



Exporting Food Products to the United States

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Disclaimer: Information contained in this document is intended as a guide only and should not be relied upon as the only source of information. Every effort has been made to indicate essential export requirements to the U.S., however, all regulations of the U.S. Customs and other agencies cannot be discussed fully. You are strongly urged to obtain advice from an expert, such as a licensed U.S. Customs Broker or U.S. Customs. Please note that all the information is current only at the time of printing and is subject to change.

**Government
of Alberta** ■
Canada 

Exporting Food Products to the United States

This guide has been prepared to provide with some basic technical information that you will need to research and consider as you begin shipping food products to the United States.

The U.S. customs regulations and rules are not the same as in Canada. You will have to make sure you obey the U.S. regulations and requirements for your exports.

On December 12, 2003, the Canada Customs and Revenue Agency (CCRA) became the Canada Revenue Agency (CRA). The customs program is now part of the Canada Border Services Agency (CBSA).

1. Get a Business Number - Importer/Exporter Account from Canada Revenue Agency

You must obtain your Business Number (BN) to be able to account for your products. You need to include your BN on all of your export declarations no matter what reporting method you choose. The BN consists of 15 digits: a 9-digit account number; the letters RM, which represent the import/export program; and a 4-digit program account identifier that **must be activated for exports**, e.g. 123456789RM0003.

The **Canada Revenue Agency** uses this number to identify a business and Canada Border Service Agency, to process Customs accounting documents. To register for a BN, or to include an RM account identifier in your BN, call **1-800-959-5525**.

If you have a Social Insurance Number, you can register online at www.businessregistration.gc.ca. You can also call or visit your local Canada Revenue Agency (CRA) tax services office. These offices are listed in the government section of your telephone book.

In addition, you may wish to consult the Canadian Revenue Agency following websites: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/bn-ne/menu-eng.html>
<http://www.cra-arc.gc.ca/formspubs/tpcs/bn-ne-eng.html>
<http://www.cra-arc.gc.ca/E/pbg/tf/rc1c/README.html> (Form RC1C, Import/Export Account).

Note: Before you start to export, you must activate your BN with its account identifier by calling **1-800-959-5525**. **Canada Automated Export Declaration (CAED)** Users must ensure that they are using the correct BN and RM identifier that their transmission will be accepted by the export automated system at the CBSA and that you will not be subject to penalties under the [Administrative Monetary Penalty System \(AMPS\)](#).

2. Find the Harmonized Commodity Coding System Applying to Your Products

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 internationally developed and implemented commodity-description and coding system, upon which the tariffs of most countries of the world (including the NAFTA countries) are based. 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. HS Codes also help international trade by simplifying the requirements of customs administrations, trade statisticians, carriers, and producers.

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. For example, Export HS Number 0101.19.10 is divided, with each 'component' named as follows:

0101.19.10

01 Chapter

0101 Heading

0101.19 Subheading

0101.19.10 Export HS Number

There are three points which should be noted with respect to the Export HS Number:

- i) Although the majority of the subheadings in the Canadian Export Classification have no further breakdown for domestic purposes, it is necessary to include '00' in the 7th and 8th digits for consistency purposes.
- ii) The proper way of writing the Export HS number is to insert a period between the 4th and 5th digits (separating the heading and subheading) and between the 6th and 7th digits (separating the subheading and the statistical suffix) as in the following example:
- iii) There is a correlation between the numbering scheme and the 'dashes' which appear before the text. If there is no detail beyond the fifth digit (e.g. the sixth digit is a zero) there is one 'dash'. Detail at the sixth digit is shown by two 'dashes'. Similarly, detail at the seventh and eighth digits are shown by three and four dashes respectively. This logic of the numbering and dashes facilitates the interpretation of the classification system.

Example:

08.02 Other nuts, fresh or dried, whether or not shelled or peeled

- Almonds

0802.11 -- In shell

0802.12 -- Shelled

In this example it should be noted that subheading 0802.11 (--in shell) relates to almonds, in shell.

Chapter 98 has been reserved for the classification of certain commercial transactions which are not, for various reasons, classified by commodity in trade statistics as well as certain transactions which do not have an international financial implication or which, for various reasons are better considered separately from merchandise trade in economic analysis. Some examples of such transactions might be contractors' outfits, small value shipments (see D20-1-1), settlers' effects and tourist purchases.

To determine the HS code for your product you may wish to consult with your custom broker or visit **Canada Statistics** at <http://www.statcan.ca/english/tradedata/cec/index.htm>

For additional information, contact: **Canada Border Services Agency** Automated Service at **1-800-461-9999**.

3. Contact Canadian Food Inspection Agency (CFIA)

Disclaimer: It is recommended that you consult the appropriate set of regulations before using any information.

The **Canadian Food Inspection Agency** supports the export of products such as:

[dairy products](#)
[fish and seafood](#)
[foods regulated solely under the Food and Drugs Act and Regulations](#)
[fresh fruits and vegetables](#)
[honey](#)
[meat and poultry products](#)
[processed products - fruits, vegetables and maple products](#)

The following are the federal requirements for the export of products covered by the Processed Products Regulations in Canada:

If you wish to export a food product, please ensure that the following points are observed:

1. The food product has been prepared in a registered establishment. Contact your local Canadian Food Inspection Agency office for further information.
2. Minimum Grade or Standard of Identity
3. Prescribed containers
4. Correct Labelling. visit Food Labelling and Advertising:
<http://inspection.gc.ca/english/fssa/labeti/labetie.shtml>

In general, prepackaged process products have the following labelling requirements **(in Canada only)**:

- the common name
- net quantity
- grade name
- size grading
- a list of ingredients
- the complete name and address
- country of origin
- other mandatory information depending on the nature of the food or the types of claims being made
- bilingualism
- minimum height of characters (must be respected)
- food plant registration number

For additional information visit the Guide to Food Labelling and Advertising:
<http://www.inspection.gc.ca/english/fssa/labeti/guide/toce.shtml> or

5. A **fee** is charged for the grading and/or issuance of an Export Certificate. Full payment is due to the inspector on completion of the document. Clients with pre-authorized credit privileges may be billed and the charges will appear on the client's monthly statement. Payment will be due by the date specified on the statement.
6. Export certificate. You shall submit a completed application for processed products to the local Canadian Food Inspection Agency.

For questions on documentation required by the CBSA please contact your local CBSA office.

Note: CFIA is the single contact for all federal regulations covering products which fall under the Processed Products Regulation (PPR) including product labelling. However, certain references are made to the Food and Drugs Act and Regulations. Please use the above information **ONLY** as a guide to the basic labelling requirements under the Food and Drugs Act and Regulations, the Consumer Packaging and Labelling Act and Regulations, Honey Regulations, Maple Product Regulations, and the Processed Product Regulations. These Acts and Regulations must be consulted for further details.

Under The CFIA there are several considerations that might apply to you as an exporter. The CFIA website has export information, forms catalogue (Direct link: <http://www.inspection.gc.ca/english/for/mpppe.shtml>), overview regulations and contacts, thus you are strongly urged to visit the CFIA website at: www.inspection.gc.ca and/or consult with the **local CFIA office** <http://www.inspection.gc.ca/english/directory/offbure.shtml>.

4. Report your Exports to the Canadian Government

You **have to** report all goods that are controlled, prohibited, or regulated regardless of their value by submitting, prior to exportation, an Export Declaration and when applicable any required permits, certificates, or licenses.

Exports must be reported through any of the following methods:

- the Canadian Automated Export Declaration (CAED);
- G7 Electronic Data Interchange (EDI) Export Reporting;
- **Form B13A (PDF 330 Ko)** *Export Declaration*; or
- Summary Reporting.

Methods of reporting:

1. **Electronic methods** – use the Canadian Automated Export Declaration ([CAED](#)) or G7 Electronic Data Interchange (EDI) to submit your data directly to the CBSA and Statistics Canada.
 - a) The **Canadian Automated Export Declaration** is a program in which you or your customs service provider can prepare your export declarations quickly and transmit the information electronically to the Government of Canada.

The CAED software is available free of charge and anyone who has the necessary computer equipment can register to participate in the program. You can find a demonstration of the CAED software and information on how to register on the Statistics Canada Web site, or you can contact the following:

CAED Help Line

International Trade Division
Statistics Canada
9th floor, Jean Talon Building
150 Tunney's Pasture Driveway
Ottawa ON K1A 0T6
Telephone: 613-951-6291 or 1-800-257-2434
Fax: 613-951-6823 or 1-888-269-5305
E-mail: export@statcan.gc.ca

For **CBSA-related questions** on the CAED, please contact the Border Information Service (BIS) at 1-800-461-9999.

- b) **G7 Electronic Export Reporting Process** allows exporters and agents to file an export declaration via electronic data interchange (EDI). The G7 EDI Export Reporting was set up to report transactions between the G7 countries, i.e. Britain, Canada, France, Italy, Japan, Germany and the United States. This reporting method has been expanded to include the reporting of goods that are being exported to any country for which an export declaration is required. There is a cost associated with this reporting method.

To register for G7 EDI Export Reporting, you must have a valid BN and complete the related application form. You can find the form in the G7 EDI Export Participants' Requirement Document (PRD), on the CBSA Web site or by contacting the following:

Information regarding the **G7 Electronic Data Interchange Export Reporting** can be found at:

<http://cbsa-asfc.gc.ca/eservices/g7/exporting-eng.html>

Electronic Commerce Unit

Canada Border Services Agency
250 Tremblay Road, 6th floor
Ottawa, ON K1A 0L8
Telephone: 1-888-957-7224 (within North America) 613-946-0762 (outside North America)
Fax: 613-952-9979

You must submit your completed application form to Statistics Canada by fax or mail at:

Fax: 1-888-269-5305 or 613-951-6823
Mail: International Trade Division Statistics Canada
9th floor, Jean Talon Building
150 Tunney's Pasture Driveway
Ottawa ON K1A 0T6

Note: If you are reporting restricted goods via the CAED or G7 EDI Export Reporting, you must present a paper copy of the CAED or G7 EDI export report together with the accompanying permit at the place of exit.

If your goods destined for consumption in the U.S. market are **regular goods** (i.e., not controlled, prohibited, or regulated) regardless of their value, you **do not** need to report your exports by submitting Form B13A (Export Declaration). It is your responsibility to find out if the goods you want to export are controlled, prohibited, or regulated.

- c) For the paper-based method submit [Form B13A \(PDF, 337 KB\)](#), Export Declaration to a designated Canada Border Services Agency (CBSA) export reporting office **prior to** exporting each shipment. To obtain Form B13A Export Declaration go to <http://www.cbsa-asfc.gc.ca/E/pbg/cf/b13a/README.html>
- d) **Summary Reporting** program is reserved for exporters of low-risk, bulk goods who export on a regular basis and who have met specific CBSA requirements. It enables exporters to summarize required export data and submit it monthly in writing five business days after the end of the month in which the goods are exported. To report in this manner, you need prior written authorization from the CBSA. You can contact your local export reporting office for an application form or for additional information.

To apply for this program, you must contact Program Services at your [regional CBSA office](#). **Goods that are controlled, prohibited, or regulated do not qualify for this program.**

Mandatory Fields

Note: B13A Export Declaration all fields are mandatory

The name of the exporting carrier and manifest number are mandatory fields on the B13A. If the exporting carrier or manifest number, are not known at the time the CAED export declaration is submitted online, the exporter is to state the service provider's name and file or booking reference number in that field. This will ensure that you are not subject to penalties.

Due to the size restrictions imposed by the form, please use the Exporter Reference Number, when required to record multiple Manifest numbers.

For **step-by-step instructions to completing** your **B13A Export Declaration**, consult *Exporting Goods From Canada: A Handy Guide for Exporters* (BSF5081) at: <http://www.cbsa-asfc.gc.ca/publications/pub/bsf5081-eng.html>

5. Get Your Export Permit, Certificate, License

In accordance the [Export and Import Permits Act](#), the Export and Import Controls Bureau is responsible for issuing permits and certificates for various products included on the [Export Control List](#) (ECL). The Division provides assistance to exporters in determining if export permits are required. Export Permits are required if the goods are on the **Area Control List (ACL)** or on the **Export Control List (ECL)**.

There are two types of permits:

1. General Export Permit
2. Individual Export Permit

Most controlled goods require an Individual Permit for import or export, although some goods may enjoy facilitated treatment under a General Permit. General Permits are not specific to an individual importer or exporter in the manner of Individual Permits. General Permits allow for the pre-authorized export or import of certain eligible goods to/from certain eligible countries, by a simplified process (explained in later sections). For instance, the import or export of household goods are treated in this manner.

For additional information, go to <http://www.international.gc.ca/controls-controles/index.aspx?view=d>

Or obtain the Export Controls Handbook which can be found at Export Permits and Controls:

http://www.international.gc.ca/controls-controles/military-militaires/handbook-manuel.aspx?menu_id=1&view=d

An application for Permit to Export Goods Form EXT 1466 can be found at http://www.international.gc.ca/controls-controles/report-rapports/list_liste/forms-formulaires.aspx?menu_id=61&view=d

Permit Fees

There is a \$14 fee for each application to export goods described in Items 5001 to 5204 (Medical Products, Forest Products, and **Agriculture and Food Products**) of the Export Control List, with the exception of Item 5104 (Softwood Lumber Products), to which a \$9 fee applies. There is no charge for permits classified under any other ECL Item numbers. This fee must accompany each export permit application. An export permit will not be issued unless full payment has been received. For more information about these, please contact either the Trade Controls Policy Division at (613) 944-1803 or 944-0777, or the Softwood Lumber Division at (613) 944-2167. http://www.international.gc.ca/controls-controles/export-exportation/TOC-exp_ctr_handbook-manuel_ctr_exp.aspx?lang=eng&view=d

NAFTA Certificate of Origin

Every exporter of goods for which preferential tariff treatment under North American Free Trade Agreement (NAFTA) is to be claimed, will certify in writing that the exported goods to the U.S. meet the rules of origin (pursuant to section 97.1 (1) of the Custom Act). The "Certificate of Origin of Goods Exported to a Free Trade Partner Regulations" set out the requirements as follows:

- The exporter's knowledge that the goods meet the rules of origin
- The exporter's reliance on the written representation of the producer that the goods meet the rules of origin; or
- A certificate, completed and signed by the producer and provided to the exporter, stating that the goods meet the rules of origin (NAFTA)

For the **Certificate of Origin Form** go to: <http://www.cbsa-asfc.gc.ca/publications/forms-formulaires/b232-eng.pdf>

You will need to deal with a lot of documents when delivering products to the U.S. However, you do not normally do it all yourself – you can use freight forwarders and customs brokers.

Freight forwarder helps you to improve your delivery times and customer service. These agencies will negotiate rates for you with shipping lines, airlines, trucking companies, customs brokers and insurance firms.

For a list of freight forwarders visit the Canadian International Freight Forwarders Association web site at www.ciffa.com

Custom Broker clears goods through customs, prepare customs documentation and remit duties owing on exported goods. They are also good sources of information on recent tariff changes and other customs-related developments.

- **List of Customs Brokers** with access to the on-line computer system can be found at http://international.gc.ca/controls-controles/report-rapports/list_liste/customs-douanes.aspx?view=d
- Contact the **Canadian Society of Customs Brokers** at (613) 562-3543 <http://www.cscb.ca>

6. Define your Type of Exporting Entry and Documentation (Formal/Informal Entry)

Goods entering the United States do so in one of two ways: by Formal Entry or Informal Entry. The type of entry would determine the required documentation for completion of your export transaction.

a) Your shipment enters by **Formal Entry** when:

- it is **over** US \$2000; or
- it includes controlled or regulated goods (i.e., requires Canadian or US permits, certificates or licences).

Formal entries **must** be cleared by a US Customs Broker.

b) Your shipment enters by **Informal Entry** when:

- it is **under** US \$2000;
- goods are not controlled or regulated;
- it includes Business-to-Business and Business-to-Consumer transactions.

These shipments **do not** require a US Customs Broker unless the shipment is unaccompanied (i.e., consignee not present to accept the goods at the border). Informal entries of merchandise are those that are valued over \$200 and under \$2000 US per shipment and are considered non-controlled or non-regulated goods. Those items do not require Canadian or U.S permits, certificates or licensing when exporting. However, you are required to secure what is known as a "Customs Assign Number" or "Importer ID Number". You are not required to complete a certificate of origin, but U.S Customs recommends you do so.

Note: The U.S. Customs Inspectors have the right to request a formal entry if there are concerns about the shipment.

Entry Documentation Requirements

For shipments to enter the United States, the following documents are generally required (entry documentation):

- Commercial Invoice (including currency, freight charge, the type of containers, who is paying the US duty and if it is included in the invoice, and if the shipper and consignee are related through ownership or blood.)
- Custom Assigned Number (Also known as an Importer ID Number)
- Bill Of Lading or Airway Bill (not required for mail shipments)
- Entry Manifest (not required for mail shipments)
- Entry/Immediate Delivery (can be used in certain circumstances in place of an Entry Manifest)
- NAFTA Certificate of Origin; The NAFTA Agreement does not require you to have the certificate of origin with your shipment. However, U.S. Customs recommends that you include one as your shipments will clear U.S. Customs quicker, and you importer will be able to claim duty free status if the goods qualify under NAFTA. (See the attached NAFTA Certificate of Origin Copy)

To determine whether your goods are controlled or regulated

See Canada's Export Control List at [Export and Import Controls](http://www.international.gc.ca/controls-contrôles/about-a_propos/expor/before-avant.aspx?lang=eng&view=d) for a listing of Canadian goods that require extra documentation and/or permits at: http://www.international.gc.ca/controls-contrôles/about-a_propos/expor/before-avant.aspx?lang=eng&view=d

For **U.S. Import Regulations** you may contact U.S. customs broker, or visit

- U.S. Customs website at <http://www.cbp.gov/xp/cgov/trade>

For **Canadian Export Regulations** visit:

- Canada Revenue Agency at www.cra-adrc.gc.ca
- Foreign Affairs and International Trade Canada, Export and Import Controls Bureau at www.dfait-maeci.gc.ca/~eicb/epd_home.html

7. U.S. Customs Clearance

The U.S. Customs Service does not notify your consignee of the arrival of their shipment. The carrier of the goods upon arrival usually makes notification. Arrangements should be made to ensure that you are consignee or the U.S. customs broker is informed immediately of arrival so that the entry can be filed, and delays in entry of the goods avoided.

Required documents:

- Commercial Invoice (with description of the goods in detail and selling prices) or pro forma invoice (when the commercial invoice cannot be produced);
- Internal Revenue Service (IRS) Tax Number or Social Security Number of the US importer (or your Customs Assigned Number);
- U.S. Customs Form 7533- Entry Manifest or U.S. Customs form 3461/3461 ALT-Entry/Immediate Delivery;
- NAFTA Certificate of Origin
- Registration of Facility and Prior Notice documents (Bio-terrorism Act)
- Packing lists if appropriate
- Permits for food
- Certificate of insurance

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 the U.S. customs broker.

After the goods have arrived at the port of entry, they'll 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 the 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.

Penalties and seizures

You won't 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.

For further information, contact U.S. customs broker or visit the **U.S. Customs & Border Protection** website at: <http://www.cbp.gov>

For more information regarding **NAFTA Customs Procedures** visit:
http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/customs_procedures_lp.xml

A Guide to NAFTA Customs Procedures:

http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/customs_procedures/

8. Labelling, Marketing and Standardization

Marking of Country of Origin (shipping purposes)

Every item imported into the U.S. has to be clearly marked (labeled) with its country of origin, as such, every article (or container) you ship to the U.S. must be marked "Made in Canada". You'll find detailed information on how to *Marking of Country of Origin* on the U.S. Bureau of Customs and Border Protection trade publications page at:

http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/co_origin.ctt/markingo.pdf

Additional information for Country of Origin Marking can be found at:

http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/customs_procedures/country_of_origin_marking.xml

Mandatory Country of Origin Labelling (mCOOL)

Country-of-origin labelling (COOL) was specified by the U.S. 2002 Farm Bill and requires retailers to inform consumers of the country of origin for certain agricultural commodities, called "covered commodities." This mandatory measure was implemented March 16, 2009, by USDA's Agricultural Marketing Service.

The term "covered commodity" is defined as muscle cuts of beef, lamb, and pork, ground beef, ground lamb, ground pork, farm-raised fish and shellfish, wild fish and shellfish, perishable agricultural commodities, and peanuts. Perishable agricultural commodities are further defined as fresh and frozen fruits and vegetables. A notable exception is poultry and poultry products. In the case of imported products, the food label indicates where it started, was grown/raised and processed. For example, a meat label for pork might read, "From hogs born in Canada, raised and slaughtered in the United States." In addition, the labelling of blended products will be especially difficult for ground beef companies, which buy trimmings from multiple packing houses.

The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture enforces country of origin labeling regulations for all foods covered under this law.

USDA's Food Safety and Inspection Service (FSIS) enforces the **labeling requirements** for labeling of meat, poultry, and egg products, including covered commodities. For more information from FSIS visit:

http://www.fsis.usda.gov/Fact_Sheets/COOL_Meat_and_Chicken/index.asp

MeatCool.info was developed by Canada's beef and pork industries (Beef Information Centre, Canadian Pork Council, the Canadian Cattleman's Association, and Canada Pork

International) to support trade in meat products following the implementation of Mandatory Country of Origin Labeling in the USA.

The website posts news, frequent asked questions, and a summary of the m-COOL regulations for producers to understand the regulations. For specific information regarding **meat labelling** under m-Cool visit: <http://www.meatcool.info/>

Harmonized System (HS)

- See above.

Technical Regulations, Standards and Conformity Assessment

You should find out whether there are any technical 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 and, depending on the product or service, requirements may have been established at the federal, state and/or local levels.

For example: all organic products entering the U.S. must be certified according to NOP (National Organic Program, USDA Agency) regulation.

The United States and Canada are required, under Chapter 9 of the NAFTA and under 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.

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/inforeg/regpol.html for more information.

In Canada, notifications are received through the WTO/NAFTA Enquiry Point operated by the Standards Council of Canada (SCC) on behalf of International Trade Canada. 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.

For more information visit:

- **Standards Council of Canada:** www.scc.ca
- **CSA International:** (they provide international product testing and certification services): www.csa-international.org
- **United States Department of Commerce:** www.commerce.gov

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

World Trade Organization Agreement on Sanitary and Phytosanitary (SPS)

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're 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: http://www.wto.org/english/tratop_e/sps_e/sps_e.htm

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 Web site is at www.scc.ca

Related bodies include:

Canadian Food Inspection Agency: www.inspection.gc.ca

Health Canada: www.hc-sc.gc.ca

Labelling Requirements for U.S.

As well as requiring licenses 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. Canadian producers of food or beverages will find specialized labelling information for your sector on the Agriculture and Agri-Food Canada Web site at:

The major American agencies with special labelling rules are:

- **Federal Trade Commission (FTC)** — The FTC provides business-oriented information about labelling, including the requirements of the U.S. Fair Packaging and Labelling Act, see the Fair Packaging and Labelling Act homepage at: <http://www.ftc.gov/os/statutes/fplajump.shtm> or Visit the FTC site at: www.ftc.gov
- **Food and Drug Administration (FDA)**— The FDA, 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 Web site at <http://www.fda.gov/Food/LabellingNutrition/default.htm> provides information for industry about food labelling and nutrition.

The FDA requires food labeling for most prepared foods. Nutrition labelling for raw products is voluntary.

FDA states that required label information must be conspicuously displayed and in terms that the ordinary consumer is likely to read and understand under ordinary conditions of purchase and use.

For more information see the **Guidance for Industry: A Food Labelling Guide:** <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm2006828.htm>

Details concerning types, sizes, location are found in FDA regulations and are summarized as follow:

- With a few exceptions, if the label of the food bears representations in a foreign language, the label must bear all of the required statements in the foreign language as well as in English.
- If the food is packaged, the followings must appear on the label in English:
 - Name
 - Street address
 - City, Province, Postal Code (manufacturer, distributor or packer)
 - Accurate statement of the net amount of food in the package
 - Drained weight rather than net weight is required for some products packed in a liquid that is not consumed as food (olives)
 - The common name of a food must appear on the principal display panel, in bold type and in lines generally parallel to the base of the package

- The ingredients in a food must be listed by their common or usual names in decreasing order of their predominance by weight
- Nutrition information must be provided on the label for almost all packaged foods intended for sale to the consumer

U.S. Department of Agriculture (USDA)— The USDA, www.usda.gov, through its **Food Safety and Inspection Service (FSIS)** at 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 Labelling and Consumer Protection page, which you'll find at www.fsis.usda.gov/about/labelling_&_consumer_protection/index.asp provides much of the information you'll need.

For additional **fact sheets** regarding food labelling visit:

http://www.fsis.usda.gov/Fact_Sheets/Food_Labelling_Fact_Sheets/index.asp

Most labels on retail packages of meat or poultry must be pre-approved by the FSIS. You obtain such approval by submitting your proposed label on the **Application for Approval of Labels, Marking or Device (Form FSIS 7234-1)** which can be found at: <http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/fsisforms/7234-1.pdf>

Also visit the **Labelling and Consumer Protection** page at:

http://www.fsis.usda.gov/Regulations_&_Policies/Label_Application_Guidance/index.asp .

Information about products that may enter the U.S. with **generic labelling**, which doesn't require pre-approval can be found at:

http://www.fsis.usda.gov/Regulations_&_Policies/Generic_Labelling/index.asp

The USDA is also responsible for the **National Organics Program (NOP)**. The USDA Web site provides information on the NOP, including the accreditation requirements of the program.

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOPNationalOrganicProgramHome&acct=AMSPW>

For helpful labelling tips visit the **10 Most Common Mistakes and How to Avoid Them** fact sheet available at:

http://www.fsis.usda.gov/Regulations_&_Policies/Ten_Label_Mistakes/index.asp

Disclaimer: The labelling information is intended as a guide ONLY and should not be relied upon as the only source of information. Labelling requirements change quite often, thus, prior to your exportation, you must make sure you meet all the updated labelling requirements for the U.S. market.

Be sure your goods are properly labeled. The U.S. Food and Drug Administration requires food labelling for most prepared foods, such as breads, cereals, canned and frozen foods, snacks, desserts, drinks, etc. Nutrition labelling for raw produce (fruits and vegetables) and fish is voluntary.

The required label statements on Foods

The law states that required label information must be conspicuously displayed and in terms that the ordinary consumer is likely to read and understand under ordinary conditions of purchase and use (Sec. 403(f)).

Details concerning type sizes, location, etc., of required label information are contained in FDA regulations (21 CFR 101), which cover the requirements of both the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labelling Act. The Food labelling requirements in the regulations are summarized as follows:

- 1.** With a few exceptions, if the label of a food bears representations in a foreign language, the label must bear all of the required statements in the foreign language, as well as in English. (Note - The Tariff Act of 1930 (19 U.S.C. 130461) requires all imported articles to be marked with the English name of the country of origin.)
- 2.** If the food is packaged, the following statements must appear on the label in the English language:
 - The name, street address, city, State and zip code of the manufacturer, packer, or distributor
 - An accurate statement of the net amount of food in the package
 - Drained weight rather than net weight is required on some products packed in a liquid that is not consumed as food, such as olives in brine
 - The common or usual name of a food must appear on the principal display panel, in bold type and in lines generally parallel to the base of the package as it is displayed
 - The ingredients in a food must be listed by their common or usual names in decreasing order of their predominance by weight
 - Nutrition information must be provided on the label for almost all packaged food products intended for sale to the consumer

Nutrition labelling

The new nutrition labelling regulations (21 CFR 101.9) require nutrition labels on almost all packaged foods, revise the list of nutrients whose content levels are required to be shown on the nutrition label, adopt a new format for the nutrition label, and provide for more consistent serving sizes across product lines to reflect the amounts people actually eat. The basic nutrition label is to list 14 nutrients. The nutrients and the order in which they must be listed are: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron. Other vitamins and minerals for which Reference Daily Intakes (RDI's) have been established must be declared if a claim is made about them or if they have been added as a nutrient supplement.

For more specifics regarding **Nutritional Labelling**, visit:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm064894.htm>

The format of the nutrition label

The nutrition label is to be titled "Nutrition Facts." The major nutrients must be printed in bold type on the left-hand column with the subcomponents indented and in lesser type face. The absolute quantitative amount of each nutrient in the food product is placed adjacent to the name of the nutrient. To the right of the list of nutrients is a column entitled "Percent Daily Value" which indicates the role of the food in the daily diet. The Daily Value amounts are based on a 2,000-calorie diet. The "Percent Daily Value" is not given for sugars and is required for protein only when a protein claim is made (e.g., "high protein") or when the food is for children less than 4 years of age.

Serving sizes on the label

The NLEA (1) required FDA to adopt regulations that establish standards to define serving sizes, (2) defined serving size as the amount customarily consumed, and (3) required that

serving sizes be expressed in household measures. To determine the serving size for a product, manufacturers need to refer to 21 CFR 101.12 to ascertain the "reference amount customarily consumed" for the appropriate food product category. The regulations then specify procedures for manufacturers to use in converting these reference amounts to label serving sizes. The type of food determines the procedures. For instance, if the food is a bulk product, such as flour or ready-to-eat breakfast cereals, the serving size is to be the household measure closest to the reference amount. That is, if the reference amount is 30 grams, the labeled serving size will be the household measure of that food that comes closest to weighing 30 grams, perhaps 3/4 cup or one cup.

If the food comes in large discrete units, such as a pie, the label serving size will be the fraction closest to the reference amount, perhaps one-sixth of a pie. Likewise, if the food comes in discrete individual units, such as a cookie or slice of bread, the label serving size is the number of whole units closest to the reference amount, perhaps five mini-cookies, or two larger cookies. As a result, while serving sizes within a category of food will not be exactly alike (for instance, a serving of cookies will not weigh exactly 30 grams for all cookies), they will be similar and allow for comparisons between products.

The serving size must be given in household measures followed parenthetically by the metric weight. FDA will use this metric amount in checking the accuracy of declared amounts of nutrients. Specific rules for determining and expressing serving sizes are found in 21 CFR 101.9(b) and 101.12.

Nutrient content claim

Nutrient content claims are those claims that describe the amount of a nutrient in the food (such as "sodium free" or "low fat"). These claims may not be made unless FDA defines them in regulations. While consumers need not be concerned with the exact definition for each claim, those who want more detailed information need only look to the nutrition label on the side or back of the package.

For detailed information on food labelling including exemption from the requirements of nutrition labelling, refer to the **Guidance for Industry: A Food Labelling Guide**: <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm2006828.htm>

Small Business Food Labelling Exemption

If you're a small business, check out the Small Business Food Labelling Exemption at <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm053857.htm> which may make your labelling requirements less rigorous. Note that the exemption applies only to the requirement for a nutrition facts statement, one of the five mandatory statements which FDA requires on a label.

Section 403(q) of the Federal Food, Drug and Cosmetic Act requires that packaged foods bear nutrition labelling unless they qualify for an exemption. 21 CFR 101.9(j)(1) and 21 CFR 101.9(j)(18) sections for foods outline the requirements to qualify for the exemption. A business may be exempt from the requirement of including a "Nutrition Facts" panel on its food packages.

The exemption under 21 CFR 101.9(j)(1) applies to retailers with annual gross sales of less than \$500,000, or with annual gross sales of food to consumers of less than \$50,000. The exemption under 21 CFR 101.9(j)(18) is based on the number of employees and number of product units sold. The exemption applies to businesses with fewer than 100 employees and products fewer than 100,000 units. The number of employees is based on the average

number of full time equivalent employees. No exemption may be taken if a company has more than the number of employees listed regardless of number of units produced.

The firm claiming the exemption must file a notice with the Food and Drug Administration annually. A suggested form to use to claim the exemption may be obtained at: <http://www.fda.gov/Food/LabelingNutrition/FoodLabelingGuidanceRegulatoryInformation/SmallBusinessNutritionLabelingExemption/ucm113960.htm>

- Fax your notice to: 301-436-2639 or 301-436-2636
- E-mail your notice to: sbusiness@cfsan.fda.gov
- Send your notice to:
Center for Food Safety and Applied Nutrition
Food and Drug Administration
HFS-820
5100 Paint Branch Parkway
College Park, MD 20740-3835

If you have questions, please call **240-402-2371**

9. Packing, Marking and Shipping

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 licenses, will contribute a great deal to trouble-free exporting.

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.

Attention to packaging is important. You may not be insured if you do not package in an appropriate manner. 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

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://sea.agr.gc.ca/access/shipping-e.htm).

For a good general guide to Canadian customs regulations as they affect exporters, refer to the CBSA's **Handy Customs Guide for Exporters**, available at: <http://www.cbsa-asfc.gc.ca/publications/pub/bsf5081-eng.html>

Note: Be sure to refer to **Section 6** of this guide for information on **controlled** and **restricted** category goods.

Freight Forwarding

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.

- In Canada, many freight forwarders belong to the **Canadian International Freight Forwarders Association** (CIFFA). You'll find a list of more than 150 forwarders in their Members Directory at: www.ciffa.com/members_directory.asp
- 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

Shipping 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. For this reason, **transportation insurance is an absolute necessity**. 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're getting.

The **Canadian Trade Commissioner Service** Web site provides an overview of **shipping insurance**; refer to Shippers and Shipping: Delivering the Goods page at: <http://www.tradecommissioner.gc.ca/eng/document.jsp?did=118716>

Export Development Canada <http://www.edc.ca/english/index.htm> has a variety of programs to assist exporters in insuring shipments. Insurance information can be found at: <http://www.edc.ca/english/insurance.htm>

Marking

Marks shown on the shipping container must agree with those on the commercial invoice or bill of lading or other shipping documents. Before shipping your package for resale, make sure you have required package markings:

- The appropriate handling
- The proper language usage
- The following markings (as may be required by Customs)
- port of destination
- transit instruction
- any cautions
- name, address, and phone number of consignee
- country of origin
- name, address and phone number of sender
- package dimensions/weight
- package serial number
- invoice and/or order number
- a packing list identifying the contents of each container

Shipping

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're an informal entry (valued between US\$200.00 and US\$2,000.00) or a formal entry (valued at more than US\$2,000.00).

The most common shipping methods are:

- **Truck** — Many trucking companies carry Canadian exports to the United States. Rates depend on whether you're sending a full truckload (TL) or less-than-truckload (LTL).
- **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 don't offer COD service when shipping directly from Canada, so you'll have to use some other means to get paid. Also, if your shipment requires formal entry because it's valued at more than US\$2,000.00, 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're considered a single entry for customs purposes, so you pay only one brokerage fee. After clearing customs, the packages continue to their individual buyers.

Note: Shipments to the U.S. require the buyer's federal tax ID number. Should your buyer not have one, you will need their IRS number. It is a rule of the U.S. (not Canadian) government for all direct imports. Then remember to keep in on file.

Note: Cargo insurance is more important in international transportation than in domestic transportation. International carriers assume only limited liability for goods when shipping by air or by sea. Terms of sale often make the seller responsible for the goods up to the point of delivery to the foreign buyer. For this reason, you must have **transportation insurance**.

10. Comply with the Bioterrorism Act

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the **Bioterrorism Act**) directs the Food and Drug Administration (FDA), as the food regulatory agency of the Department of Health and Human Services, to take additional steps to protect the public from a threatened or actual terrorist attack on the U.S. food supply and other food-related emergencies.

To carry out certain provisions of the Bioterrorism Act, FDA has established new regulations requiring that:

- Food facilities **are registered** with FDA, and
- FDA be given **prior notice** on shipments of imported food (including samples).

Facilities can **register online** via the Internet, by completing a paper form, or submitting to FDA a CD-ROM with relevant registration information.

- For assistance with online registration: in the U.S call **1-800-216-7331** or **301-575-0156**; from elsewhere call **301-575-0156**; or send a fax to **301-210-0247**.

The Online Registration Help Desk has been staffed on business days from 7 AM until 11 PM U.S. Eastern Time.

The Act requires that FDA receive prior notice before food is imported or offered for import into the United States. Advance notice of import shipments allows FDA, with the support of the Bureau of Customs and Border Protection (CBP), to target import inspections more effectively and help protect that nation's food supply against terrorist acts and other public health emergencies.

Refer to **the U.S. Bureau of Customs and Border Protection** (CBP) for more information on **The Bioterrorism Act** at:

http://www.cbp.gov/xp/cgov/trade/trade_programs/is_initiatives/bioterrorism/

11. Prior Notice of Imported Foods

The Bioterrorism Act requires that FDA receive prior notice before food is imported or offered for import into the United States. Advance notice of import shipments allows FDA, with the support of the **Bureau of Customs and Border Protection** (CBP), to target import inspections more effectively and help protect that nation's food supply against terrorist acts and other public health emergencies. 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.

Prior notice must be submitted for any shipment of human or animal food imported or offered for import subject to the Act. Anyone with knowledge of the shipment may submit the Prior Notice. Prior notice **must** also be given when shipping **samples**.

FDA must electronically receive and confirm Prior Notice before a food shipment arrives at the first port in the United States (port of arrival). The deadline for submitting Prior Notice depends on the mode of transportation used for shipment.

Except in the case of food arriving by international mail, FDA must receive and confirm a Prior Notice: 1) no more than 30 days before a shipment arrives, if Prior Notice is submitted via ABI/ACS; or 2) no more than 15 days before a shipment arrives, if Prior Notice is submitted via FDA's PNSI.

In addition:

For Shipments Arriving:

By land via road

By land via rail

By air

By water

By international mail
Carried by or otherwise

accompanying an individual

Prior Notice Must Be Submitted:

No less than 2 hours before arriving at the port of arrival

No less than 4 hours before arriving at the port of arrival

No less than 4 hours before arriving at the port of arrival

No less than 8 hours before arriving at the port of arrival

Before the food is sent

Within the timeframe for the applicable mode of transportation

For complete information consult the FDA website at:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodDefenseandEmergencyResponse/ucm267673.htm>

Prior Notice **must be submitted electronically** through either of the following systems:

- Automated Broker Interface (ABI) or Automated Commercial System (ACS) of the CBP
- FDA Prior Notice System Interface (PNSI) <http://www.access.fda.gov/>

The FDA **Prior Notice System Interface** (PNSI) is available 24 hours a day, 7 days a week. FDA's and CBP's computer systems enable you to submit Prior Notice as part of the entry process. This will avoid duplication of information.

If a broker's or filer's Automated Broker Interface (ABI) system or the ABI/Automated Commercial System (ACS) interface is not operating, Prior Notice must be submitted through the FDA Prior Notice System Interface.

If the FDA PNSI is not operating, or if the Operational and Administrative System for Import Support (OASIS) is not operating, FDA will post prominent notification and instructions on the **System Status** web page. FDA will accept Prior Notice submissions in the format it deems appropriate during the system(s) outage.

System Status notifications can be found at:

<http://www.fda.gov/food/guidancecomplianceregulatoryinformation/registrationoffoodfacilities/online/registration/ucm161883.htm>

For more information refer to the FDA's page on **Prior Notice of Imported Foods** at:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/PriorNoticeofImportedFoods/default.htm>

The Prior Notice Center staff can answer questions about Prior Notice policies, procedures, and interpretations 24 hours a day, 7 days a week. **1-866-521-2297**

Note: FDA is proposing to exempt several types of facilities from the registration requirement including farms, retail facilities, restaurants, and nonprofit food facilities in which food is prepared for or served directly to the consumer.

12. Keep Your Records

As an exporter you have to keep accurate books and records in Canada for six years after the end of the calendar year in which you export the goods. You can keep these records on paper or electronically.

13. Incoterms – International Commercial Terms

The Incoterms rules are an internationally recognized standard and are used worldwide in international and domestic contracts for the sale of goods. First published in 1936, Incoterms rules provide internationally accepted definitions and rules of interpretation for most common commercial terms.

The rules have been developed and maintained by experts and practitioners brought together by the **International Chamber of Commerce** (ICC) and have become the standard in international business rules setting. They help traders avoid costly misunderstandings by clarifying the tasks, costs and risks involved in the delivery of goods from sellers to buyers. Incoterms rules are recognized by UNCITRAL as the global standard for the interpretation of the most common terms in foreign trade.

For more information visit the ICC's webportal on Incoterms at:

<http://www.iccwbo.org/incoterms/>

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

You will make better decisions if you have a basic knowledge of things like NAFTA rules, U.S. tax laws and Canadian customs and export regulations.

The North American Free Trade Agreement (NAFTA)

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 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. Basically, however, your goods will qualify for NAFTA originating status if:

1. the good is wholly obtained or produced in one or more of the NAFTA countries;
2. 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;
3. the good meets the requirements of a specific rule of origin for that product;
4. the good qualifies under NAFTA Article 401(d),
5. the good is automatic data processing equipment or parts qualifying under the provisions of NAFTA Annex 308.

To enable U.S. Customs officials to recognize those Canadian export shipments which are eligible to receive NAFTA preferential duty rates at the point of entry, the Export and Import Controls Bureau (EICB) will issue a Certificate of Eligibility. This certificate must be transmitted to the U.S. importers in advance of shipment for presentation to U.S. Customs officials at the border.

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 CBSA form B232, North American Free Trade Agreement — Certificate of Origin www.cbsa-asfc.gc.ca/E/pbg/cf/b232/README.html

Dealing with U.S. taxes

In the United States taxes can be based on income, or on the sale or use of a good or service. This adds 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. tax systems evaluate your export trade.

Unfortunately, the treaty doesn't apply to State income taxes. Although Canadian companies are not being treated any differently from any other U.S. out-of-state companies, Canadian tax structures result in Canadian companies bearing a greater burden than U.S. companies.

Refer to:

Internal Revenue Service (IRS): www.irs.gov

Multistate Tax Commission (links to all state tax departments): www.mtc.gov

Important notice regarding GST

Goods exported from Canada are considered “zero-rated”. What this means, that you do not charge the Goods and Services Tax (GST), the Provincial Sale Tax (PST) or the Harmonized Tax (HST). You will be credited for goods that you paid the GST or HST on and then exported. To claim back the GST or HST you must be registered with CRA. The form to submit your returns is called the “GST-HST (GST/HST) Return for Registrants” (form GST 34). Additionally, Canadian companies exporting to the United States may be liable for state and/or federal taxes. Exporters are strongly urged to seek the assistance of a tax professional.

U.S. sanctions laws and regulations

Exporters to the U.S. need to be aware of U.S. laws and regulations regarding sanctions that target foreign countries may prohibit the import into the U.S. of goods or services originating in the targeted countries.

The essentials of export contracts

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: www.iccwbo.org/index_incoterms.asp

The basic provision of a contract for the sale of goods is that you, the seller, will transfer ownership of the goods to your buyer in return for payment. The rest of your 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 licenses;
- 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.

Obtaining contract insurance and bonding

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. Such security can take several forms, such as an on-demand bank letter of guarantee, a standby letter of credit or a surety performance bond.

Patents, trademarks and copyrights

- 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.
- 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”.

- In the United States, according to the U.S. Copyright Office, 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.

Product Liability Litigation

Product liability insurance (PLI) are much more common in the U.S. than in Canada, As well as being difficult to get, PLI can be very costly.

Refer to **Canada Business Network** for more information:

<http://www.canadabusiness.ca/eng/guide/3169/#c3162>

15. U.S. Border Security

The Canada Border Security Agency has jurisdiction over customs.

Refer to www.cbsa-asfc.gc.ca

Canada-U.S. border risk-management programs

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

- The **Free and Secure Trade Program (FAST)** – 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. <http://www.cbsa.gc.ca/prog/fast-expres/menu-eng.html>
- The **Partners in Protection Program (PIP)** — The PIP program is intended to enlist industry's help in dealing with terrorism, increasing border security, reducing smuggling and combating organized crime. <http://cbsa-asfc.gc.ca/security-securite/pip-pep/menu-eng.html>
- The **Customs-Trade Partnership Against Terrorism Program (C-TPAT)** — 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. http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/

Dealing with U.S. Customs

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 doesn't 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 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.

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 licensed, 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:

- 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 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 Web site of the **National Customs Brokers & Forwarders Association of America** (NCBFAA) at www.ncbfaa.org

Useful Internet Sites for Exporting to the U.S.

- Canadian Trade Commissioner Service: www.tradecommissioner.gc.ca
- Canadian Business Network: www.canadabusiness.ca
- Agri-Food Trade Service Online: <http://www.ats.agr.gc.ca/intro/index-eng.htm>
- Industry Canada www.ic.gc.ca
- Department of Foreign Affairs and International Trade: www.dfait-maeci.gc.ca
- Canadian Agri-Food Trade Alliance: www.cafta.org
- Food Marketing Institute: www.fmi.org
- United States Department of Agriculture: www.usda.gov
- Food and Drug Administration: www.fda.gov
- Alberta Economic Development Website: www.albertacanada.com

Key information sources for cross-border travel:

- U.S. Customs and Border Protection: www.cbp.gov
- Cross-Border Movement of Business Persons: www.international.gc.ca/nafta-alena/cross-en.asp
- U.S. Citizenship and Immigration Services Immigration Manuals and Handbooks: www.uscis.gov
- Embassy of the United States in Canada: <http://canada.usembassy.gov/>

Further information on exporting to the US can be obtained by calling the **export information service line at 1-888-576-4444**, available through the network of Canada Business Service Centres and speaking with one of our trained Information Officers. While general export information is provided directly, clients who require more expert advice or export counselling are referred to appropriate domestic export development services.