commonly structured in one of two ways: either the two businesses each contribute capital to a newly created corporation that they operate together, or the Canadian and U.S. businesses enter into a general partnership agreement and operate the joint venture as a partnership.

### 3.6.2 Investments and acquisitions

Canadian direct investment abroad (CDIA) refers to capital outflows from Canada that are invested in industries and businesses in other countries. These foreign direct investments (FDI) are of significant size; according to the *Seventh Annual Report on Canada's State of Trade*, issued by DFAIT's Office of the Chief Economist,

“Canadian FDI abroad is predominantly in service industries, and this prevalence has increased since 2000, in which the share held by services was 55 per cent; in 2006 it was 61 per cent. Looking at individual industries, finance and insurance has by far the largest share, at nearly double the next nearest industry, and also experienced the highest growth in 2006 at 20.4 per cent. But Canada's [foreign direct] investments in energy and metallic minerals have also been growing, averaging annual growth of 9.8 per cent over the past five years, versus finance and insurance's 5.2 per cent.”

With respect to CDIA into the United States, in 2006 this meant

“[...] an increase of \$19.0 billion, primarily due to capital outflows from Canadian firms to existing operations in their U.S. affiliates. The U.S. continues to dominate as the most important destination for Canadian direct investment abroad, making up 42.7 per cent (\$223.6 billion) of Canada's outward FDI. On the other hand, 61.0 per cent of Canada's inward FDI has come from the United States. While the share held by the U.S. has remained fairly steady over the past 5 years, hovering between 41-46 per cent, over the longer term it becomes apparent that *Canadian direct investment abroad has become increasingly diversified, with the focus on the U.S. down to 42.7 per cent from 50.6 per cent ten years ago, and 65.9 per cent 20 years ago.*” [Italics added]

It is clear from the above that while CDIA into the United States has diminished during the past two decades, the U.S. remains a crucially important destination for investment by Canadian businesses. This is because a substantial capital commitment to a U.S. firm, or the outright acquisition of a U.S. company, can help a Canadian exporter in several important ways:

- You immediately gain access to the enormous U.S. market, allowing you to expand sales and promote company growth. Operating in the U.S. market can also lead to sales in other countries.
- It allows you to take advantage of the U.S. firm's assets to increase your competitiveness in the United States, in Canada and possibly elsewhere abroad. These assets can include patents and other intellectual property, resource availability, access to capital, specialist expertise, proprietary technology and product differentiation.
- In some parts of the U.S., you may have easier access to supplies, lower labour costs and lower transportation costs than you would in Canada.
- You have somewhat better protection from changes in U.S.-Canadian exchange rates, since a falling American dollar makes assets in the United States cheaper and business costs lower.
- Many of the biggest manufacturing regions of the U.S. are within easy reach of Canada's major business centres. This means that a Canadian company can be more closely involved in the operations of its U.S. business, and, if the U.S. company is providing inputs to the Canadian firm, the costs of transportation and logistics will be lower because the Canadian and U.S. production plants are geographically close.

Because Canadian and U.S. markets are so closely inter-related in so many sectors, customers will have similar needs and preferences. This leads to lower costs for market research and product differentiation.

### 3.7 U.S. government procurement

The government of the United States buys a huge array of products and services on the commercial market, and this can present a rich source of contracts for Canadian exporters. Selling to U.S. government agencies and departments is a complex business, however, and can overwhelm the resources of a Canadian company that tries to undertake such a deal on its own. To help such companies, the Government of Canada has established the Canadian Commercial Corporation (CCC), a Crown Corporation that acts as Canada's international contracting and procurement agency.

The CCC brings Canadian exporters and foreign government buyers together by assisting with the negotiation and execution of contracts. It does this not only for U.S. government procurement, of course, but also for buyers from numerous other national governments. The U.S., however, is by far the largest of these customers.

To facilitate exports at this level, the CCC signs two contracts: one with the U.S. buyer, and the other with the Canadian exporter. As the intermediary, the CCC ensures that the contract is completed according to the conditions of the agreement, and transmits the contractual obligations to the Canadian exporter. The result is a secure government-to-government contract on the best possible terms and conditions for all concerned. In addition, CCC manages the cycle of payments from the U.S. government buyer to the Canadian exporter in order to maintain a predictable and timely payment schedule.

Because of the enormous size of the U.S. defence and aerospace sectors, the CCC also specializes in managing export contracts that originate with the U.S. Department of Defense and NASA. To find out more, refer to the CCC website at [www.ccc.ca](http://www.ccc.ca). For a more detailed explanation of U.S. government procurement and the opportunities it offers, visit DFAIT's SELL2USGOV website at [www.international.gc.ca/sell2usgov](http://www.international.gc.ca/sell2usgov).

### 3.8 Market entry for service exports

Unlike goods, service exports tend to be intangibles such as scientific knowledge, technical expertise or intellectual property. Nevertheless, the major methods of delivering services fall into categories that are quite similar to those for delivering goods. For example, exporters of goods and exporters of services can both benefit from direct selling; in fact, if you are a service company with a unique skill or knowledge, you might consider contracting your service directly to American clients.

Alternatively, you might market your service indirectly through an intermediary who negotiates a service contract for you with the client. Or you might establish a partnership with a firm whose services dovetail with yours, to the advantage of both companies.

The method you choose will depend on the nature of your service, the resources available to you and the particular U.S. market you are entering. No matter which approach you select, however, you must focus on establishing an awareness of your firm in the target market and on demonstrating the credibility, competence and professionalism of the service it offers. And, as always, you will have to ensure that your management and staff are sensitive to the culture, values and business practices of your American clients and/or business partners.

### 3.9 Special issues for service exports

Exporting to the United States can be more complicated for a service company than it is for a manufacturer of goods, especially if you need to send personnel across the border to provide the service. If you use this form of service export, you will have to comply with the strict immigration and labour laws that apply to non-Americans entering the U.S. to work.

It will often be easier to send your employees to the United States if you set up a formal U.S. business presence, such as a wholly owned subsidiary. This also gives you added flexibility in providing the service, because you will be able to hire American workers directly if it suits your purposes. Indeed, if you hire only Americans, the whole immigration issue will vanish.

#### 3.9.1 Cross-border movement of Canadian workers

Even if you establish a U.S. business presence, however, getting your people across the border can be difficult, especially in sectors such as the construction services industry. One big issue is timing. For example, a Canadian paving company that obtains a road service contract in the U.S. may need Canadian labour to do the job, but may be unable to get its employees cleared by U.S. immigration authorities by the time the project has to start. This can have serious financial and legal consequences if it causes your company to default on its contract. Any service company that lands a U.S. contract with tight deadlines may find itself in this sort of difficulty.

The variety of immigration classifications also means that a service company has to understand very clearly who it can and cannot send to work in the U.S., and exactly how its employees must be classified in order to enter. For example, it is a mistake to use a B-1 classification for an employee who is going to the U.S. to provide services for an American client. The B-1 is the business visitor classification, and only allows the holder to undertake marketing activities in the U.S., *not* to do any work.

#### 3.9.2 Service exports and U.S. immigration classifications

U.S. immigration classifications are examined in more detail in [Section 6](#), “Business Travel to the U.S.,” but we will explore them briefly here, in the special context of service exports.

The most common classification is the H-2B, which allows foreigners to work temporarily in the U.S., *provided* there is no American worker available to do the job—a condition that you, as the contractor, are required to prove. Other classifications are the TN-1 for NAFTA professionals (engineers and scientific technicians, for example) and the L-1 for intracompany transferees (including executives, managers and “specialized knowledge” personnel). Choosing the most suitable classification for your workers and getting their permits cleared is complicated, so be sure to get legal advice from a professional well versed in U.S. immigration law. And while it may be tempting to go around the rules and put people to work in the U.S. before getting clearance, it is very, very unwise to do so. If detected, your employees may be expelled from the U.S. and may not be allowed back into the country for several years.

Some types of service firms, such as companies providing software development services, may be able to export to the U.S. without sending workers there at all, except perhaps for marketing employees who would use the B-1 classification. If your company provides its services in this way, your U.S. clients will often ask you to file a “Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,” or form W8BEN. This form applies when goods or services, for which the Canadian firm will receive payment from the American client, are provided in the U.S. by a Canadian firm.

### 3.10 Innovation: Science and technology exports

Historically, Canada’s major exports have been generated by our natural resources industries, especially agri-food, forest products, minerals and energy. But if we are to maintain our global competitiveness, we need to expand and diversify our international trade in sectors related to science and technology (S&T).

Our close economic relationship with the United States is an enormous advantage in this regard. The U.S., of course, is a world leader in S&T innovation, and one of its strengths is the willingness of its businesses and research institutions to collaborate with their counterparts



in other countries. Most regions of the U.S. are home to at least one major S&T cluster, and the country as a whole presents enormous opportunities for Canadian S&T companies working in what has become known as the “knowledge industry.”

In recognition of this, the Government of Canada has established S&T development as a major economic priority for the foreseeable future. This includes not only advanced R&D, but also the commercialization of Canadian S&T innovations and their transfer to the U.S. and global markets. This outward-looking approach is important because strong international S&T linkages help connect Canadian firms to the world marketplace of ideas, talents and technologies. In turn, this ensures that Canada’s exporters have access to leading-edge research, which boosts their competitiveness and productivity.

Looking abroad, especially to the U.S., is even more important when one considers the relatively small size of the Canadian market for many advanced technologies. In aerospace, for example, the volume of domestic demand simply cannot support the full-fledged commercialization of a service or product, so having access to the

U.S. aerospace industry is absolutely vital for the survival of Canadian companies in this sector. This example could be repeated across a wide range of industries, and if your company operates in one of them, you will almost inevitably have to become an exporter. And because of its geographical accessibility, its vast S&T market and the willingness of its companies to work with Canadian firms, the U.S. is the most obvious destination for Canadian businesses that can supply technologically advanced products, services and knowledge.

But “exporting to the U.S.” in this context means much more than shipping goods or providing services. It can also mean joining a U.S./global value chain through R&D collaboration with a company in the United States; forming a Canada-U.S. partnership to commercialize a product; or investing in a U.S. business whose R&D or innovations complement your own. U.S. sectors that offer excellent prospects for such investments and partnerships include aerospace and defence, life sciences, environmental technology, alternative energy and information and communications technology.

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*Monica Heron,  
Senior Trade Commissioner  
Denver, United States*

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# 4

## The Legal Side of Exporting to the U.S.

Exporting to the United States means that you will have to become familiar with a new set of business laws. While there is no substitute for good legal counsel, you will make better decisions if you have a basic knowledge of NAFTA rules, U.S. tax laws and Canadian customs and export regulations. We will examine these and similar issues in the following sections; for more details, you can consult the publication *U.S. Regulations for Canadian Exporters*, available at [www.canadabusiness.ca/alberta/content/us\\_reg.pdf](http://www.canadabusiness.ca/alberta/content/us_reg.pdf).

Note that the trade teams in Canadian consulates in the U.S. can often refer you to local professionals, such as trade lawyers and accountants, whose assistance you may need. For consulate contact information, refer to [trade-commissioner.gc.ca/regions](http://trade-commissioner.gc.ca/regions).

### 4.1 The North American Free Trade Agreement (NAFTA)

NAFTA, as mentioned in Chapter 1, is an agreement among Canada, the United States and Mexico to remove impediments to trade and investment among the three countries.

While the intent of NAFTA is straightforward, the agreement itself and its side agreements are complex. The Foreign Affairs and International Trade Canada's NAFTA website at [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/index.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/index.aspx) will provide you with a good background to the agreement, along with many other resources such as technical papers and information about Canadian trade priorities.

*For a clear understanding of how NAFTA regulations may affect your specific export activities, you will need to consult specialists in cross-border trade, such as lawyers, brokers and shippers.*

NAFTA is most likely to have an immediate effect on your export initiative in two areas:

#### ■ Cross-border movement of personnel

Under NAFTA, certain types of professionals and business people can work temporarily in the U.S. There are many restrictions, however, since NAFTA is primarily an agreement for free trade in goods, not for free trade in labour. We will examine this in more detail in [Section 6](#), “Business Travel to the U.S.”

#### ■ NAFTA Rules of Origin

NAFTA rules of origin determine whether an exported product receives preferential tariff treatment when moving between Canada, the U.S. and Mexico. The rules are based on the Harmonized System of tariff classification and vary from product to product, depending on the product's composition. You will find the NAFTA Rules of Origin and its Annexes at [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap04.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap04.aspx).

Essentially, your goods will qualify for NAFTA originating status if:

- The good is wholly obtained or produced in one or more of the NAFTA countries (including those goods that are entirely grown, fished or mined in a member country—it does not include goods purchased in a NAFTA country that were imported from a non-NAFTA country).
- The good is made up entirely of components and materials that qualify in their own right as goods that originate in one or more of the NAFTA countries.
- The good meets the requirements of a specific rule of origin for that product, as listed in NAFTA Annex 401 (refer to [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/ann-401.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/ann-401.aspx)).

- The good qualifies under NAFTA Article 401(d) in the Rules of Origin, which applies to only a few cases.
- The good is automatic data processing equipment or parts, certain colour television tubes, or local area network apparatus qualifying under the provisions of NAFTA Annex 308 (refer to [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap03.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap03.aspx)).

The most common of these five requirements is the third, which applies to a good that includes any non-originating materials in its production. Non-originating materials are:

- materials or components you import from a non-NAFTA country; or
- materials produced in one or more of the NAFTA countries but which fail to satisfy the rules of origin in their own right.

NAFTA provides a rule of origin for every type of good that incorporates non-originating materials. In many cases, two different rules may apply to a good, and the good may qualify under the rule appropriate to the good's production.

Once you actually begin exporting, you will need to fill out Certificate of Origin forms for those products for which NAFTA originating status is claimed. To obtain copies of the form, download Form B232, "North American Free Trade Agreement—Certificate of Origin" from the Canada Border Services Agency (CBSA) website at [www.cbsa-asfc.gc.ca/E/pbg/cf/b232/README.html](http://www.cbsa-asfc.gc.ca/E/pbg/cf/b232/README.html).

The CBSA also maintains a General Tariff Information web page, at [www.cbsa-asfc.gc.ca/menu/D11-e.html](http://www.cbsa-asfc.gc.ca/menu/D11-e.html), which provides information about the documents required to support a NAFTA originating-status claim for verification and auditing purposes. The most pertinent documents are:

- D11-4-2: Proof of Origin. Refer to [www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-2-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-2-eng.html).
- D11-4-14: Certification of Origin. Refer to [www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-14-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-14-eng.html).
- D11-4-17: NAFTA Origin Redetermination Requests. Refer to [www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-17-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-17-eng.html).
- D11-5-1: NAFTA Rules of Origin Regulations. Refer to [www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-5-1-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-5-1-eng.html).

- D11-5-2: NAFTA Rules of Origin Regulations—Amendments to Schedule I—Specific Rules of Origin. Refer to [www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-5-2-eng.html](http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-5-2-eng.html).
- The CBSA also has a guide that describes the process of verifying that a product qualifies for NAFTA originating status. Refer to RC4006: What to Expect From a NAFTA Verification at [www.cbsa-asfc.gc.ca/publications/pub/rc4006-eng.html](http://www.cbsa-asfc.gc.ca/publications/pub/rc4006-eng.html).

## 4.2 Dealing with U.S. taxes

The United States applies taxes to both businesses and individuals. It has two different levels of tax jurisdiction: the first is at the federal level under the U.S. Internal Revenue Service (IRS), and the second is at the state level. Taxes can be based on income, or on the sale or use of a good or service (for example, state sales taxes).

The U.S. tax system, like most tax systems, is complicated, so you will need legal and accounting professionals to help you avoid unexpected tax liabilities. Failure to pay or collect the correct taxes may incur penalties above the actual tax amount owed.

Adding another layer of complexity is the Canada–United States Tax Treaty, which is intended to avoid double taxation and which will affect the way that both Canadian and U.S. federal tax systems evaluate your export trade. The treaty does not apply to state income taxes, though, so you should obtain legal advice to make sure you comply with state tax laws.

U.S. clients often ask the Canadian exporter to file a "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," or form W-8BEN. This form generally applies when products or services are made, processed or otherwise undertaken in the U.S. by the Canadian firm, and for which the Canadian firm will receive payment from the American client. As a general rule, though, if you are a firm that simply exports goods to the U.S., you will not be required to file this form. For more information, visit the IRS website listed below or call the IRS at 1-800-829-4933.

You can find out more about U.S. tax regulations and policies here:

- Internal Revenue Service (IRS): [www.irs.gov](http://www.irs.gov)
- Taxsites.com (federal, state and local taxes): [www.taxsites.com](http://www.taxsites.com)
- Multistate Tax Commission (links to all state tax departments): [www.mtc.gov](http://www.mtc.gov)

### 4.3 U.S. sanctions laws and regulations

Exporters to the U.S. need to be aware of U.S. sanctions laws and regulations administered by the Office of Foreign Assets Control (OFAC), at [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac). OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction. Sanctions that target foreign countries may prohibit the import into the U.S. of goods or services originating in the targeted countries.

The OFAC website identifies several countries currently subject to trade sanctions; these are listed at [www.ustreas.gov/offices/enforcement/ofac/programs](http://www.ustreas.gov/offices/enforcement/ofac/programs). Generally speaking, if a Canadian business intends to export goods or services to the U.S., and if these goods or services originate in a third country, the Canadian company should make sure that the third country is not affected by U.S. sanctions.

The same website also lists sanctions that the U.S. applies on a non-country basis; these include anti-terrorism, diamond trading, counter-narcotic and non-proliferation sanctions.

Among the most significant examples of U.S. sanctions law affecting Canada is the *Cuban Liberty and Democratic Solidarity (Libertad) Act* of 1996, also known as the *Helms-Burton Act*. This legislation prohibits the importation into the U.S. of goods or services originating in Cuba. It also targets other economic activities, such as investment and travel. Consequently, Canadian individuals or businesses carrying out economic activities with Cuba and wishing to engage in economic activities or travel in the U.S. should investigate the scope of the Act's application and seek legal advice. The Canadian Embassy in Washington can provide a list of local attorneys who can advise Canadians on these issues.

The Canadian government is opposed to the extraterritorial application of laws by another country when these conflict with Canada's own policies and laws. Canada's *Foreign Extraterritorial Measures Act* and the *Foreign Extraterritorial Measures (United States) Order* prohibit Canadians from complying with extraterritorial measures that operate to prevent trade or commerce between Canada and Cuba.

*If a Canadian business intends to export goods or services to the U.S., and if these goods or services originate in a third country, the Canadian company should make sure that the third country is not affected by U.S. sanctions.*

### 4.4 Bribery and corruption legislation

The United States, like most countries, has well-developed laws and regulations to prevent the bribery or corruption of its officials. The penalties for doing so can be severe.

Many nations also have laws intended to keep their own citizens from bribing or corrupting officials of foreign countries, and Canada is no exception. Our *Corruption of Foreign Public Officials Act*, which you will find at [canada.justice.gc.ca/eng/dept%2Dmin/pub/cfpoa%2Dlcape/](http://canada.justice.gc.ca/eng/dept%2Dmin/pub/cfpoa%2Dlcape/), makes bribing a foreign public official a criminal offence, and the *Criminal Code* makes it an offence to knowingly launder the property and proceeds of bribery, or possess such property and proceeds with knowledge of their origin.

Canadians can also be prosecuted if they conspire to commit these offences, aid or abet them, or counsel other people to commit them. Prosecution for such offences takes place in Canadian courts. For a plain-language guide to the legislation, you can download the pamphlet *Keeping Corruption Out* from Export Development Canada. It is at [www.edc.ca/english/docs/csr\\_anticorruption\\_e.pdf](http://www.edc.ca/english/docs/csr_anticorruption_e.pdf).

The OECD also has deep concerns about bribery, and publishes a 100-page booklet called *Bribery in Public Procurement*; to read an online copy, refer to [213.253.134.43/oecd/pdfs/browseit/2807061E.pdf](http://213.253.134.43/oecd/pdfs/browseit/2807061E.pdf).

### 4.5 Export contracts for goods

Export contracts are more likely to cause disputes than straightforward domestic contracts, since the contracting parties come from places that often have different business laws, regulations and attitudes. This can be true even when the countries have as much in common as Canada and the United States. You should therefore make your export contracts as clear, precise and comprehensive as is reasonably possible.

To provide a common terminology for international shipping, and minimize misunderstandings over contract terms, the International Chamber of Commerce has developed a set of terms known as “Incoterms.” These are the basic terms used in international sales contracts, and you can learn more about them from the Incoterms website at [www.incoterms.com](http://www.incoterms.com) or in the Glossary of International Trade Terms in Appendix A.

The basic provision of a contract for the sale of goods is that the seller will transfer ownership of the goods to the buyer in return for payment. The rest of the export contract specifies the terms and conditions for doing this, and at the minimum should describe:

- who is party to the contract;
- the contract’s validity conditions;
- the goods you will provide;
- the purchase price of the goods and the terms for payment, inspection and delivery of the goods;
- where transfer of title to the goods takes place;
- any warranty and/or maintenance terms and conditions;
- who is responsible for obtaining import or export licences;
- who is responsible for paying taxes;
- any contract performance security requirements, such as bank letters of guarantee;
- what to do if your buyer defaults or cancels;
- the provisions for independent mediation or arbitration to resolve disputes, and whether this would take place in the United States or Canada; and
- the contract completion date.

*To provide a common terminology for international shipping and minimize misunderstandings over contract terms, the International Chamber of Commerce has developed a set of terms known as “Incoterms.”*

If the contract involves the licensing of proprietary information or technology, it is important that the wording be *very* precise about the licensee’s rights. Vagueness can create serious problems and could lead to the loss of your intellectual property. If the licensee uses your technology to create other technologies, for example, this can severely undermine the value of your asset.

Also—and this would seem obvious, but it is sometimes overlooked—be sure that all parties to the contract have signed it. For instance, if you are working through a representative, be sure that the actual buyer signs the contract. The representative’s signature is not necessarily enough, because without the buyer’s signature there is no written evidence that the buyer owes you money. Last, but certainly not least, have the contract examined by a lawyer familiar with the U.S. export market.

The *Step-by-Step Guide to Exporting*, at [tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp](http://tradecommissioner.gc.ca/ie-en/ExportingGuide.jsp), has an overview of international contracts in the chapter titled “The Legal Side of International Trade.”

## 4.6 Export contracts for services

Just like the export sale of goods, the export sale of services requires a contract. The two types of export share many characteristics, and basic to both is the need for clarity. A clearly written, precise contract will greatly reduce the chances of disagreement between you and your customer.

It is also crucial to be absolutely clear about whose laws will govern the interpretation and enforcement of the contract: will they be Canada’s laws or the laws of the United States? A contract that is vague about this can cause no end of difficulty, litigation and loss of revenue.

### 4.6.1 Special aspects of contracts for services

As well as the general provisions described in the previous section on goods contracts, your contract for exporting services should specify:

- the service to be provided and the people who will provide it;
- the facilities, information and personnel that the client will make available for your use;
- the date on which your provision of the service is to begin and end;
- the payments to be made, together with the milestones for these payments;
- what will be done if your buyer is unable to provide the facilities, information or personnel that are stipulated in the contract;
- conditions for holdbacks; and

- the circumstances under which the contract may be terminated, together with stipulations for partial payments, penalties, and other requirements related to the termination.

#### 4.6.2 Performance requirements and service contracts

Depending on the nature of your services, your U.S. buyers may insist that you provide financial security, such as a surety performance bond, to compensate them if you fail to deliver the services as contracted. When negotiating this, be certain that the contract stipulates your precise performance obligations, as well as the conditions under which your buyer can make a valid call for non-performance on the guarantee or bond.

It is, unfortunately, possible for a buyer to make an *invalid* call for alleged non-performance (referred to as a “wrongful call”). If this happens, you have to pay out the value of the bond even if you do not think there was a reason for the call, and try to get the money back by demonstrating that the call was wrongful. However, since a wrongful call can take a large financial toll on a company, you might want to take out wrongful call insurance that will protect you from financial loss until the problem can be resolved. This type of insurance and other security instruments are available from Export Development Canada; refer to [www.edc.ca/bonding](http://www.edc.ca/bonding) for further information.

Before signing any U.S. export contract, of course, always obtain professional legal advice regarding the business laws that govern service contracts in the state where you are doing business.

#### 4.7 Obtaining contract insurance and bonding

As a condition for closing a deal, your U.S. buyer may require you to provide financial security that will protect him against any failure, on your part, to meet your obligations under the contract. This security can take several forms, such as an on-demand bank letter of guarantee, a standby letter of credit or a surety performance bond.

Depending on your financial circumstances, you might have difficulty arranging such security on your own. Export Development Canada (EDC) may help you obtain the required security instruments without restricting your working capital. You can find out more about these

financial instruments on EDC’s Bonding Products web page at [www.edc.ca/bonding](http://www.edc.ca/bonding).

If you provide one of these instruments, make sure that your contract clearly stipulates your performance obligations, as well as the conditions under which your buyer can make a valid call for non-performance in order to have the security paid out.

#### 4.8 Patents, trademarks and copyrights

Goods, of course, are not the only marketable things a company may possess. For many businesses, their intellectual property and/or proprietary technology can be their most valuable assets.

Because these assets are intangible, they can be difficult to protect and easy to misappropriate. Several legal methods have been developed to protect them. The major ones are:

##### ■ Patents

Patents are granted for new inventions (such as processes, machines, manufacturing techniques or the composition of substances), or any new and useful improvement of an existing invention, and are intended to prevent people or businesses from making, using or selling them without the patent owner’s permission. As defined by the United States Patent and Trademark Office, at [www.uspto.gov](http://www.uspto.gov), a patent is “the right to exclude others from making, using, offering for sale, or selling the invention in the United States or importing the invention into the United States.”

A Canadian patent does *not* protect your property in the U.S. To obtain this protection, you have to obtain a patent through the United States Patent and Trademark Office. A U.S. patent is good for 20 years.

In the U.S., industrial designs are considered “design patents” and are also handled by the Patent Office. Note that a U.S. patent gives no protection outside the U.S.

*For many businesses, their intellectual property and/or proprietary technology can be their most valuable assets.*

## ■ Trademarks

A trademark is defined by the U.S. Patent and Trademark Office as protecting “words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and to indicate the source of the goods.”

## ■ Copyrights

In the United States, according to the U.S. Copyright Office, copyright is “a form of protection provided . . . to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works.” Copyright covers both published and unpublished works and means that you alone are allowed, among other things, to produce, reproduce, perform or publish the work, or to permit anyone else to do so. A U.S. copyright lasts for the life of the author plus 70 years. For more information, refer to [www.copyright.gov](http://www.copyright.gov).

You obtain copyright automatically when you create an original work. Registration of copyright is optional, but registration creates a presumption of validity that can be used to your advantage if your rights to your work are infringed. A work is protected in all countries that have signed the Berne Copyright Convention or the Universal Copyright Convention, and the U.S. has signed both. If you wish to register your copyright, you can do so through the U.S. Copyright Office.

## 4.9 Protecting intellectual property from theft

The United States Patent and Trademark Office defines intellectual property as “creative works or ideas embodied in a form that can be shared or can enable others to recreate, emulate, or manufacture them.” As mentioned earlier, the intangible nature and the relative portability of this kind of property make it easy to steal and difficult to protect. These attractive characteristics, when added to the high value of some kinds of intellectual property and proprietary technology, can lead to theft by other businesses, which is known as industrial espionage. Such theft costs legitimate companies vast amounts annually in lost sales and business opportunities.

The first step, as outlined in the previous section, is to establish legal protection through patents, trademarks or copyrights. You can (and should) also secure your intellectual property from industrial or economic espionage in other ways, such as:

- securing company websites and IT systems with hardware and software barriers to prevent data theft;

- observing good communications security with technologies such as email, cell phones and fax or telephone lines;
- avoiding discussion of sensitive information where the discussion might be monitored or overheard; and
- educating all employees about the dangers of intellectual property loss, including the fact that it may jeopardize the company’s survival and the security of their jobs.

## 4.10 Litigation in the U.S.

Business litigation is common in the United States. Making sure that your contracts are clear, precise and specific will go a long way toward avoiding disputes. However, sometimes a good contract is not enough, and having one does not guarantee that you will never find yourself in court, either as a plaintiff or a defendant.

Problems that involve litigation often involve matters such as:

- disputes with an intermediary;
- late payments;
- breach of contract; and
- intellectual property issues.

Trying to resolve a dispute through litigation in a U.S. or Canadian court can be very expensive and may not be in your best interest, no matter how justified your position. Often it is much better to have the matter put to arbitration, often called “Alternative Dispute Resolution” or ADR.

An alternative to arbitration or litigation is mediation. With mediation, a neutral third party hears your position and that of your opponent, and then tries to find a solution acceptable to both of you. A mediator’s solution is not binding, however, unless you and your opponent both agree to it.

Mediation and arbitration services are available in the U.S. through the American Arbitration Association at [www.adr.org](http://www.adr.org), a public service, not-for-profit organization that deals with a broad range of disputes. The corresponding Canadian organization is the ADR Institute of Canada at [www.adrcanada.ca](http://www.adrcanada.ca).

*Business litigation is common in the United States. Making sure that your contracts are clear, precise and specific will go a long way toward avoiding disputes.*



## 4.11 Product liability litigation

In both the U.S. and Canada, individuals and groups can sue businesses on the grounds a business's product or service was faulty and that this fault caused harm to the plaintiff(s). Product liability lawsuits are much more common in the United States than in Canada, and the result has been a huge increase in the cost and difficulty of obtaining product liability insurance (PLI) in the U.S.

Carrying PLI for your U.S. operations is not legally mandatory. However, potential intermediaries or buyers may refuse to purchase your exports unless you obtain such coverage, because this will help protect them from litigation if your product or service is alleged to be faulty.

In consequence, before you settle on a final export price for your product, be sure to find out whether you do need PLI and, if so, how much it will cost. Insurance-Canada.ca's product liability web page has more information on PLI; you will find it at [www.insurance-canada.ca/profproducts/categories/prodliab.php](http://www.insurance-canada.ca/profproducts/categories/prodliab.php).

*Product liability lawsuits are much more common in the U. S. than in Canada, and the result has been a huge increase in the cost of product liability insurance (PLI) in the U.S.*

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# 5

## The Basics of Export Financing

It may not be possible for you to finance an export initiative entirely from your company's resources. For example, you might need additional capital to cover production and operating costs until the goods are finished, shipped and paid for. In such cases, you will need to know what financing might be available and where you can obtain it on the best terms.

The guide *Introduction to Export Finance*, which you will find at [www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC\\_FE/display&c=InfoResources&cid=1142310687723&lang=en](http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_FE/display&c=InfoResources&cid=1142310687723&lang=en), provides a detailed overview of how Canadian exporters can finance their U.S. initiatives. The essentials are fairly straightforward and we will examine them in the next sections.

### 5.1 Types of financial assistance

There are several types of basic financial assistance for export ventures: pre-shipment financing, post-shipment financing, medium-term financing and project financing.

#### ■ Pre-shipment export financing

You may require additional financing to produce the goods or services your buyer wants. To persuade a lender to help you, you will need a firm export sale and a contract that is acceptable to the lender in terms of repayment risk, payment terms, production time-frames and recourse conditions.

#### ■ Post-shipment export financing

This covers your financial needs during the time between shipping the goods and receiving payment for them.

#### ■ Medium-term export financing

This is often used with capital goods exports. You can usually obtain such assistance for terms of 180 days to two years, and possibly for terms of as long as five years.

#### ■ Project financing

This usually applies to large undertakings such as major capital projects. This is a less common export field for small- to medium-size Canadian businesses, since such projects tend to be long-term, complex and demanding. If you are considering becoming involved in one, be sure to obtain help from project-financing experts from the very beginning.

If you are intending to export services, you will not have exactly the same financial needs as exporters of goods. You can get an overview of financing service exports from *Export Your Services* at [www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC\\_FE/display&c=Services&cid=1081944199778&lang=en](http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_FE/display&c=Services&cid=1081944199778&lang=en).

### 5.2 Obtaining financial assistance

There are three chief sources for the financial help you may need: banks, government assistance programs and venture capital. In brief:

#### ■ Banks

As with domestic business operations, bank lines of credit or loans are commonly used to help fund export operations.

#### ■ Government assistance

Several government agencies and programs exist specifically to help Canadian exporters do business abroad. Among them are:

- The Business Development Bank of Canada (BDC) provides flexible financing for the development of international markets, R&D, product modifications and new production equipment or technology. Refer to [www.bdc.ca](http://www.bdc.ca) for more information.
- Export Development Canada (EDC) offers innovative commercial solutions to help Canadian exporters and investors expand their international business. EDC's knowledge and partnerships are used by 6,400 Canadian companies and their global customers in up to 200 markets worldwide each year. Refer to [www.edc.ca](http://www.edc.ca) for more information.

- Industry Canada’s “Finding Financing” web page at [www.ic.gc.ca/epic/site/ic1.nsf/en/h\\_00156e.html](http://www.ic.gc.ca/epic/site/ic1.nsf/en/h_00156e.html) may help you identify other private or public sources of financing.

#### ■ Assistance from regional agencies

Various regional development agencies offer financial assistance to exporters. Refer to the Canada Business Network at [www.canadabusiness.ca](http://www.canadabusiness.ca) to find out what financing programs may be available, or call 1-888-576-4444.

### 5.3 U.S. buyer financing

Suppose you have a potential U.S. buyer who does not, for legitimate reasons, have the immediate financial resources to purchase your goods. You may be able to arrange financing for such a buyer through Export Development Canada, which can offer flexible financing and payment options to companies wanting to buy Canadian goods and services. Better yet, you can enjoy peace of mind knowing that you can secure a cash sale while EDC assumes the risk if your customer does not pay. To find out more, refer to EDC’s Financing page at [www.edc.ca/financing](http://www.edc.ca/financing).

### 5.4 Payment methods

Canadian businesses exporting to the United States should be prepared to give credit terms to their buyers. The most common payment method is by open account, with a 30- to 90-day credit period. *Open account* means that you agree to ship the goods, or provide the services, before getting paid. This is simple and involves less paperwork than other payment methods, but it has one huge drawback. You are fully exposed to your buyer’s credit risks and if the buyer refuses to pay, for whatever reason, you may not get your money.

You can insure yourself against such risks, but another option is to seek more favourable payment terms from your customer, at least until you develop a relationship. These include:

#### ■ Cash in advance

Your buyer pays you in full, or provides a deposit, before you ship the goods or provide the services. This is obviously the best option for you. However, U.S. buyers may refuse to purchase from you if you do not sell on open account.

#### ■ Letters of credit

Letters of credit (LCs) offer the best protection for exporters because they designate banks to receive and check shipping documents and to guarantee payment.

There are two major types of LC: confirmed LCs and unconfirmed LCs. A confirmed LC has been issued on behalf of the U.S. customer by the customer’s bank, and its validity has been confirmed by a domestic Canadian bank. If you have a confirmed LC, you are reasonably assured of receiving payment from the Canadian bank even if the U.S. customer or the customer’s bank defaults.

An unconfirmed LC is less secure, since it has been guaranteed only by the bank that issued it, not by a receiving bank in Canada. The issuing bank merely informs you that the LC has been opened, and tells you what the credit terms and conditions are.

LCs can also be irrevocable. This means they cannot be cancelled or amended without your approval. The most secure form of payment is an LC that is both confirmed and irrevocable.

#### ■ Documentary collections

To use a collection, you entrust the collection of payment to a remitting bank, usually your own. The remitting bank sends documents to a collecting bank (usually the importer’s bank), along with instructions for payment. The collecting bank accepts your buyer’s payment and sends it to the remitting bank, which then pays you. Collections are less complicated but also less secure than LCs, because you are exposed to your buyer’s credit risks until you receive payment. However, they are preferable to the open-account approach.

*The most common U.S. payment method is by open account, with a 30- to 90-day credit period.*

### 5.5 Dealing with non-payment

If you have delivered your goods to the U.S. company but it has not paid you, what recourse do you have?

You can hire a lawyer or a collection agency, but it can still be very difficult for a Canadian exporter to recover payment from recalcitrant U.S. customers, especially if the customers have sought bankruptcy protection. Legal action can be exceedingly costly, so arbitration or mediation to settle out of court is preferable if you can arrange it. This, of course, presupposes that you wrote an arbitra-

tion/mediation clause into the contract with your buyer. If you did not, your best course is to obtain legal advice and consider whether it is even worthwhile to pursue payment.

Hiring a licenced collection agency can also help to encourage payment. Although cheaper than hiring a lawyer, this is still expensive because collection agents take as payment a percentage of the amount they recover.

## 5.6 Reducing financial risk through buyer credit checks

A buyer's failure to pay, whether because of bankruptcy or for some other reason, can spell serious financial trouble for a Canadian exporter that is badly exposed to the buyer's risk. However, you can do a lot to protect yourself from the risk of non-payment by carrying out a careful credit check before signing the contract. Some of the questions you need to ask are:

- Is the U.S. company creditworthy?
- How long has it been in business?
- Is its financial record clear of irregularities?
- What reputation does its management have?
- Do other suppliers give it a good credit report?

There are several places you can go to obtain this information:

- Export Development Canada's database contains detailed credit information on millions of U.S. buyers. Its EXPORTCheck service is a convenient way to review an online credit profile of your potential U.S. buyer before you export. Starting at a fee of \$30, an EXPORTCheck Report is one of the best ways to manage the risks of an unfamiliar customer. For more information, refer to [www.edc.ca/english/credit\\_information.htm](http://www.edc.ca/english/credit_information.htm).
- Contact your Canadian bank and ask if it has a correspondent bank that can report on the buyer's reputation.
- Find out if the buyer deals with other Canadian companies and check with them to see what they think of the buyer. Mention the buyer to Canadian companies you've dealt with in the past, in case they may have pertinent information.
- There are many consulting firms and credit reporting agencies in Canada and the United States that will help you check out a buyer. This checking can be expensive, but if it uncovers serious risks for your company it is worth every penny.

*You can do a lot to protect yourself from the risk of non-payment by carrying out a careful credit check before signing the contract.*

## 5.7 Reducing financial risk through export insurance

If you cannot get cash in advance, purchasing some form or export insurance is the best way to avoid the most serious consequences of buyer non-payment. In Canada, these types of insurance are the specialty of Export Development Canada and include:

### ■ Accounts Receivable Insurance

EDC will protect you against non-payment by covering up to 90 percent of your losses resulting from a wide range of commercial and political risks. Better still, you will be able to free up capital and possibly extend more attractive payment terms and credit options to new customers. For more information, refer to [www.edc.ca/english/insurance\\_accounts\\_receivable.htm](http://www.edc.ca/english/insurance_accounts_receivable.htm).

### ■ Single Buyer Insurance

If you are an occasional exporter or are concerned about selling to a new customer or a new market, you can insure your sales with Single Buyer Insurance. This covers you for up to 90 percent of losses due to non-payment, on an unlimited number of sales to the same customer, for up to US\$250,000 during a six-month period. For more information, refer to [www.edc.ca/english/insurance\\_single\\_buyer.htm](http://www.edc.ca/english/insurance_single_buyer.htm).

### ■ Contract Frustration Insurance

EDC's Contract Frustration Insurance covers up to 90 percent of costs that might arise from risks such as buyer insolvency, political instability or sudden contract cancellation. For more information, refer to [www.edc.ca/english/insurance\\_contract\\_frustration.htm](http://www.edc.ca/english/insurance_contract_frustration.htm).

### ■ Performance Security Insurance

This covers you for up to 95 percent of your losses if your customer demands payment of a bond issued by your bank without valid reason. For more information, refer to [www.edc.ca/english/insurance\\_performance\\_security.htm](http://www.edc.ca/english/insurance_performance_security.htm).

### ■ Political Risk Insurance

Political Risk Insurance (PRI) helps protect your overseas assets for up to 90 percent of losses from political risks, including breach of contract, conversion, expropriation, non-payment by a foreign government, political violence, repossession and transfer. For more information, refer to [www.edc.ca/english/insurance\\_political\\_risk.htm](http://www.edc.ca/english/insurance_political_risk.htm).

## 5.8 Currency fluctuations

Fluctuations in the value of the Canadian dollar relative to that of the United States can affect export profits either positively or negatively. The risk presented by such currency fluctuations is called *foreign exchange risk* or *FX risk*, and you have to factor it into your operations plans and your pricing. If you do not, your budgeting may go off track, you may not have enough cash to meet payment obligations, and you may even risk bankruptcy.

There are two major types of FX risk or FX exposure:

### ■ Transaction exposure

Suppose you conclude a contract with a buyer and he commits to pay you in U.S. funds 60 days after delivery. Now suppose the Canadian dollar rises in value against the U.S. dollar by the end of that 60 days. Because of this, your buyer's payment will be worth *less* to you once it is converted into Canadian currency. Conversely, if the Canadian dollar falls during that 60 days, the payment will be worth *more* to you after conversion to Canadian currency. This situation is called *transaction exposure*.

### ■ Economic exposure

If transaction exposure is the small picture, economic exposure is the big one. If the Canadian dollar rises in value, as it did very rapidly in 2007, Canadian goods

and services will become more expensive in the U.S. market. This may cause U.S. buyers to buy less, drive harder bargains or look for better deals elsewhere. Conversely, Canadian exporters that buy their raw materials, components or equipment from the U.S. will get more for their money when the Canadian dollar is high.

According to the Business Development Bank of Canada,<sup>1</sup> you can minimize your exchange risk by using tools such as the following:

- *Currency forward contracts* allow you to lock a price at which your company is obligated to buy or sell U.S. currency at your specified date. These forward contracts are non-transferable, and you will need a line of credit for currency transactions. Using them will allow you to protect your revenues, profit margins or expenses at a fixed price.
- *Currency futures contracts* allow you to specify a price at which U.S. currency will be bought or sold at a future date. Your company can close out these contracts early if it is to your advantage, giving you more flexibility. You will also need to maintain a margin/cash deposit at all times to compensate for the credit risk.
- *Currency options* give you the right, but not the obligation, to buy or sell U.S. currency at a specified exchange rate during a specific period of time. Regardless of whether you exercise the option, there is a cost.

These financial instruments (also called hedging tools) are complicated, and you should obtain experienced financial and accounting advice to determine which ones are best for your company. They will also cost you money, so be sure to build the required fees into your financial plans.

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<sup>1</sup> Article at [www.bdc.ca/en/my\\_project/Projects/articles/exporting\\_dollar.htm](http://www.bdc.ca/en/my_project/Projects/articles/exporting_dollar.htm)

# 6

## Business Travel to the U.S.

Since September 2001, the United States has become much more strict about its border security. While Canadians tend to receive preferential treatment compared to citizens of some other countries, American security concerns do affect Canadian business travellers who wish to enter the U.S.

### 6.1 Documentation required for entering the United States

The basic requirements for entry into the U.S. are set out under the Western Hemisphere Travel Initiative (WHTI). This is a U.S. law requiring all travellers, including Canadians, to carry a passport or other appropriate secure documentation when travelling to the United States. Before beginning your trip, check for updated information on these requirements through the Canada Border Services Agency website at [www.cbsa-asfc.gc.ca/whti-ivho/menu-eng.html](http://www.cbsa-asfc.gc.ca/whti-ivho/menu-eng.html).

As of January 2008, the documentation requirements were as follows:

#### ■ Entering by air

Canadian citizens travelling by air to, through or from the United States must present *either* a valid Canadian passport *or* a valid NEXUS card (the latter at airports participating in the NEXUS program). This requirement applies to all travellers, regardless of age and including children.

The NEXUS program is designed to speed up border clearance for low-risk, pre-approved travellers into Canada and the United States. If you expect to travel frequently to the U.S., having a NEXUS card can be very convenient. For more information about becoming a NEXUS member, refer to [www.cbsa-asfc.gc.ca/prog/nexus](http://www.cbsa-asfc.gc.ca/prog/nexus).

To find out how to apply for a Canadian passport, consult the Canadian Passport Office at [www.ppt.gc.ca](http://www.ppt.gc.ca).

#### ■ Entering by land

To enter the U.S. by land, you will have to present one of the following documents, or sets of documents:

- a government-issued photo ID, such as a driver's licence, PLUS a birth certificate or citizenship card; or
- a valid passport; or
- a NEXUS card or a Free and Secure Trade (FAST) card; or
- an enhanced driver's licence; or
- a Certificate of Indian Status (CIS) card; or
- for those 18 and under, only a birth certificate.

For information about FAST cards, refer to [www.cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html](http://www.cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html). For information about enhanced drivers' licences, refer to [www.cbsa-asfc.gc.ca/whti-ivho/edl-pca-eng.html](http://www.cbsa-asfc.gc.ca/whti-ivho/edl-pca-eng.html).

#### ■ Entering by water

To enter the U.S. by water, you will have to present one of the following documents, or sets of documents:

- a government-issued photo ID, such as a driver's licence, PLUS a birth certificate or citizenship card; or
- a valid passport; or
- a NEXUS card; or
- an enhanced driver's licence; or
- a Certificate of Indian Status (CIS) card; or
- for those 18 and under, only a birth certificate.

### 6.2 Entering the U.S. under NAFTA classifications

A Canadian citizen travelling to the United States for "pleasure" (for a vacation, for example) usually needs only the basic identification described in the previous section. However, if you are a Canadian citizen and you are travelling to the U.S. for business purposes, you will also need documentation that states the purpose of your entry and indicates that you do not intend to remain in the U.S. indefinitely.

While the temporary-entry provisions of NAFTA make it easier to enter the United States, they do not replace existing U.S. temporary-entry rules and immigration regulations—you must still comply with immigration laws and with regulations on national security, public health and safety. (If you reside in Canada but you are not a

Canadian citizen, please refer to [Section 6.6](#), “If you are not a Canadian citizen.”)

There are four classifications of business persons covered by NAFTA’s temporary-entry provisions. Each of the four has its own requirements, which you must meet before you can enter the United States, and it is generally advisable to check for recent changes in these requirements before you begin your trip.

Detailed information about the classifications is available on International Trade Canada’s Cross-Border Movement of Business Persons website at [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-1.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-1.aspx). This information is also available as a downloadable PDF in booklet form. Another source of information is Foreign Affairs Canada’s Canada-U.S. Relations website; refer to [www.can-am.gc.ca](http://www.can-am.gc.ca).

### 6.2.1 Business visitors (B-1 classification)

You may qualify as a business visitor if you enter the U.S. on a temporary basis to perform these types of work: research and design; growth, manufacturing and production; marketing, sales and distribution; after-sales service; and general service. Refer to [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-2.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-2.aspx) for further specifics.

More specifically, you may qualify as a NAFTA business visitor if:

- you are a Canadian citizen;
- you are seeking entry to carry out one of the types of business activity listed above;
- the proposed business activity is international in scope and you do not intend to enter the U.S. labour market;
- your primary source of remuneration is outside the U.S.;
- the principal place of business, and the accrual of profits, remain outside the U.S.; and
- you meet the United States’ existing temporary entry immigration requirements.

You establish your B-1 classification at the time you enter the U.S. To do this, you must present proof of Canadian citizenship (ideally, your Canadian passport) and a letter outlining the purpose of your business trip. The letter should include your itinerary while in the U.S., the list of businesses and business contacts you plan to visit, and a statement that your primary source

of remuneration is outside the United States. In addition, if you are entering to perform after-sales service, you will need a copy of the sales invoice and the related warranty and/or service agreement.

Under the B-1 classification, you can remain in the U.S. until you conclude your business, as long as you do not stay for more than six months. If you expect to make frequent trips across the border, it is a good idea to have a record of entry document (I-94) placed in your passport. The I-94 is valid for up to six months. Remember, though, that the length of your stay is at the discretion of the U.S. authorities.

As a business visitor, you are very likely to be granted entry under the B-1 classification, provided you are engaged in marketing activities on behalf of your company—that is, promoting your goods for subsequent orders. However, you can be refused entry if you intend to *sell* anything—that is, if you will be taking orders and accepting payment while in the United States. Doing this is not permitted under the B-1 classification. Entering the United States to market U.S.-made products is also prohibited under the B-1 classification.

The need for honesty about your business intentions in the U.S. cannot be stressed too much. Lying to a border official is a serious offence, and U.S. immigration officers have the authority to bar non-citizens from entering the country for five years if they present false documentation or misrepresent themselves (for example, by saying they are on holiday when the real purpose of the trip is business).

### 6.2.2 Professionals (TN classification)

NAFTA defines these as “business persons who plan to carry out professional activities ... for an employer or on contract to an enterprise located in a member country other than one’s own.”

More simply put, this means that you can be paid for working in your profession in the U.S., *provided* your profession is among the 63 listed under NAFTA, and *provided* you meet the educational requirements of the profession. The minimum requirement for most of the professions is a bachelor’s degree. There are other qualifications as well; you can find out about them and about the list of eligible professions on the Cross-Border Movement of Business Persons website at [www.international.gc.ca/trade-agreements-accords-commerciaux/agracc/nafta-alena/temp05-3.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agracc/nafta-alena/temp05-3.aspx).



You may qualify as a NAFTA Professional if:

- you are a Canadian citizen;
- your occupation is one of the 63 on the NAFTA list;
- you meet the educational requirements of the occupation;
- you have pre-arranged employment or a contractual agreement with an entity located in the U.S.; and
- you meet the United States' existing temporary entry immigration requirements.

There is no prior approval required for Canadians applying to enter the U.S. under the TN classification, so you can establish your classification at the port of entry. To do this, you have to present proof of Canadian citizenship (ideally, your Canadian passport) and a letter from your prospective employer, or a signed contract, outlining the purpose of your entry. The letter or contract should include:

- your job title and detailed summary of duties;
- starting date and anticipated length of stay;
- payment arrangements;
- proof that you meet the necessary education and experience requirements to work in the profession, including all applicable degrees and licences; and
- original or certified copies of your diploma or credentials.

On approval, you will be issued an I-94 Record of Entry Document indicating the TN classification code. The I-94 is your employment authorization and allows you to obtain a social security number from the U.S. Social Security Administration.

### 6.2.3 Intracompany transferees (L-1)

NAFTA defines these as “business persons employed by an enterprise, who are seeking to render services to a branch, parent, subsidiary or affiliate of that enterprise, in a managerial or executive capacity or in a manner that involves specialized knowledge.”

In plain language, if your company has a branch or subsidiary in the U.S., you can send qualified Canadian staff to work there. Again, you will find details of the required qualifications on the Cross-Border Movement of Business Persons website at [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-4.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-4.aspx).

The L-1 classification is very flexible; for example, Canadian transferees may be paid either by the Canadian parent company or by the U.S. subsidiary, and spouses of L-1 holders are allowed to work in the U.S. Extensions allow management transferees to work there for up to seven years, while special-knowledge transferees are limited to five years. Other transferees can stay for three years (or one year if the Canadian company is new).

To obtain an L-1 classification, you submit a Petition for a Nonimmigrant Worker using Form I-129, obtainable through the U.S. Citizenship and Immigration Services at [www.uscis.gov/portal/site/uscis](http://www.uscis.gov/portal/site/uscis) (use the Immigration Forms link at the top of the web page). The form's instruction sheet tells you where to send the completed petition. U.S. authorities recommend that you submit it no less than 45 days before you intend to enter the United States.

### 6.2.4 Traders (E-1) and investors (E-2)

According to the NAFTA definition, traders are people who “conduct substantial trade in goods or services principally between their country of residence and the country into which entry is being sought.” Investors are people who “establish, develop, administer or provide advice or key technical services to the operation of an investment to which you or your enterprise has committed ... a substantial amount of capital.”

To apply for the E-1 or E-2 classification, refer to the U.S. Consular Services in Canada website at [www.amcits.com/evisa.asp](http://www.amcits.com/evisa.asp), where you will find detailed instructions to guide you through the process.

## 6.3 Entering the U.S. under non-NAFTA classifications

Some entry classifications do not fall under NAFTA rules. The major ones are the following:

### 6.3.1 Performing artists

Canadian performing artists (for example, individuals or members of a Canadian entertainment group in a creative field such as music, opera, dance, theatre or the circus), who have a signed contract with an enterprise in the U.S. for single or multiple performances, need a temporary employment visa. For more information, obtain the brochure *Canadian Performers: How to Enter the United States*, available by calling 1-800-267-8376, or by fax at 613-996-9709.

### 6.3.2 Specialty occupations (H1-B)

A specialty occupation is one that requires the theoretical and practical application of highly specialized knowledge and a Bachelor's degree in the specific specialty. To qualify, your prospective U.S. employer must secure a certified Labour Condition Application (Form ETA 9035) from the U.S. Employment and Training Administration of the Department of Labor. You must then submit an I-129 petition to the United States Citizenship and Immigration Services (USCIS). Upon approval of the I-129 petition, you may apply for temporary entry at any port of entry. For more information, refer to [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-6.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-6.aspx).

### 6.3.3 Medium- or lower-skilled workers (H-2B)

The H-2B non-agricultural classification for temporary workers can be used by U.S.-based enterprises (such as a U.S. subsidiary of a Canadian firm) to hire medium- or lower-skilled workers to perform temporary services or non-agricultural labour within the United States. An H-2B visa will not be issued if the labour or service displaces U.S. workers capable of performing such services or labour, or if the employment of the temporary worker has an adverse effect on the wages and working conditions of U.S. workers. For more information refer to [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-6.aspx](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/temp05-6.aspx).

If you need H-2B visas and you are a novice at dealing with U.S. immigration laws, you should obtain legal advice from a U.S. lawyer who specializes in immigration procedures. You may save yourself a good deal of time, money and frustration by doing so.

### 6.3.4 The Jay Treaty of 1794

If you were born in Canada and have at least 50 percent Aboriginal blood, you may be entitled to certain rights and benefits in the United States under the terms of the Jay Treaty of 1794. If you plan to enter the U.S. for business purposes under this provision, you should first obtain specialist advice about the procedures for doing so.

## 6.4 Travelling with samples and business gifts

If you need to transport samples and business gifts across the border, you have several ways of doing so:

#### ■ Payment of duty

You pay regular duty and/or taxes on the goods when you enter the United States. This releases the goods to the authorized importer. If you take the imported goods back into Canada, and they are in the same condition as they were when exported, you can file for a drawback that will reimburse you for the taxes and duties you paid.

#### ■ Temporary Importation Under Bond (TIB)

If you use your samples solely to take orders, you may be able to transport them into the U.S., without paying duty, under a TIB.

To take advantage of a TIB, you must post a bond for twice the amount of duty, taxes and so on that would otherwise be owed on the importation. If you are importing the samples as accompanying baggage, you will have to go to the port's entry branch and complete the Form CF 7501 Entry Summary. Then you will have to post the bond itself, which generally entails going to a surety's office. Because of these complications, you might prefer to make advance arrangements with a customs broker to handle the transaction.

You cannot sell the samples and you have to move them back into Canada within one year of entry, although the TIB can be extended up to three years. Failure to comply with these conditions means that you forfeit the bond.

#### ■ ATA Carnet

The "Admission Temporaire – Temporary Admission," or the ATA Carnet, is an international customs document you can use to temporarily import goods, duty-free, into the U.S. This substitutes for the usual customs documents needed for entry and guarantees the payment of duties if the merchandise is not re-exported. It is valid for one year and you can use it for as many trips as you wish during that period. For more information, refer to [www.atacarnet.com](http://www.atacarnet.com).

More information about these arrangements is available on the U.S. Customs and Border Protection website at [www.customs.ustreas.gov/xp/cgov/travel/clearing/business\\_travel/samples.xml](http://www.customs.ustreas.gov/xp/cgov/travel/clearing/business_travel/samples.xml).

## 6.5 Managing entry problems

Some types of entry can present difficulties, especially if you are in the service sector, if you are an artist or craftspeople, or if you are participating in a trade show.

### 6.5.1 Immigration issues for construction services

Cross-border movement of workers remains a difficult issue for Canadian construction companies engaged in projects in the U.S. The entry of construction workers and tradespeople is not covered by NAFTA; instead, the entry of these types of workers is subject to labour certification by the U.S. Department of Labour.

As a result, scheduling can be a major issue for a construction company; getting workers cleared for U.S. entry can take weeks, which can cause serious problems with project deadlines. Managing the application process yourself will be complicated and time-consuming, and your best strategy may be to hire a legal expert to deal with it. You can obtain more detailed information from the Canadian Construction Association's *Guide to Doing Business in the United States*, available through your local construction association. For more information, refer to [http://www.cca-acc.com/directories/associations/associations\\_e.asp](http://www.cca-acc.com/directories/associations/associations_e.asp).

### 6.5.2 Immigration issues for after-sales services

Repair, warranty, maintenance and related services are described under NAFTA as work done by

installers, repair and maintenance personnel and supervisors, with specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract which is incidental to the sale of commercial or industrial equipment or machinery. This includes computer software, purchased from an enterprise located outside the U.S.

U.S. immigration officials can be quite sensitive about after-sales service. Hands-on building and construction work do *not* fall under the after-sales service provision of the NAFTA business visitor category, so you will need to prove that the work you will be doing inside the U.S. does, in fact, fall under the NAFTA regulations. To do so, you will need a copy of the original sales contract, which must clearly state the service work to be done. Presenting

a company letter that describes the reasons for the business trip is also a good idea.

### 6.5.3 Trade shows and sales staff

NAFTA allows Canadian business people to enter the U.S. to attend a trade fair or convention. Sales staff can also enter to take orders or negotiate contracts for goods or services, *provided* they do not deliver these goods or services (that is, do the work) and *provided* they do not accept payments for them. If you are transporting samples or business gifts, you will have to declare them at the border, as described earlier in [Section 6.4](#), "Travelling with samples and business gifts."

### 6.5.4 Immigration issues for artists and craftspeople

If you are a craftspeople or visual artist, you will likely enter the U.S. under the business visitor (B-1) classification. If you are exhibiting your work at a U.S. art show or craft fair, however, you *cannot* personally exchange your work for money there, because the B-1 classification does not allow it. If you are caught doing so, the penalties include seizure of your work, fines and being barred from entry to the U.S. for five years or more. You *are* allowed to take orders, however, for shipment after you return to Canada. Another alternative is to hire an American to handle the sales. This is legitimate because the intent of the regulations is to protect American jobs, not to prevent you from selling your work to Americans.

Before you and your work leave for the U.S., you must prepare documentation not only for its U.S. entry but also its re-entry into Canada. It is highly recommended that you have the Canada Border Services Agency (CBSA) verify the shipment before you take it to the U.S., because the export documents they provide will prove the origin of your goods when you return home. Without such documents, you may find yourself trying to convince a Canadian customs officer that the goods in your possession did in fact originate in Canada. Check with the CBSA to find out what procedures you should follow; contact information is at [www.cbsa.gc.ca/contact/menu-eng.html](http://www.cbsa.gc.ca/contact/menu-eng.html).

## 6.6 If you are not a Canadian citizen

The regulations governing entry of non-Canadians into the U.S. vary according to citizenship and may change without much notice. Consequently, if you are a Cana-

dian permanent resident (defined as “someone who has been allowed to enter Canada as an immigrant, but who has not become a Canadian citizen”), check your status with U.S. immigration officials *before* you set out on your business trip. You can get information about doing this from the United States Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov). You might also wish to query the Government of Canada’s Consular Affairs Bureau at [www.voyage.gc.ca](http://www.voyage.gc.ca) for additional information about your particular situation.

Having left Canada, you will presumably want to return. If you are a Canadian permanent resident, you will need a Canadian Permanent Resident Card to do so. You can apply for the card through Citizenship and Immigration Canada’s website at [www.cic.gc.ca/english/information/pr-card/index.asp](http://www.cic.gc.ca/english/information/pr-card/index.asp) or by calling 1-888-242-2100.

You will find further information on U.S. entry for third-country nationals—that is, citizens of nations other than the U.S and Canada—on the U.S. Consular Services website at [www.amcits.com/canada.asp](http://www.amcits.com/canada.asp). Other resources are on the U.S. Citizenship and Immigration Services website at [www.uscis.gov](http://www.uscis.gov).

*The regulations governing entry of non-Canadians into the U.S. vary according to citizenship and may change without much notice. If you are a Canadian permanent resident but a third-country national, check your status with U.S. immigration officials before you set out on your business trip.*

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# 7

## Labelling, Marking and Standardization

Labelling and marking provide essential information for the shippers and other people who handle your goods and are required for transit across the United States border. Standardization helps ensure that your goods meet U.S. requirements and will make it easier for you to export to the U.S. market.

### 7.1 Country of origin

Every item imported into the U.S. has to be indelibly labelled with its country of origin, so everything you ship to the U.S. must be labelled “Made in Canada.” You will find detailed information about this labelling on the U.S. Bureau of Customs and Border Protection trade publications page, at [www.cbp.gov/xp/cgov/newsroom/publications/trade/](http://www.cbp.gov/xp/cgov/newsroom/publications/trade/); scroll down to the document titled “Marking of Country of Origin.”

Note that this requirement and the NAFTA Rules of Origin requirement are not the same thing. See [Section 4.1](#), “The North American Free Trade Agreement,” for information about Rules of Origin.

### 7.2 Harmonized System (HS) codes

Before you can export your product, you will have to determine the Harmonized System code (HS code) that applies to it. The Harmonized System is an international commodity-description and coding system, and most countries’ tariffs are based on it. You will need the correct HS code at the U.S. border, where the customs authorities will use it to determine the duties, taxes and regulations that apply to your shipment.

In Canada, HS codes are based on an international six-digit root with an additional two digits added for Canadian domestic purposes. There is also a 10-digit version designed to give statistical information about exports. You can find out more about these codes through

[www.canadabusiness.ca/servlet/ContentServer?page-name=CBSC\\_FE/display&c=GuideFactSheet&cid=1083346950540&lang=en](http://www.canadabusiness.ca/servlet/ContentServer?page-name=CBSC_FE/display&c=GuideFactSheet&cid=1083346950540&lang=en), under the “HS Codes and Tariffs” link.

Statistics Canada also has a reference page on Canadian Export Classification; refer to [www.statcan.ca/english/tradedata/cec](http://www.statcan.ca/english/tradedata/cec). The reference lets you search by commodity description or HS code, and also provides a tool for converting Canadian eight-digit export codes to the 10-digit codes the U.S. uses for imports. (The U.S. sometimes refers to the codes as “HTS Codes”—Harmonized Tariff Schedule Codes).

You can see how the U.S. version of the HS structure works by visiting the Tariff Information Centre on the U.S. International Trade Commission website at [www.usitc.gov/tata/index.htm](http://www.usitc.gov/tata/index.htm).

### 7.3 Technical regulations, standards and conformity assessment

Before you try to ship any goods across the border, you should find out whether there are any U.S.-specified requirements related to the sale of your products or services in the United States. These requirements may be contained in government laws and/or regulations at the federal, state and/or local levels.

At the federal level in the U.S., there is a regulatory policy requirement under the Office of Management and Budget (OMB) to consider the use of standards and to use them where this will achieve regulatory objectives. Refer to the Regulatory Affairs section of the OMB website at [www.whitehouse.gov/omb/infoereg/regpol.html](http://www.whitehouse.gov/omb/infoereg/regpol.html) for more information.

*Standardization helps ensure that your goods meet U.S. requirements and will make it easier for you to export to the U.S. market.*

### 7.3.1 Conformity Assessment

Conformity assessment helps ensure that products and services have the required characteristics, and that these characteristics are consistent from product to product and from service to service. Conformity assessment includes sampling, testing, inspection, certification, and quality and environmental system assessment and registration. It also includes accreditation of the competence of those activities by a third party and recognition (usually by a government agency) of an accreditation program's capability.

### 7.3.2 The Standards Council of Canada

The Standards Council of Canada (SCC) maintains a website at [www.scc.ca](http://www.scc.ca), with a section devoted to industry-related issues. It also provides a free information service (refer to [www.scc.ca/en/programs/information/index.shtml](http://www.scc.ca/en/programs/information/index.shtml)) that can help you:

- understand the SCC's accreditation programs, services and activities;
- identify applicable standards, regulations and conformity-assessment procedures that would apply to the market acceptance of your product;
- find competent standards authorities to contact in Canada or abroad;
- identify Canadian, international or foreign standards in a particular area; and
- locate standards published or under development by a specific technical committee.

The SCC also provides custom research on a growing range of standards, legislation and conformity assessment requirements in world markets. There is a fee for this service; for more information, contact an SCC information officer at 613-238-3222.

### 7.3.3 Export Alert!

The SCC operates a service called Export Alert!, which will tell you about pending changes to trade-related regulations. In addition to tracking regulatory developments from a range of countries, Export Alert! allows you to monitor regulatory changes under the World Trade Organization Agreement on Technical Barriers to Trade, and under the Agreement on the Application of Sanitary and Phytosanitary Measures. Administrative features allow you to track your requests and access full texts, and offer links to a number of related information resources.

Export Alert! is made available through the SCC with the support of Foreign Affairs and International Trade Canada. To learn more about Export Alert! or to subscribe, visit [alert.scc.ca/ExportAlert/Index](http://alert.scc.ca/ExportAlert/Index).

*Export Alert! sends you an e-mail warning when foreign (including U.S.) regulators are changing the requirements that apply to your products.*

### 7.3.4 The SCC as a WTO/NAFTA Enquiry Point

The United States and Canada are required, under Chapter 9 of NAFTA and under the provisions of the WTO Technical Barriers to Trade (TBT) Agreement, to notify their trading partners of any newly proposed technical regulations and conformity assessment procedures, or changes to existing ones. In Canada, notifications are received through the WTO/NAFTA Enquiry Point, which is managed by the SCC on behalf of Foreign Affairs and International Trade Canada.

### 7.3.5 Conformity testing

Several agencies test Canadian products for conformity with U.S. standards. The major ones are CSA International and Underwriters Laboratories.

- CSA International, at [www.csa-international.org](http://www.csa-international.org), is a voluntary, non-profit membership organization that is also a Nationally Recognized Testing Laboratory (NRTL). This means that its marks are recognized as valid in the United States. Refer to their Product Areas section at [www.csa-international.org/product\\_areas](http://www.csa-international.org/product_areas) for information about the kinds of products certified by their standards.
- Underwriters Laboratories Inc., at [www.ul.com](http://www.ul.com), is an independent, non-profit, product safety testing and certification organization. UL has both Canadian and U.S. branches and certifies products using several marks. Some are for Canadian standards, some for American, and some for both.

In the United States, the Department of Commerce (website at [www.commerce.gov](http://www.commerce.gov)) is responsible for ensuring the recognition and use of internationally recognized standards, both in the U.S. and abroad. It also works with other U.S. government agencies and foreign governments to solve market-access problems related to foreign standards.

You can find out more about U.S. standards development and U.S. regulatory initiatives from the following organizations:

- The American National Standards Institute (ANSI) is a private, non-profit organization that administers and coordinates the U.S. voluntary standardization and conformity assessment system. Refer to [www.ansi.org](http://www.ansi.org).
- The National Institute of Standards and Technology (NIST) is a non-regulatory federal agency within the U.S. Department of Commerce's Technology Administration. NIST develops and promotes measurement, standards, and technology to enhance U.S. productivity and facilitate trade. Refer to [www.nist.gov](http://www.nist.gov).

### 7.3.6 The World Trade Organization Agreement on Sanitary and Phytosanitary Measures

A particular class of standards, called Sanitary and Phytosanitary Measures (SPS), constitute a major part of the trade regime facing Canadian exporters of agricultural and other natural resource products. If you are an exporter of such products, shipping your goods across the U.S. border may require that you meet these standards, as specified in the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures. For details, refer to [www.wto.org/english/tratop\\_e/sps\\_e/sps\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/sps_e.htm).

This agreement concerns the application of food safety and animal and plant health standards and regulations. According to the WTO:

The Agreement on the Application of Sanitary and Phytosanitary Measures sets out the basic rules for food safety and animal and plant health standards. It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. However, members may use measures that result in higher standards if there is scientific justification. They can also set higher standards based on an appropriate assessment of risks so long as the approach is consistent, not arbitrary.

The agreement still allows countries to use different standards and different methods of inspecting products.

The SPS Agreement encourages countries to use commonly-agreed-on international standards and regulations, and to recognize each other's testing procedures and standards, so that domestically produced goods don't receive an unfair advantage in a country's domestic marketplace.

To help exporters understand and keep up with the standards that apply to their particular market and product, the WTO requires all member governments to set up an "enquiry point." In Canada, this is the Standards Council of Canada, whose website is at [www.scc.ca](http://www.scc.ca). Related bodies are the Canadian Food Inspection Agency ([www.inspection.gc.ca](http://www.inspection.gc.ca)) and Health Canada ([www.hc-sc.gc.ca](http://www.hc-sc.gc.ca)).

*Sanitary and Phytosanitary Measures (SPS) constitute a major part of the trade regime facing Canadian exporters of agricultural and other natural resource products.*

## 7.4 Labelling and marking requirements of U.S. agencies

As well as requiring licences for certain types of imports, several United States agencies have special marking and labelling rules. If your shipments do not comply with them, your exports may not be allowed to cross the border. Check with the appropriate agency for specific information about your product and the marking and labelling it requires.

The major American agencies with special labelling rules are described in the following sections.

### 7.4.1 Federal Trade Commission (FTC)

The FTC, at [www.ftc.gov](http://www.ftc.gov), provides business-oriented information about labelling, including the requirements of the U.S. *Fair Packaging and Labeling Act*. The Act applies to goods that are consumed—a candle is consumed, for example, and is subject to the Act, while the candle holder, which is not consumed, is not.

There are other regulations that apply to textiles, clothing, wool, fur and leather. The FTC publication *Thread-*

ing Your Way Through the Labeling Requirements Under the Textile and Wool Acts, is a user-friendly source of information on these rules; you will find it at [www.ftc.gov/bcp/conline/pubs/buspubs/thread.shtm](http://www.ftc.gov/bcp/conline/pubs/buspubs/thread.shtm). Visit the FTC Business page at [www.ftc.gov/bcp/business.htm](http://www.ftc.gov/bcp/business.htm) for more information on labelling.

#### 7.4.2 Food and Drug Administration (FDA)

The FDA, at [www.fda.gov](http://www.fda.gov), regulates food labelling in the United States and also has authority over the labelling of dietary supplements, cosmetics, drugs (both prescription and over-the-counter), medical devices, devices that emit radiation, animal foods, drugs and cosmetics. Their website at [www.cfsan.fda.gov/~dms/lab-ind.html](http://www.cfsan.fda.gov/~dms/lab-ind.html) provides information about this labelling.

If you are a small business, be sure to check out the Small Business Food Labeling Exemption, described at [www.cfsan.fda.gov/~dms/sbel.html](http://www.cfsan.fda.gov/~dms/sbel.html), which may make your labelling requirements less rigorous. Note that the exemption applies only to the requirement for a nutrition labelling statement, one of the five mandatory statements that the FDA requires on a label.

#### 7.4.3 United States Department of Agriculture (USDA)

The USDA ([www.usda.gov](http://www.usda.gov)), through its Food Safety and Inspection Service (FSIS) at [www.fsis.usda.gov](http://www.fsis.usda.gov), is responsible for ensuring that the U.S. commercial food supply is safe, wholesome and correctly packaged and labelled. The FSIS Labeling and Consumer Protection page, which you will find at [www.fsis.usda.gov/About\\_FSIS/labeling\\_&\\_consumer\\_protection/index.asp](http://www.fsis.usda.gov/About_FSIS/labeling_&_consumer_protection/index.asp), provides much of the information you will need.

Most labels on retail packages of meat or poultry must be pre-approved by the FSIS. The Labelling Procedures section of the website at [www.fsis.usda.gov/Regulations\\_&\\_Policies/Labeling\\_Procedures/index.asp](http://www.fsis.usda.gov/Regulations_&_Policies/Labeling_Procedures/index.asp) has information about doing this. The same page leads to information about products that may enter the U.S. with generic labelling, which does not require pre-approval from FSIS.

The USDA is also responsible for the National Organic Program (NOP) at [www.ams.usda.gov/nop/indexIE.htm](http://www.ams.usda.gov/nop/indexIE.htm).

Note that the U.S. *Bioterrorism Act* will probably affect you if you export food and agricultural products to the United States; for more information, see [Section 9.3](#), “U.S. legislation affecting exporters.”

#### 7.4.4 Bureau of Alcohol, Tobacco and Firearms (ATF)

The ATF, at [www.atf.gov](http://www.atf.gov), ensures that alcoholic beverages sold in the U.S. are labelled according to regulations. You must apply to have your label approved, which you do through the Alcohol Labeling and Formulation Division (ALFD); you can contact them in Washington, D.C. at 1-202-927-8140. You will need to fill out Form F5100.31, “Application for and Certification/Exemption of Label/Bottle Approval,” which you can download from the Forms section of the ALFD web page at [www.atf.gov/alcohol/alfd.htm](http://www.atf.gov/alcohol/alfd.htm).

#### 7.4.5 Customs and Border Protection (CBP)

Unless otherwise specified, all articles entering the United States must be marked with a country-of-origin statement. The rules for country-of-origin marking are in Title 19, Part 134 of the U.S. Code of Federal Regulations (CFR). For details, refer to [www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html), which will allow you to reference the document online.

If you are sending printed material across the border, a label must state the country in which it was printed (“Printed in Canada,” for example). However, if the material is NAFTA-qualified and is not intended for resale (such as brochures you will be giving away), this label is not necessary. For more information, refer to NAFTA Part Two, Chapter Three, Section B, Article 306. The text is at [www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap03.aspx?lang=en#SectionB](http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap03.aspx?lang=en#SectionB).

*If you are shipping your product to an end user (that is, someone who will not be reselling it), you may be able to obtain a marking exemption. Contact U.S. Customs at [www.customs.ustras.gov](http://www.customs.ustras.gov) or a U.S. customs broker to find out if you qualify.*

#### 7.4.6 Environmental Protection Agency (EPA)

The EPA ([www.epa.gov](http://www.epa.gov)) deals with protection of the environment in the U.S. If your product contains chemicals



that may come under the U.S. *Toxic Substances Control Act*, it may need special labelling.

Any product that purports to be a pesticide, fungicide, rodenticide or anti-microbial agent is subject to the U.S. *Federal Insecticide, Fungicide and Rodenticide Act* (FIFRA), which is under the authority of the EPA. (This excludes products associated with cosmetics or over-the-counter drugs, which are under the FDA.) Information on labelling pesticides is in Chapter Two of the EPA Label Review Manual, refer to [www.epa.gov/oppfead1/labeling/lrm/chap-03.htm](http://www.epa.gov/oppfead1/labeling/lrm/chap-03.htm). The rules governing the FIFRA are in Title 40, Part 152 of the CFR. For details, refer to [www.access.gpo.gov/nara/cfr/cfr-tablesearch.html](http://www.access.gpo.gov/nara/cfr/cfr-tablesearch.html), which will allow you to reference the document online.

The EPA is also responsible for the national volatile organic compound emission standards for consumer products. These are in Title 40, Subpart C of Part 59 of the CFR.

For more information about EPA requirements, contact one of the EPA regional offices listed at [www.epa.gov/epahome/comments.htm](http://www.epa.gov/epahome/comments.htm).

#### 7.4.7 Consumer Products Safety Commission (CPSC)

The CPSC, at [www.cpsc.gov](http://www.cpsc.gov), is responsible for the proper labelling of various hazardous substances and articles. These rules can be found in Title 16, Part 1500 of the CFR; for details, refer to [www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html), which will allow you to reference the document online. The CPSC is also responsible for the labelling requirements of flammable products. The rules for this are in Title 16, Parts 1608 and 1609 of the CFR. For details, refer to [www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html), which will allow you to reference the document online.

#### 7.4.8 Department of Labor (DOL)

The Department of Labor is responsible for the Occupational Health and Safety Administration (OSHA). The rules on hazard communication, including labelling and information sheets regarding hazardous products, are in Title 29, Section 1910.1200 of the CFR. For details, refer to [www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html), which will allow you to reference the document online.



# 8

## Packing and Shipping Your Goods

Both you and your buyer want your goods to cross the border easily, to arrive on time and to be intact when they reach their destination. Proper packing and shipping, with complete and accurate documentation, permits and licences, will contribute a great deal to trouble-free exporting.

### 8.1 Basic packing and shipping requirements

How you pack your goods will depend, of course, on what the goods are, how they will be shipped, and what hazards they may encounter on their way to your buyer. Remember that a truck shipment going from Regina to Miami will be on the road for several days and will be subject to vibration and shock; moreover, if it leaves Canada in winter for the southern United States, it will travel from a cold, dry climate to a warm, humid one.

It is in your interest to pack your shipments securely. If a shipment arrives in a damaged state because of improper packing, your buyer will not accept it and may decide not to order goods from you again. Moreover, insurance often will not cover goods shipped in unsuitable or insufficient packaging.

The Canadian Trade Commissioner Service offers a comprehensive publication about stowage for international shipments titled *Safe Stowage: A Guide for Exporters*. You will find the downloadable version on the TCS website: [tradecommissioner.gc.ca/misc\\_cont/SafeStowage-e.pdf](http://tradecommissioner.gc.ca/misc_cont/SafeStowage-e.pdf).

Agriculture and Agri-food Canada's website has a useful list of shipping resources that are applicable not only to agri-food but to most other sectors as well. Refer to [ats-sea.agr.gc.ca/access/shipping-e.htm](http://ats-sea.agr.gc.ca/access/shipping-e.htm).

### 8.2 Shipping labels

Shipping labels and marks should be large, clear, and waterproof. The shipping information should include:

- port of destination and name, address and phone number of consignee on at least three faces of the package (top, one side, one end);
- any necessary cautionary labels (e.g. "Fragile," "Use no hooks");
- transit instructions;
- package dimensions and weight;
- package number; and
- invoice and/or order number.

*Proper packing and shipping, with complete and accurate documentation, permits and licences, will contribute a great deal to trouble-free exporting.*

### 8.3 Shipping methods

There are several ways of transporting your product to your buyer. Which one you select depends on the nature of the product, where it's going, how much of the product is in the order, and so on. No matter which you choose, however, all shipments will require some form of customs documentation, according to whether they are an *informal entry* (valued at US\$2,000 or less) or a *formal entry* (valued at more than US\$2,000).

The most common shipping methods are:

- *Truck*: Many trucking companies carry Canadian exports to the United States. Rates depend on whether you are sending a full truckload or less than a truckload.
- *Bus*: If your product is relatively small and light, bus shipment may be an efficient, cost-effective option.
- *Air*: Air shipment is fast, with reasonable insurance and warehousing rates.

- *Rail*: Large bulk shipments are well suited to rail shipping. This method can also involve truck movement to transport the cargo from the rail terminal to your buyer. You get a lower rate for a full carload than you do for a partial carload.
- *Mail*: For small shipments that comply with Canada Post's size, weight and content regulations, mail can be a cost-effective delivery method. All mail shipments to the U.S. are diverted to U.S. Customs for checking and for assessment of duty where applicable.
- *Courier*: Couriers do not offer COD service when shipping directly from Canada, so you will have to use some other means to get paid. Also, if your shipment requires *formal entry* because it's valued at more than US\$2,000, the customs brokerage fees can price your product out of the market. To get around this, couriers recommend that you send several items at a time as a *consolidated entry*. This means that they are considered a single entry for customs purposes, so you pay only one brokerage fee. After clearing customs, the packages travel onward to their individual buyers.

## 8.4 Reporting your exports

Reporting your goods exports is mandatory under Canadian regulations *except* when you are exporting to the United States, Puerto Rico or the U.S. Virgin Islands. There is no reporting requirement for U.S.-bound exports because there is an agreement between the U.S. and Canada whereby Canada gets its export data directly from American import data.

Note that you *do* have to report exports that are shipped through the U.S. to another country (referred to as "in-transit goods").

Some goods, however, are classified by Canada as controlled, prohibited or regulated. To export these to the U.S., you will need an export permit; for more detail, see the next section.

For a good general guide to Canadian customs regulations as they affect exporters, be sure to look at the CBSA's *Handy Guide for Exporters*, available at [www.cbsa-asfc.gc.ca/publications/pub/rc4116-eng.html](http://www.cbsa-asfc.gc.ca/publications/pub/rc4116-eng.html).

## 8.5 Controlled, prohibited and regulated exports

Quite a few goods fall into the controlled or restricted category and cannot be freely exported from Canada. Examples of this category are certain agricultural commodities, cultural property, pharmaceuticals and some types of technology. The prohibited category includes things such as (understandably) illegal drugs and counterfeit money.

Unfortunately, there is no comprehensive published list of these products. To find out if yours is among them, you can get in touch with the Government of Canada's Export and Import Controls Bureau (EICB) at [www.international.gc.ca/eicb](http://www.international.gc.ca/eicb), whose contacts page gives telephone numbers for queries about various kinds of controlled goods.

Another place to look for information is the CBSA Publications and Forms page at [www.cbsa-asfc.gc.ca/publications/menu-eng.html](http://www.cbsa-asfc.gc.ca/publications/menu-eng.html). It lists guides, forms and documents for Canadian exporters.

Note that these are Canadian regulations, not U.S. ones, and only affect your ability to ship the goods out of Canada. The U.S. import regulations for these types of goods are a separate matter and are discussed in [Section 9.3](#), "U.S. legislation affecting exporters."

## 8.6 Using freight forwarders

Dealing with shipping and customs can be very complicated and time-consuming, especially when you are still finding your way around. An alternative to managing everything yourself is to use a freight forwarder.

Using a freight forwarder can have many advantages. A forwarder who specializes in moving goods to the United States will be familiar with U.S. import regulations, with the shipping methods that best suit your product and with the documentation and procedures needed to move it to its destination. A forwarder can also give you quotations on insurance, freight and other shipping services.

Forwarders normally offer these services for a stated fee plus documentation charges. Do not forget to factor these costs into the price you charge for your product.

A freight forwarder should, ideally, satisfy the following criteria:

- Be a member of the Canadian International Freight Forwarders Association (CIFFA). The CIFFA Members Directory can be found at [www.ciffa.com](http://www.ciffa.com).
- Be a member of the International Air Transport Association (IATA).
- Offer a complete line of services such as brokerage, insurance and packaging, all at competitive rates.
- Have a list of satisfied customers you can contact for references.
- Be familiar with your product and with the procedures and requirements for shipping it to the U.S.
- Be large enough to handle your volume of shipping and to provide the scheduling you need.
- Have warehousing facilities.
- Have errors and omissions insurance. This is a form of liability insurance that covers the forwarder against a customer's claims for negligence in clearing and forwarding the customer's goods.

Agriculture and Agri-food Canada's website has a useful page on freight forwarders that is applicable to most sectors. Refer to [www.ats-sea.agr.gc.ca/access/4153\\_e.htm](http://www.ats-sea.agr.gc.ca/access/4153_e.htm).

## 8.7 Insurance

International carriers assume only limited liability for goods when shipping them. Terms of sale often make the seller responsible for the goods up to the point of delivery to the foreign buyer. This means that transportation insurance is an absolute necessity. As mentioned in the previous section, your freight forwarder should also carry errors and omissions insurance.

Most freight forwarders will arrange insurance for your shipment. If you decide to do this yourself, through an insurance company, make sure you understand exactly what coverage you are getting.

*Insurance often will not cover goods shipped in unsuitable or insufficient packaging.*



# 9

## Border Security

After the events of September 11, 2001, Canada and the United States signed the Smart Border Declaration and Action Plan, which identified 32 initiatives to promote bilateral cooperation in the areas of border security and border management. This plan has since evolved into the Security and Prosperity Partnership (SPP) of North America, which is intended to allow people and goods to move efficiently between Canada, the U.S. and Mexico while minimizing security risks. Information about the SPP is available from the Government of Canada SPP website at [www.spp-psp.gc.ca/menu-en.aspx](http://www.spp-psp.gc.ca/menu-en.aspx).

The Canada Border Services Agency (CBSA) and various risk-management programs, as outlined below, are involved in the SPP.

### TRADE AND INTERNATIONAL SECURITY

Because the global trading system is vulnerable to terrorist exploitation that would severely damage the world's economy, the World Customs Organization (WCO) has begun an initiative that will help protect the international supply chain. Called the SAFE Framework, this initiative aims to establish and integrate standards for supply chain security and management, strengthen cooperation among customs administrations to improve their detection capabilities, strengthen customs-business cooperation and promote the seamless movement of goods through well-secured international supply chains.

### 9.1 The Canada Border Services Agency

The CBSA was created in late 2003 by integrating certain employees and functions from the Canada Customs and Revenue Agency, Citizenship and Immigration Canada and the Canadian Food Inspection Agency into the new agency. The CBSA has jurisdiction over:

- customs;
- passenger inspection services at Canadian ports of entry; and
- intelligence, interdiction and enforcement functions related to citizenship and immigration.

You can find out more about the agency from the CBSA website at [www.cbsa-asfc.gc.ca](http://www.cbsa-asfc.gc.ca).

### 9.2 Canada-U.S. border risk-management programs

Canada and the United States have instituted several risk-management programs that may affect your export business.

#### 9.2.1 The Free and Secure Trade (FAST) program

FAST is a joint Canada-U.S. program involving the CBSA, Citizenship and Immigration Canada, and U.S. Customs and Border Protection. If you belong to FAST, you will be eligible to have your goods processed through expedited clearance processes.

To be FAST-approved in Canada, you need to meet the requirements under the Customs Self-Assessment (CSA) program and be enrolled in PIP (see below). To enrol in FAST, you have to complete separate applications to the customs administrations in the United States and Canada.

To take advantage of FAST, you must use carriers that are approved through C-TPAT (see next page) and whose drivers carry FAST Cards. For more information on FAST, CSA and PIP, visit the CBSA FAST website at [www.cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html](http://www.cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html).

#### 9.2.2 The Partners in Protection (PIP) program

The PIP program enlists industry's help in dealing with terrorism, increasing border security, reducing smuggling and combating organized crime. In Canada, PIP is managed by the CBSA; companies that sign up for the

program give the CBSA a self-assessment of their security methods. In return, the CBSA will help the business remedy any flaws in its security.

PIP is intended to benefit a business through faster movement of low-risk personnel and goods through U.S. customs, improved security for the company and better understanding of customs requirements. You can find out more about PIP from the CBSA's Partners in Protection website at [www.cbsa-asfc.gc.ca/security-secure/pip-pep/menu-eng.html](http://www.cbsa-asfc.gc.ca/security-secure/pip-pep/menu-eng.html).

### 9.2.3 The Customs-Trade Partnership Against Terrorism (C-TPAT) program

The C-TPAT program is intended to help businesses work with U.S. Customs to keep international supply chains secure. If you produce goods and export them to the U.S., it may be to your advantage to be a C-TPAT participant. This will allow you to benefit from reduced inspections at the border, provide you with a customs account manager and allow you to use the FAST program.

To enrol in C-TPAT, you will have to carry out a thorough self-assessment of your supply chain security, using the C-TPAT guidelines developed by U.S. Customs and Border Protection. You will also have to develop a program to enhance your supply chain security in accordance with these guidelines. For more information, refer to the C-TPAT website of the U.S. Customs and Border Protection website at [www.cbp.gov/xp/cgov/trade/cargo\\_security/ctpat/](http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/).

*The CBSA maintains a Border Wait Times web page at [www.cbsa-asfc.gc.ca/general/times/menu-e.html](http://www.cbsa-asfc.gc.ca/general/times/menu-e.html), which is updated once an hour. A wireless version of Border Wait Times is available through the Government of Canada's Wireless Portal. Refer to [www.canada.gc.ca/mobile/wireless\\_e.html](http://www.canada.gc.ca/mobile/wireless_e.html).*

## 9.3 U.S. legislation affecting exporters

The U.S. has implemented two pieces of security-related legislation that may affect your export business.

### 9.3.1 The Bioterrorism Act

The *Public Health Security and Bioterrorism Preparedness and Response Act* of 2002, more commonly known as the *Bioterrorism Act*, was implemented in December 2003 and is intended to protect the United States from bioterrorism. If your business produces, processes or handles food for human or animal consumption in the U.S., it will almost certainly affect you, and you will have to register with the U.S. Food and Drug Administration (FDA). For information about registering, refer to the FDA Registration web page at [www.cfsan.fda.gov/~furlsovffreg.html](http://www.cfsan.fda.gov/~furlsovffreg.html).

You will be required to provide the name of a U.S. company to act as your agent/contact in the U.S. should FDA officials need to make immediate contact with someone regarding your shipments. You must also notify FDA of your shipments in advance of their arrival at the border.

Agriculture and Agri-food Canada maintains an extensive web page with information and links related to the *Bioterrorism Act*; it's at [www.sea.agr.gc.ca/us/bioterrorism\\_e.htm#FDA](http://www.sea.agr.gc.ca/us/bioterrorism_e.htm#FDA).

### 9.3.2 The Trade Act

In July 2003, the U.S. Bureau of Customs and Border Protection announced new regulatory requirements for pre-arrival notice in air, rail and highway modes under the *Trade Act* of 2002. Under these requirements, traders shipping goods to the U.S. are required to submit certain cargo and conveyance information to U.S. Customs before the goods arrive at the border. For example, in the marine mode, U.S. Customs must receive specific cargo information 24 hours prior to the goods being loaded onboard the vessel at the foreign port.

As with the FDA regulations, exporters will find that these U.S. Customs requirements may have a significant effect on how and when export documents must be completed and submitted to the appropriate border authorities. For more information on the requirement for advance notice, visit [www.cbp.gov/xp/cgov/trade/trade\\_outreach/advance\\_info/](http://www.cbp.gov/xp/cgov/trade/trade_outreach/advance_info/).



# 10

## Dealing with U.S. Customs

Although U.S. customs regulations are complex and often different from those used by Canada, shipping goods across the border can be relatively uncomplicated if you are well prepared for it. Some extra time spent on your paperwork will contribute a great deal to problem-free customs clearance, since inaccurate or incomplete documentation is the most common reason that export shipments have trouble entering the United States.

There are two major ways in which your goods can enter the United States: as a *formal entry*, also called a *commercial entry*, or as an *informal entry*. Most exports enter the U.S. as a formal entry, for which U.S. customs regulations require the use of a U.S. customs broker. Informal entry does not require a broker if the shipment is accompanied by the exporter, or if the consignee comes to the port of entry to collect it.

As well as meeting the U.S. Customs requirements for formal or informal entry, your exports may have to abide by regulations established by other U.S. agencies. The Federal Trade Commission, for example, is responsible for enforcing import regulations for clothing and textiles, which are subject to more controls than some other goods. As another instance, the U.S. Food and Drug Administration maintains guidelines for the labelling of food and beverage products; if your product falls into these categories, you may need additional documentation such as a Certificate of Hygiene, a Certificate of Free Sale or a Certificate of Inspection. Your U.S. customs broker, as well as the agencies in question, can help you understand and deal with these special requirements.

*Inaccurate or incomplete documentation is the most common reason for export shipments having trouble entering the United States. A little extra time spent on your paperwork will contribute a great deal to problem-free customs clearance.*

### 10.1 Customs brokers and what they do

Your U.S. customs broker will act on your behalf to clear your goods through customs and deliver them to their final destination. In the United States, customs brokers are licenced, bonded and regulated by U.S. Customs and Border Protection.

Using a U.S. customs broker is usually mandatory. The benefits of doing so, for the exporter, include the following:

- Brokers stay up-to-date with all customs regulations and procedures and will be aware of changes well before you are.
- They prepare all the export documentation that Canada Customs and U.S. Customs require.
- Before your goods can clear customs, U.S. regulations require a bond for their value plus any duties. Your broker will arrange this bond for you.
- A broker will clear your goods through customs quickly, sparing you storage costs.

To find a U.S. customs broker, check the website of the National Customs Brokers & Forwarders Association of America (NCBFAA) at [www.ncbfaa.org](http://www.ncbfaa.org). The site has a searchable membership directory that will direct you to the websites and contact information of NCBFAA members.

Alternatively, you can find a broker at a particular port of entry by visiting the Ports of Entry page on the U.S. Customs and Border Protection site at [www.customs.gov/xp/cgov/toolbox/ports/](http://www.customs.gov/xp/cgov/toolbox/ports/). Select the port of entry and scroll down the page to the link for its brokers list.

Agriculture and Agri-food Canada's website has a useful list of customs resources that are applicable not only to agri-food but to most other sectors as well. Refer to [www.ats-sea.agr.gc.ca/access/shipping-e.htm](http://www.ats-sea.agr.gc.ca/access/shipping-e.htm).

### 10.2 Formal/commercial entry of goods

U.S. Customs requires formal entry for any shipment valued at more than US\$2,000, and you must use a customs broker to clear such shipments. Formal entry also requires a broker for a shipment of *any* value if it consists

of controlled goods (that is, goods requiring either Canadian or U.S. permits or licences to cross the border).

We examined Canadian export permit requirements earlier, in [Section 8.5](#), “Controlled, prohibited and regulated exports.” On the U.S. side, licences or permits are required for the import of the following products and commodities:

- Alcoholic beverages, firearms and ammunition: refer to the Bureau of Alcohol, Tobacco and Firearms at [www.atf.gov](http://www.atf.gov).
- Animals and animal products, meat and meat products, plants and plant products, poultry and poultry products, vegetables: refer to the U.S. Department of Agriculture at [www.usda.gov](http://www.usda.gov).
- Artifacts and cultural property, trademarked articles: refer to U.S. Customs and Border Protection at [www.cbp.gov](http://www.cbp.gov).
- Biological materials, fruit and nuts, medicines, narcotics and certain drugs, milk, dairy and cheese products: refer to the U.S. Food and Drug Administration at [www.fda.gov](http://www.fda.gov).
- Hunting trophies, fish and wildlife, pets: refer to the U.S. Fish and Wildlife Service at [www.fws.gov](http://www.fws.gov).
- Petroleum and petroleum products: refer to the U.S. Department of Energy at [www.energy.gov](http://www.energy.gov).

Note that a U.S. customs inspector can require a formal entry, at his or her discretion, even if the goods are not controlled or even if they are valued at less than US\$2,000.

The U.S. Bureau of Customs and Border Protection provides a pamphlet called *Importing into the United States: A Guide for Commercial Importers*. It covers the entry process, invoice requirements, duty assessment and much more. To download a PDF copy of the document, go to the CBP Trade Publications page at [www.cbp.gov/xp/cgov/newsroom/publications/trade/](http://www.cbp.gov/xp/cgov/newsroom/publications/trade/) and scroll to the “Importing into the United States” link.

*U.S. Customs requires formal entry, using a customs broker, for any shipment valued at more than US\$2,000.*

## 10.3 Required documentation for formal entry

Your shipment, if destined for formal entry, will require the following documents and information:

### ■ Commercial invoice

Also known as a business invoice, this must exactly represent the content and value of your shipment. If you just happen to toss in a few promotional items at the last moment and they are not on the invoice, the customs inspector may hold your shipment at the border until you clarify what is going on. Also, never declare goods, such as promotional items or samples, as being of “No commercial value.” U.S. customs officials may decide to impose a value of their own or may even refuse entry of the goods.

Yet one more invoicing tip: When using part numbers, provide a written description that will help classify the goods for customs purposes. And be sure that each invoice also shows the total amount charged to the buyer for the shipment; never use the net value.

### ■ NAFTA Certificate of Origin

This was discussed in [Section 4.1](#), “The North American Free Trade Agreement.”

### ■ Importer ID Number

Also known as the Customs Assigned Number, this is used by U.S. Customs to establish bond coverage, release and entry of merchandise, liquidation, the issuing of bills and refunds, and drawback processing. Your customs broker can help you obtain the number or you can get it yourself by submitting Form 5106 to U.S. Customs, available at [forms.cbp.gov/pdf/CBP\\_Form\\_5106.pdf](http://forms.cbp.gov/pdf/CBP_Form_5106.pdf).

### ■ Bill of lading or airway bill

Your freight forwarder, carrier or broker is responsible for filling it out. A bill of lading is not needed for mail shipments.

### ■ Entry manifest

The carrier is responsible for filling this out. Again, this is not needed for mail shipments.

### ■ Entry/immediate delivery

This is used for time-sensitive shipments, such as fresh produce, and replaces the entry manifest. The carrier is responsible for submitting this to U.S. Customs before the shipment arrives at the port of entry.

#### ■ Harmonized System Tariff Classification (HS code)

This was discussed earlier in [Section 7.2](#), “Harmonized System (HS) codes.”

#### ■ Other documents

Depending on the nature of the goods, the shipment may also need to be accompanied other documents such as permits or licences (if they are controlled goods) or a packing list.

## 10.4 Informal entry of goods

Your goods are considered an informal entry if their value is less than US\$2,000, and if they are not controlled goods. As we also mentioned earlier, informal entry does not require a broker if the shipment is accompanied by the exporter, or if the consignee comes to the port of entry to collect it.

A downloadable guide, called *Exporting Small Commercial Shipments to the U.S.*, will be useful if you are routinely sending informal, non-controlled exports over the border. You will find it at [www.canadabusiness.ca/alberta/content/export\\_comm\\_goods.pdf](http://www.canadabusiness.ca/alberta/content/export_comm_goods.pdf).

Documentation for informal entry is less stringent than it is for formal entry. The shipment must have its commercial invoice with it. You should also include a NAFTA Certificate of Origin; while this is not legally required by U.S. Customs, providing one will smooth your shipment’s path across the border.

## 10.5 Clearing U.S. Customs

You should ensure with your carrier that the *importer of record* will be notified of your shipment as soon as it arrives at U.S. Customs. The importer of record is responsible for filing all entry documents with the authorities at the port of entry. When exporting from Canada to the U.S., the importer of record can be the exporter (you), your consignee/buyer, or your U.S. customs broker.

If you want to defer payment of duties and processing fees until you have completed the sale of your goods, you can have them sent to a bonded warehouse. Duties and fees are not levied until the goods leave the warehouse.

After the goods have arrived at the port of entry, they will be examined by U.S. Customs officials to determine:

- the value of the goods for customs and duty purposes;

- the validity of the marking and labelling;
- the validity of the invoice;
- whether the shipment contains any prohibited goods; and
- whether the requirements of other U.S. federal agencies, such as the Department of Agriculture, have been met.

Once customs officials have decided that the shipment and its documentation are in order, the goods are allowed to proceed into the U.S. The broker then determines the duties or fees payable and files this information, along with any payment due, with U.S. Customs. After official appraisal of the goods, the entry is “liquidated,” meaning that the final computation of duties and/or drawback is complete.

## 10.6 Duty deferral and duty relief

If you are importing goods in order to re-export them to the U.S., you might be able to take advantage of the Duty Deferral Program, administered by the Canadian Border Services Agency (CBSA). The program relieves or defers payment duties if the goods are in transit through Canada and will not be sold here.

There are three components to the Duty Deferral Program:

#### ■ Duty Relief Program

This program enables eligible companies to import goods without having to pay customs duties, as long as they export the goods after importing them. For more information, refer to Memorandum D7-4-1, “Duty Deferral Program,” at [cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-1-eng.html](http://cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-1-eng.html). For further information on the program, refer to [www.cbsa-asfc.gc.ca/import/ddr-red/tab1-eng.html](http://www.cbsa-asfc.gc.ca/import/ddr-red/tab1-eng.html).

#### ■ Drawback Program

With the Drawback Program, duty is refunded on previously imported goods once these goods have been exported. For more information, refer to Memorandum D7-4-2, “Duty Drawback Program,” at [cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-2-eng.html](http://cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-2-eng.html). For further information on the program, refer to [www.cbsa-asfc.gc.ca/import/ddr-red/tab1-eng.html](http://www.cbsa-asfc.gc.ca/import/ddr-red/tab1-eng.html).

### ■ Bonded Warehouse Program

A bonded warehouse is a storage facility operated by the private sector and regulated by the CBSA. In such a warehouse, you may store goods without having to pay duties and taxes. This could be beneficial if you are planning to import goods only for the purpose of exporting them. For more information, refer to Memorandum D7-4-4, “Customs Bonded Warehouses,” at [cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-4-eng.html](https://cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-4-eng.html). For further information on the program, refer to [www.cbsa-asfc.gc.ca/import/ddr-red/tab9-eng.html](https://www.cbsa-asfc.gc.ca/import/ddr-red/tab9-eng.html).

## 10.7 Penalties and seizures

U.S. Customs levies severe penalties for fraud or negligence, so you have to be sure that the information you give about your exports is accurate and complete. If you discover errors after your goods have entered the U.S., notify your customs broker immediately; you may be able to avoid penalties through prior disclosure of the mistake (in other words, before U.S. Customs detects it).

You will not normally be penalized for clerical errors or omissions, but negligence or gross negligence, as defined by U.S. Customs, can draw penalties of up to four times the duty or 40 percent of the value of the goods. The penalty for outright fraud, such as false valuation, can be the entire value of the shipment or seizure of the shipment. Again, your best defence against such problems is to be very thorough and precise in preparing your documentation.

*You will not normally be penalized for clerical errors or omissions, but negligence or gross negligence, as defined by U.S. Customs, can draw penalties of up to four times the duty or 40 percent of the value of the goods.*

# A

## Appendix A: Glossary of International Trade Terms

Exporting is more complex than selling in a domestic market. You will know better what is going on if you understand some key trade expressions, techniques and requirements. Among these are:

- the laws, regulations and practices governing your product or service in your target market;
- export documentation, including invoices, bills of lading, certificates of origin and health and safety certificates;
- tariffs, customs duties and processing fees, as well as taxes payable on your shipment;
- export-related services offered by brokers, trading houses, agents, freight forwarders and insurance companies;
- how to label, pack, transport and store your products; and
- payment options such as letters of credit, bills of exchange and open account transactions.

### GENERAL TERMS

International trade carries its own particular terminology. The following are general trade expressions that new exporters will encounter in published sources and trade discussions.

**Anti-dumping Duty:** A special duty imposed to offset the price effect of dumping that has been determined to be materially harmful to domestic producers. (See also Dumping.)

**Counter-trade:** A general expression meaning the sale or barter of goods on a reciprocal basis. There may also be multilateral transactions involved.

**Countervailing duties:** Additional duties imposed by an importing country to offset government subsidies in an exporting country, when the subsidized imports cause material injury to domestic industry in the importing country.

**Dumping:** The sale of an imported commodity at a price lower than that at which it is sold within the exporting country. Dumping is considered an actionable trade practice when it disrupts markets and injures producers of competitive products in the importing country. Article VI of the General Agreement on Tariffs and Trade permits the imposition of special anti-dumping duties against dumped goods equal to the difference between their export price and their normal value.

**Export Quotas:** Specific restrictions or ceilings imposed by an exporting country on the value or volume of certain exports designed, for example, to protect domestic producers and consumers from temporary shortages of the goods affected or to bolster their prices in world markets.

**Export Subsidies:** Government payments or other financially quantifiable benefits provided to domestic producers or exporters contingent on the export of their goods and services.

**GDP/GNP (Gross Domestic/National Product):** The total of goods and services produced by a country.

**Subsidy:** An economic benefit granted by a government to producers of goods, often to strengthen their competitive position. The subsidy may be direct (e.g. cash grant) or indirect (e.g. low-interest export credits guaranteed by a government agency).

**Surcharge or Surtax:** A tariff or tax on imports in addition to the existing tariff, often used as a safeguard measure.

**Tariff:** A duty (or tax) levied on goods transported from one customs area to another. Tariffs raise the prices of imported goods, thus making them less competitive within the market of the importing country. Under the North American Free Trade Agreement, most duties on goods qualifying as NAFTA-originating and services from Canada to the United States and Mexico have been eliminated.

### INTERNATIONAL COMMERCIAL - INCOTERMS

Shipping terms set the parameters for international shipments, specify points of origin and destination, outline conditions under which title is transferred from seller to buyer, and determine which party is responsible for ship-

ping costs. They also indicate which party assumes the cost if merchandise is lost or damaged during transit. To provide a common terminology for international shipping, the following INCO terms have been developed under the auspices of the International Chamber of Commerce at [www.iccwbo.org/incoterms/id3045/index.html](http://www.iccwbo.org/incoterms/id3045/index.html).

**Cost and Freight (C&F):** The exporter pays the costs and freight necessary to get the goods to the named destination. The risk of loss or damage is assumed by the buyer once the goods are loaded at the port of embarkation.

**Cost, Insurance and Freight (CIF):** The exporter pays the cost of goods, cargo and insurance plus all transportation charges to the named port of destination.

**Delivered at Frontier:** The exporter/seller's obligations are met when the goods arrive at the frontier, but before they reach the "customs border" of the importing country named in the sales contract. The expression is commonly used when goods are carried by road or rail.

**Delivered Duty Paid:** This expression puts maximum responsibility on the seller/exporter in terms of delivering the goods, assuming the risk of damage/loss and paying duty. It is at the other extreme from delivered ex works (see below), under which the seller assumes the least responsibility.

**Delivered Ex Quay:** The exporter/seller makes the goods available to the buyer on the quay or wharf at the destination named in the sales contract. There are two types of *ex quay* contracts in use: *ex quay duty paid*, whereby the seller incurs the liability to clear the goods for import, and *ex quay duties on buyer's account*, whereby the buyer assumes the responsibility.

**Delivered Ex Ship:** The exporter/seller must make the goods available to the buyer on board the ship at the location stipulated in the contract. All responsibility/cost for bringing the goods up to this point falls on the seller.

**Delivered Ex Works:** This minimal obligation requires the seller only to make the goods available to the buyer at the seller's premises or factory. The seller is not responsible for loading the goods on the vehicle provided by the buyer, unless otherwise agreed. The buyer bears all responsibility for transporting the goods from the seller's place of business to their destination.

**Ex Works (EXW):** The price quoted applies only at the point of origin and the seller agrees to place the goods at the disposal of the buyer at the specified place on the date or within the period fixed. All other charges are for the account of the buyer.

**Free Alongside Ship (FAS):** The seller quotes a price for the goods that includes charges for delivery of the goods alongside a vessel at the port. The seller handles the cost

of unloading and wharfage, loading, ocean transportation, and insurance are left to the buyer.

**Free Carrier (named port):** Recognizing the requirements of modern transport, including multi-modal transport, this principle is similar to Free on Board (see below), except that the exporter's obligations are met when the goods are delivered into the custody of the carrier at the named port. The risk of loss/damage is transferred to the buyer at this time, and not at the ship's rail. The carrier can be any person contracted to transport the goods by road, sea, air, rail or a combination thereof.

**Free of Particular Average (FPA):** This type of transportation insurance provides the narrowest type of coverage—total losses, and partial losses at sea if the vessel sinks, burns or is stranded, are covered.

**Free on Board (FOB):** The goods are placed on board the vessel by the seller at the port of shipment specified in the sales contract. The risk of loss or damage is transferred to the buyer when the goods pass the ship's rail.

**Free on Board Airport (FOB Airport):** Based on the same principles as the ordinary FOB expression, the seller's obligation is fulfilled by delivering the goods to the air carrier at the specified airport of departure, at which point the risk of loss or damage is transferred to the buyer.

**Free on Rail and Free on Truck (FOR/FOT):** Again, the same principles apply as in the case of ordinary FOB, except that the goods are transported by rail or road.

**With Average (WA):** This type of transportation insurance provides protection from partial losses at sea.

## TRANSPORTATION AND DELIVERY TERMS

The following are common terms used in packing, labelling, transporting and delivering goods to international markets. They are in addition to the above INCO terms.

**Area Control List:** A list of countries to which any export (except humanitarian items) requires an export permit.

**Bill of Lading (Ocean or Airway):** A contract prepared by the carrier or the freight forwarder with the owner of the goods. The foreign buyer needs this document to take possession of the goods.

**Certificate of Origin:** A document that certifies the country where the product was made (i.e. its origin). A common export document, a certificate of origin is needed when exporting to many foreign markets. It must be used for Canadian-made goods to qualify for preferential tariff treatment under the North American Free Trade Agreement.

**Commercial Invoice:** A document prepared by the exporter or freight forwarder, and required by the foreign buyer, to prove ownership and arrange for payment to the exporter. It should provide basic information about the transaction, including description of goods, address of shipper and seller as well as delivery and payment terms. In some cases, the commercial invoice is used to assess customs duties.

**Consular Invoice:** A statement issued by a foreign consul in the exporting nation describing the goods purchased. Some foreign governments require Canadian exporters to first obtain consular invoices from their consulate in Canada. A fee is usually charged.

**Customs Declaration:** A document that traditionally accompanies exported goods bearing such information as the nature of the goods, their value, the consignee and their ultimate destination. Required for statistical purposes, it accompanies all controlled goods being exported under the appropriate permit.

**Customs Invoice:** A document used to clear goods through customs in the importing country by providing documentary evidence of the value of goods. In some cases, the commercial invoice (see glossary entry) may be used for this purpose.

**Dock Receipt:** A receipt issued by an ocean carrier to acknowledge receipt of a shipment at the carrier's dock or warehouse facilities. (See also Warehouse Receipt.)

**Ex Factory:** Used in price quotations, an expression referring to the price of goods at the exporter's loading dock.

**Export Control List:** A list of goods and technologies that require export permits to be exported from Canada, pursuant to the *Export and Import Permits Act*.

**Export Permit:** A legal document that is necessary for the export of goods controlled by the Government of Canada, specifically goods included on the Export Control List (see above) or goods destined for countries on the Area Control List (see previous page).

**Freight Forwarder:** A service company that handles all aspects of export shipping for a fee.

**Insurance Certificate:** A document prepared by the exporter or freight forwarder to provide evidence that insurance against loss or damage has been obtained for the goods.

**Landed Cost:** The cost of the exported product at the port or point of entry into the foreign market, but before the addition of foreign tariffs, taxes, local packaging/assembly costs and local distributors' margins. Product modifications prior to shipment are included in the landed cost.

**Packing List:** A document prepared by the exporter showing the quantity and type of merchandise being shipped to the foreign customer.

**Pro Forma Invoice:** An invoice prepared by the exporter prior to shipping the goods, informing the buyer of the goods to be sent, their value and other key specifications.

**Quotation:** An offer by the exporter to sell the goods at a stated price and under certain conditions.

**Warehouse Receipt:** A receipt identifying the commodities deposited in a recognized warehouse. A non-negotiable warehouse receipt specifies to whom the deposited goods will be delivered or released. A negotiable receipt states that the commodities will be released to the bearer of the receipt.

## FINANCIAL AND INSURANCE TERMS

The following are the most commonly used terms in international trade financing.

**All Risk:** This is the most comprehensive type of transportation insurance, providing protection against all physical loss or damage from external causes.

**Bid Bond:** When an exporter is bidding on a foreign contract, a bid bond guarantees that the exporter will take the contract if the bid succeeds. An exporter who refuses the contract must pay a penalty equal to the amount of the bond.

**Cash in Advance (Advance Payment):** A foreign customer pays a Canadian exporter prior to actually receiving the exporter's product(s). It is the least-risk form of payment from the exporter's perspective.

**Confirming House:** A company, based in a foreign country, that acts as a foreign buyer's agent and places confirmed orders with Canadian exporters. They guarantee payment to the exporters.

**Consignment:** Delivery of merchandise to the buyer or distributor, whereby the latter agrees to sell it and only then pay the Canadian exporter. The seller retains ownership of the goods until they are sold, but also carries all of the financial burden and risk.

**Document of Title:** A document that provides evidence of entitlement to ownership of goods, e.g. carrier's bill of lading.

**Documentary Collection:** The exporter ships the goods to the foreign buyer without a confirmed letter of credit or any other form of payment guarantee.

**Documentary Credit (sight and term):** A documentary credit calling for a sight draft means the exporter is enti-

tled to receive payment on sight, i.e. upon presenting the draft to the bank. A term documentary credit may allow for payments to be made over terms of 30, 60, or 90 days, or at some specified future date.

**Draft (Bill of Exchange):** A written, unconditional order for payment from one party (the drawer) to another (the drawee). It directs the drawee to pay an indicated amount to the drawer. A sight draft calls for immediate payment. A term draft requires payment over a specified period.

**Export Financing House:** A company that purchases a Canadian exporter's foreign receivables on a non-recourse basis upon presentation of proper documentation. It then organizes export arrangements and provides front-end financing to the foreign buyer.

**Factoring House:** A company that buys export receivables at a discount.

**Letter of Credit:** An instrument issued by a bank on behalf of an importer that guarantees an exporter payment for goods or services, provided the terms of the credit are met.

**Letter of Credit (Confirmed):** A Canadian bank confirms the validity of a letter of credit issued by a foreign bank on behalf of the foreign importer, guaranteeing payment to the Canadian exporter provided that all terms in the document have been met. An unconfirmed letter of credit does not guarantee payment, so if the foreign bank defaults, the Canadian exporter will not be paid. Canadian exporters should accept only confirmed letters of credit as a form of payment.

**Letter of Credit (Irrevocable):** A financial institution agrees to pay an exporter once all terms and conditions of the transaction are met. No terms or conditions can be modified without consent of all parties.

**Open Account:** An arrangement in which goods are shipped to the foreign buyer before the Canadian exporter receives payment.

## PARTNERSHIP, ALLIANCE AND MARKET ENTRY TERMS

The following expressions define the various types of partnership or alliance arrangements as well as methods of market entry common in international trade.

**Agent:** A foreign representative who tries to sell your product in the target market. The agent does not take possession of—and assumes no responsibility for—the goods. Agents are paid on a commission basis.

**Co-marketing:** Carried out on the basis of a fee or percentage of sales, co-marketing is an effective way to take advantage of existing distribution networks and a partner's knowledge of local markets.

**Co-production:** This arrangement involves the joint production of goods, enabling firms to optimize their own skills and resources as well as take advantage of economies of scale.

**Cross-licensing:** In this form of partnership, each firm licences products or services to the other. It is a relatively straightforward way for companies to share products or expertise.

**Cross-manufacturing:** This is a form of cross-licensing in which companies agree to manufacture each other's products. It can also be combined with co-marketing or co-promotion agreements.

**Distributor (Importer):** A foreign company that agrees to purchase a Canadian exporter's product(s), and then takes responsibility for storing, marketing and selling them.

**Franchise:** This is a more specific form of licensing. The franchise is given the right to use a set of manufacturing or service delivery processes, along with established business systems or trademarks, and to control their use by contractual agreement.

**Joint Venture:** An independent business formed cooperatively by two or more parent firms. This type of partnership is often used to avoid restrictions on foreign ownership and for longer-term arrangements that require joint product development, manufacturing and marketing.

In a specifically American legal context, however, a joint venture is a collaboration between two companies to carry out a particular, individual project. The venture lasts only as long as the project does and is governed by the partnership laws of the state where it was formed.

**Licensing:** Although not usually considered to be a form of partnership, licensing can lead to partnerships. In licensing arrangements, a firm sells the rights to use its products or services but retains some control.

**Trading House:** A company specializing in the exporting and importing of goods produced or provided by other companies.

## LEGAL TERMS

The following are some of the more common legal terms encountered in international transactions.



**Arbitration:** The process of resolving a dispute or a grievance outside of the court system by presenting it to an impartial third party or panel for a decision that may or may not be binding.

**Contract:** A written or oral agreement which the law will enforce.

**Copyright:** Protection granted to the authors and creators of literary, artistic, dramatic and musical works, and sound recordings.

**Intellectual Property:** A collective term used to refer to new ideas, inventions, designs, writings, films, and so on, protected by copyright, patents and trademarks.

**Patent:** A right that entitles the patent holder, within the country which granted or recognizes the patent, to prevent all others for a set period of time, from using, making or selling the subject matter of the patent.

**Trademark:** A word, logo, shape or design, or type of lettering which reflects the goodwill or customer recognition that companies have in a particular product.



