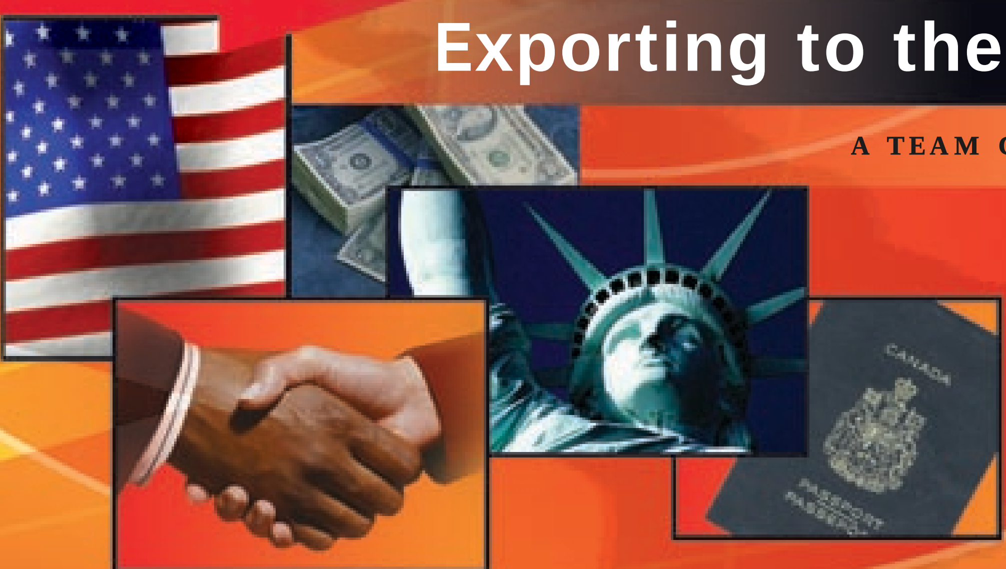
Exporting to the United States

A TEAM CANADA INC PUBLICATION



Canada

Exporting to the United States

No matter whether you're an aspiring, new or established exporter to the United States, this guide will provide you with practical information that will make your export business to the U.S. easier to start, maintain and expand. In the chapters that follow, we'll explore all the major aspects of trade with the U.S., from initial market research to customs clearance to getting paid.

Disclaimer

This information is to be considered solely as a guide and should not be quoted as, or considered to be, a legal authority. It may become obsolete in whole or in part at any time without notice.

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Is this guide for you?

Yes, it is, if your small- to medium-sized business has a product or service that you feel could compete in the United States. Even if you've already begun 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.

As you'll soon see, this guide isn't just another generic handbook about the conduct of foreign trade. While it does contain the basic information that is common to all exporting, its emphasis is firmly on the practical side of doing business in the United States. To take just a few examples, the guide will explore:

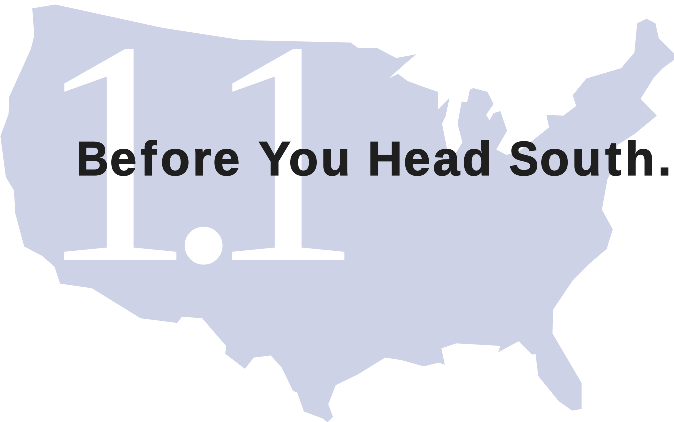
- tools you can use to analyze U.S. markets and their characteristics;
- the on-the-ground effects of NAFTA on Canadian exporters;
- product liability litigation in the U.S.;
- NAFTA and non-NAFTA classifications for cross-border travel to the U.S.;
- border security and how it affects Canadian exporters; and
- U.S. Customs procedures and regulations, and how to deal with them.

As you can see from the above, this guide assumes that you already have some basic knowledge of exporting. If you feel you need a more fundamental grounding in the subject, we'd like to recommend the Team Canada Inc (TCI) Step-by-Step Guide to Exporting, which provides a general exploration of international trade and is available at **www.exportsource.ca/stepbystep**.

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 Exporting to the United States is general in nature. To ensure that your particular needs are met, always consult specialists such as the trade officers of the Regional Offices of the Trade Commissioner Service in Canada (their Web Site is at **infoexport.gc.ca/regions**) or TCI's Export Information Service officers. For more information, call **1 888 811-1119**.



1.1 Before You Head South...

With a market of approximately 291 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 size and vast range of needs, the U.S. can be a very good place for an exporter to do business. 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. Canadian companies that understand these differences will greatly improve their chances of success south of the border.

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That said, there's every possibility that a Canadian business with a viable export product or service and a well-researched strategy will succeed in the U.S. market. Thousands of small- and medium-sized Canadian enterprises have been prospering in the U.S. for decades, selling everything from quality children's footwear to information technology services. The opportunities are there, and with the help of thorough preparation, careful planning and the many resources available to Canadian exporters, you can make the most of them.

1.2 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-U.S. 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. In 2003, Canada exported approximately C$365 billion worth of goods and services to the U.S., while it imported nearly C$280 billion from its southern neighbour. In fact, U.S. exporters sold more goods to Canada in 2003 than they did to the European Union.

When we look at just a few of the specifics of our trade with the U.S., we find that:

- In 2003, the two-way trade in goods and services between our two countries reached C$1.8 billion a day.
- Canada is the U.S.'s most important trading partner, taking in 19.2 percent of U.S. goods and services in 2003.
- In 2003, Canada was the top export market for 37 U.S. states.
- In 2002, Canadian business investment in the U.S. was valued at approximately C$202 billion. U.S. business investment in Canada was valued at just over C$224 billion.

We could add many more statistics, anecdotes and facts, but these numbers are enough to show how the economies of our two countries are intertwined, and to demonstrate the magnitude of the Canada-U.S. economic relationship.

1.3 Understanding Canada-U.S. relations

Trade, of course, is only part of a larger network of relationships between our two countries. This network evolves in response to many complex influences, and exporters need to consider how our two countries' ever-expanding, ever-changing relationships will affect their activities. To take just a few examples:

- The events of September 11, 2001 and the resulting security measures have affected border wait times, packing legislation, reporting requirements and many other export-related issues.
- The Canada-U.S. trade relationship is not static. Political and business strategies and practices change on both sides of the border, and events occur — such as "mad cow disease" — that are beyond almost everyone's control.
- 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.

The Government of Canada is very active in fostering relations with the United States, and has expanded its U.S. consular presence to help enlarge and secure the trade relationship. This "Enhanced Representation Initiative" increases Canada's representation in the U.S. to 22 such offices.

For more information, you can visit Foreign Affairs Canada's Canada-United States Relations Web site at **www.can-am.gc.ca**, which has links to many resources covering various aspects of the bilateral relationship, including visas and immigration, border cooperation and politics, as well as trade. The site also includes a handy link to a list of Government of Canada offices in the U.S.

1.4 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'll examine NAFTA's impacts on Canadian exporters at various places in this guide, particularly in Section 4.2, "The North American Free Trade Agreement". In the meantime, you can find useful information about NAFTA, including the full text of the NAFTA agreement, at **www.international.gc.ca/nafta-alena**.

1.5 Understanding the U.S. market

There's actually no single "U.S. market". What you'll 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 sheer size of the United States and the relative affluence of its 291 million people, the needs and desires of its population aren't likely to be the same across the country. For example, Oregonians probably won't have the same preferences for goods as North Carolinians; not all industries will operate in all states (there are no cotton plantations in Alaska); and products are altered for different climatic regions (different woods will be used for outdoor furniture in Florida and New Hampshire). This variety presents Canadian exporters with a myriad of opportunities.

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 equivalent to the GDP of France, and Texas' GSP is equivalent to the GDP of Canada.

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

What this implies, for you as a Canadian exporter, is a strong need for careful market research and a well thought-out export strategy. To be successful, you'll have to be very focused.

1.6 Barriers to the U.S. market

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

Generally, barriers to trade are described as tariff or non-tariff barriers. A tariff is a tax applied to merchandise imports and, less frequently, on 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.

Non-tariff barriers (NTBs) are government measures or policies, other than tariffs, that restrict or distort international trade. As tariffs are lowered or eliminated, for example by a free trade agreement, 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 unnecessary duplicate testing and certification of an imported product.

It's important to 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, your pricing of your product or service, and your costs of doing business in the United States.

Canada is committed to identifying unfair barriers to Canadian exports and to working with our trading partners to eliminate those barriers. Almost all our exports and imports cross the Canada-US border without incident, a remarkable achievement for a trading relationship worth over a billion dollars a day. Our two countries, however, do maintain key differences in economic policy, and respond in different ways to world economic conditions and the global free trade agenda. In cases where we have not been able to resolve our differences through consultation, we have relied on WTO and NAFTA dispute settlement procedures. Canada believes very strongly in a rules-based trading system with clear procedures for solving disputes.

A second major barrier to the smooth flow of U.S.-Canada trade is that of security. The 2001 terrorist attacks in the United States caused greatly increased concern about U.S. domestic security, and this has significantly affected how exports from Canada and around the world enter the U.S. Security measures continue to evolve and may complicate your export business, for example by slowing traffic across the border or by requiring more preparation and documentation. We'll examine U.S. security requirements and how to comply with them starting in Section 9.1, "U.S. Border Security".

"Buy American" policies can also present barriers 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 Defence (DoD), as well as state procurement agencies. These organizations are mandated to "buy American" whenever possible.

Almost all our exports and imports cross the Canada-US border without incident, a remarkable achievement for a trading relationship worth over a billion dollars a day.

To help Canadian firms compete with American companies in this market, the Canadian Commercial Corporation offers two business solutions. CCC's DoD Prime Contractor Solution (**www.ccc.ca/en/DoD**) gives exporters privileged access to the United States Department of Defense. The Canada-U.S. Defense Production Sharing Arrangement allows Canadian exporters to compete on an equal footing with U.S. companies for sales in defence markets. CCC is uniquely positioned to help you access opportunities in this complex arena, giving you unequalled access to one of the largest procurement markets in the world.

CCC's GSA Schedules Program Submission Service (**www.ccc.ca/en/GSA**) helps you pursue U.S. federal government business through the GSA Schedules Program. Being a GSA Schedule contractor allows you to compete on an equal footing with American companies. What do we do? Help you prepare your submission. Offer advice. Assist you with pricing and negotiations. And give you access to an established base of contacts in Washington, D.C. offering intelligence, marketing and networking support.

1.7 Information sources for the U.S. market

Online resources

- Team Canada Inc (TCI) — Canada's most comprehensive source of online export-related information and resources. TCI also provides access to TradeMap and ProductMap, two sophisticated tools for researching international trade, through **exportsource.ca**
- Canadian Trade Commissioner Service (TCS) — The TCS provides services to Canadian business in Canada and abroad. Services include market research studies and country-specific reports. TCS also provides market prospects, local company and visit information, conducts key-contact searches and arranges face-to-face briefings for Canadian companies that are prepared to do business abroad. The Virtual Trade Commissioner, also available from the TCS, is a personalized, password-protected, Web-based resource that will give you market information and business leads that match your international business interests. Register when you visit the TCS Web site at **www.infoexport.gc.ca**.

  The regional offices of the TCS in Canada, formerly the International Trade Centres, provide a full range of trade development services to Canadian small- and medium-sized businesses. There are 12 offices located across Canada; you'll find them at **www.infoexport.gc.ca/regions**.

- International Trade Canada — Provides information, statistics and analysis related to the Canadian economy and international trade. Refer to **www.itcan-cican.gc.ca**.
- Foreign Affairs Canada — Provides information related to foreign affairs, foreign policy, travel assistance, passport services and more. Refer to **www.fac-aec.gc.ca**.
- Canada-United States Relations — Provides links to many resources covering various aspects of the bilateral relationship, including visas, immigration, border cooperation, politics and trade. Refer to **www.can-am.gc.ca**.
- Canada's International Market Access Priorities 2004 — Provides an overview of the government's priorities for improving access to foreign markets, including the United States, for Canadian traders and investors. Refer to **www.international.gc.ca/tna-nac/cimap-en.asp**.
- Export Development Canada (EDC) — Provides financial services and global market expertise to Canadian exporters, particularly small- to medium-size enterprises. Refer to **www.edc.ca**.
- Agriculture and Agri-Food Canada: Exporters' Guide to the United States — This specialized guide for food and beverage exporters is indispensable for companies intending to break into the U.S. agri-food market. Refer to **ats-sea.agr.ca/us/e3272.htm**.
- Industry Canada (Strategis Web site) — Provides general and specific information of use to exporters, including market reports and the Trade Data Online research tool. Refer to **www.strategis.gc.ca**.
- Statistics Canada — Canada's central statistical agency. Produces statistics and statistical reports on Canada's population, resources, economy, society and culture. Refer to **www.statcan.ca**.
- Canadian Commercial Corporation (**www.ccc.ca**) (CCC) — Provides international contracting services to Canadian exporters, as well as special market access to those targeting U.S. public procurement markets.
- 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**.
- Bureau of Economic Analysis — Part of the U.S. Bureau of Commerce, provides statistics and analyses of U.S. economic performance. Refer to **www.bea.doc.gov**.
- Stat-USA/Internet — Available by paid subscription only. Provides trade-related statistics and information; includes Globus (Global Business Opportunities) and the National Trade Data Bank (NTDB). Part of the U.S. Department of Commerce. Refer to **www.stat-usa.gov**.

Print resources

Most are available in university and college libraries, or in the Canada Business Services Centres' Documentation Centres at **www.cbsc.org**. Some are also available online, usually for a subscription fee.

- American Wholesalers and Distributors Directory
- Chain Store Guide: **www.cgs.com**.
- Consumer USA: **www.euromonitor.com**.
- Encylopedia of American Industries
- Encyclopedia of Emerging Industries
- Europa World Book: **www.europaworld.com**.
- Manufacturers' Agents National Association Directory: **www.manaonline.com**.
- Manufacturing and Distributing USA
- Thomas Register: **www.thomasregister.com**.
- Tradeshow Week: **www.tradeshowweek.com**.
- U.S. Market Trends and Forecasts

2.1 Getting Ready to Export to the U.S.

To prepare a United States export initiative, you first have to decide whether your company is actually ready to step onto the U.S. stage. Sometimes called "being export-ready," this involves having the financial, human and production capacity to meet the demands of the export market you want to enter; for a general introduction to the process, you might want to read Chapter 1 of TCI's Step-by-Step Guide to Exporting, available at **exportsource.ca/stepbystep**. Be sure to explore the rest of ExportSource as well; it's Team Canada Inc's gateway to a vast number of export-related resources.

The first step in your readiness assessment must be to conduct market research; that is, to find out if there's a U.S. market segment that wants and/or needs what you're offering.

2.2 Is there a market for your product or service?

A good way to start your market research is to identify the value of U.S. imports related to your industry sector; this will give you an idea of the demand for your type of product from Canada.

The Trade Data Online tools on Industry Canada's Strategis Web site, at **strategis.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 will only tell 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'll need a U.S. statistical source, such as the Bureau of Economic Analysis at **www.bea.gov**. Remember, also, to examine how U.S. domestic production fills the needs of the U.S. market.

Also be aware that these statistics might not tell the whole story. For example, goods may be officially recorded as imports into one state, but are really destined for another state. If you don't do your research, you may end up targeting the wrong market.

To retrieve the Trade Data Online information — and for many other purposes — you'll need to determine the Harmonized System code (HS code) of your product. If you're not familiar with HS codes, they're an internationally developed and implemented commodity-description and coding system, upon which the tariffs of most countries are based. We'll examine HS codes in more detail in Section 7.3, "Harmonized System (HS) codes".

Also invaluable at the early stages of market research are the Canadian Trade Commissioner Service (TCS) sectoral market studies and country-specific reports, available at **infoexport.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 Web site of the Canadian Embassy in Washington, D.C. is at **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 also has a list of Canadian government offices in the U.S., at **www.canadianembassy.org/offices**.

Another resource for targeted research about potential exports is the Trade Team Canada Sectors Web site at **ttcs.ic.gc.ca**. It's a handy gateway to information about major Canadian business sectors, their markets, strategies and so on. Sectors covered include:

- TTC Aerospace and Defence: **ttcaerodef.ic.gc.ca**
- TTC Agriculture, Food and Beverages: **ats.agr.ca**. In particular, refer to their Food Export Guide for exporters to the U.S. at **ats-sea.agr.ca/us/e3272.htm** and their U.S. Market Information page at **ats-sea.agr.ca/info/us-e.htm**.
- TTC Automotive: **ttcauto.ic.gc.ca**
- TTC Bio-Industries: **ttcbio.ic.gc.ca**
- TTC Building Products: **ttcbuildingproducts.ic.gc.ca**
- TTC Cultural Goods and Services: **www.canadianheritage.gc.ca/TradeTeamCanadaCulture**
- TTC Electric Power Equipment and Services: **napoleon.ic.gc.ca/electrical/ttcelect.nsf**
- TTC Environmental Industries: **ttc-environment.ic.gc.ca**
- TTC Health Industries: **ttchealth.ic.gc.ca**
- TTC Information and Communications Technologies: **ttcinfotech.ic.gc.ca**
- TTC Oil and Gas Equipment and Services: **ttcoilandgas.ic.gc.ca**
- TTC Plastics: **ttcplastics.ic.gc.ca**
- TTC Service Industries: **ttcservices.ic.gc.ca**

2.3 Researching specific target markets

You'll make better decisions about your export strategy if you've been investigating 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 Chapter 3 of the Step-by Step-Guide to Exporting at **exportsource.ca/stepbystep**.

You'll make better decisions about your export strategy if you've 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 some Canadian and U.S. sources to help you better understand your potential market:

- The Canadian Trade Commissioner Service, mentioned earlier, provides many types of market reports.
- The Virtual Trade Commissioner (VTC), also available from the Canadian Trade Commissioner Service, is a personalized, password-protected, Web-based resource that will give you market information and business leads that match your international business interests. From here you can request services from Trade Commissioners who deal with your type of industry and its markets. The VTC can also notify you of new information related to your industry and markets, and

can make information on your company available to the 500 Trade Commissioners in Canada's 140 offices around the world. Visit the Trade Commissioner Service's Web site at **www.infoexport.gc.ca** to register with the VTC.

- Strategis, at **strategis.ic.gc.ca**, is Industry Canada's business and consumer Web site and provides a broad range of export-related information and links.
- The Canada-United States Relations Web site of Foreign Affairs Canada has links to many resources on business development in the U.S. Refer to **www.international.gc.ca/can-am**.
- Export Development Canada (EDC), at **www.edc.ca**, provides financial services and global market expertise to Canadian exporters, particularly small- to medium-size enterprises.
- CanadExport, at **canadexport.gc.ca**, is a free, online publication of International Trade Canada. In its "U.S. Connection" section, you'll 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 **canadianembassy.org/statetrade**.
- The U.S. Census Bureau, at **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. Bureau of Commerce, provides statistics and analyses of U.S. economic performance. Refer to **www.bea.doc.gov**.
- American Demographics, a subscription Web site, is a gold mine of marketing and demographic information, especially for trends and consumer analysis. It's at www.demographics.com.
- The U.S. National Technical Information Service (NTIS), at **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 provides trade-related statistics and information by subscription only. Includes Globus (Global Business Opportunities) and the National Trade Data Bank (NTDB). Part of the U.S. Department of Commerce; refer to **www.stat-usa.gov**.
- FedBizOpps, at **www.fedbizopps.gov**, provides a single point of entry for the U.S. government's product and services procurement process. International Trade Canada also provides information about this market on its Sell2USGov Web site at **www.international.gc.ca/sell2usgov**.

2.4 Assessing your company's readiness

After identifying a market segment, for example a demographic or a region where your product might do well, your next step is to decide whether your company is in fact ready to be an exporter — that is, whether it 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 working capital needed for any necessary expansion, such as staff or production space?
- Do you have enough cash flow to sustain you until payment for your goods or services is received?

After identifying a market segment, for example a demographic or a region where your product might do well, your next step is to decide whether your company is in fact ready to be an exporter.

- Will your product or service need to be adapted to the U.S. market? For example, will your oak cabinets warp in the humidity 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 the market you're going to enter? Is it time, for example, for an on-the-ground survey of the territory?

This is far from a comprehensive list. You can see a much more substantial one, and create a readiness assessment for your business at the same time, by using the online Export Diagnostic at **exportdiagnostic.ca**. It's useful for exporters of both goods and services, because it provides alternative diagnostic paths for each; once completed, it will give you a summary of your company's strengths and weaknesses as an exporter. While it's not specific to the U.S., the diagnostic will suggest ways in which you can improve your chances of export success.

Another export-readiness assessment tool for service providers can be found on **exportsource.ca** (link to "Export Your Services.") This information product covers everything from locating international business opportunities to market entry methods for service firms.

Export Development Canada (EDC), a Canadian financial institution devoted to providing trade finance services to support Canadian exporters, provides another angle on your export readiness through its free ExportAble diagnostic, available on the EDC Web site at **www.edc.ca**.

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

2.5 Creating your export plan

Your research is underway and you've assessed your export readiness. Now it's time for 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 won't lend to a business that hasn't developed one. Chapter 2 of the Step-by-Step Guide to Exporting, available at **exportsource.ca/stepbystep**, has an overview of export plans and their elements 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 good plan will vastly improve your company's chances of success in the United States.

- a description of how you'll 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'll enter the U.S., such as promotion and distribution;
- an analysis of U.S. regulatory, logistical and risk factors and how you'll deal with them; and
- an implementation plan and a financial plan.

If you're not sure how to organize your export plan, you could try out the online Interactive Export Planner, available through the Guides and Tools section of the ExportSource Web site at **exportsource.ca**. Again, it isn't specific to the U.S., but it will help you create a very detailed export plan, including the preparation of financial objectives.

We'll examine money matters in more detail in Section 5.1, "The Basics of Export Financing". However, financial plans are part of your export plan, so they bear 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 plans account 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.

You'll 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 Selecting your market

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

To help achieve this, consider:

- Talking to trade officials at the Canadian Embassy and consulates in the U.S. to find out about recent developments in the local market and to obtain information on local business conditions. Trade Commissioners work with companies that have researched and selected their target market. They offer, at no cost, market prospect assessment, key contact searches, visit information, face-to-face briefings and troubleshooting.
- Contacting potential U.S. buyers, partners, agents and distributors.
- Talking to the Chambers of Commerce in the prospective markets.
- Visiting the particular region of the U.S. in which you're interested.
- Visiting the Canadian Trade Commissioner Service Web site and registering with the Virtual Trade Commissioner at **www.infoexport.gc.ca**, if you haven't already done so.

The above list isn't exhaustive; for more information about government services and programs, visit Team Canada Inc's Web site at **exportsource.ca** or contact a TCI Information Officer at **1 888 811-1119**.

2.7 Developing your export marketing plan

Export marketing plans are always works in progress, and successful exporters begin developing theirs almost as soon as they decide to go into international trade. Assuming you've done this as well, 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 won't try to compete with them here; for a general overview, you might read Chapter 4 of the Step-by-Step Guide to Exporting, available at **exportsource.ca/stepbystep**. In the meantime, remember to consider the following in your export marketing plan:

- exchange rate fluctuations between the U.S. and Canadian dollars;
- 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 desires;
- insurance for travel, goods shipping, and so on;
- delays at the border and the costs of these delays; and
- extra packaging to cope with increased handling and travel time.

In addition to allowing for factors like these, you'll need to research the price trends for your particular product or service in the target market, so that you'll understand both your competitors' pricing strategies and the buying patterns of your potential customers. At this stage, you can obtain valuable assistance from trade officers at the appropriate Canadian consulate 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 Chapter 4 of the Step-by-Step Guide to Exporting.)

2.8 Government services and programs for exporters

Besides the Canadian Trade Commissioner Service, there are many government programs and services that help Canadian exporters who are at the stage of selecting a target market. The following resources will help you locate them:

- For guidance in identifying government services and programs suitable for your business, visit Team Canada Inc's Web site at **exportsource.ca** or contact a TCI Information Officer at **1 888 811-1119**.
- The Regional Offices of the Trade Commissioner Service (formerly the International Trade Centres) can also help you find the services you need. There are twelve ITCs located across Canada, providing one-on-one assistance with obtaining financial support, market data, and information about trade-related events. These services are provided free of charge. Check them out at **itc-cci.gc.ca**.
- Export Development Canada's Export Market Insight service, at **www.edc.ca/reports**, provides current market intelligence, and additional market and economic information is available on the EDC Economics Web page at **www.edc.ca/economics**.
- Another valuable resource is Canadian Commercial Corporation's market access services at **www.ccc.ca**, which can help you sell to U.S. civilian and defence public-procurement markets. The types of help available include identification of business leads using SourceCan (refer to **www.sourcecan.com**), 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. 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. and amongst its inhabitants. As a result, marketing that works well for you in New Brunswick may fail in Montana, and what works in Montana may fail in Louisiana. As before, you'll have to do research to find out what does work, and where. Again, Trade Commissioners at the Canadian Embassy and at the consulates in the U.S. will be able to assist you.

Also, 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're entering.

2.9 Sourcing business opportunities

It's always 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 and with the International Business Opportunities Centre.

- SourceCAN — With its Web site at **www.sourcecan.com**, this is Canada's nationale marketplace and is a partnership of Industry Canada and the Canadian Commercial Corporation. It's a single business portal that provides your company with both business opportunities and the resources you need to conduct business on the Web. SourceCAN's tools include:
  - a cross-government, single corporate registry integrated with an international tender feed system;
  - an extended company capabilities database;
  - tender/bid matching e-push;
  - partner search by capabilities; and
  - B2B e-commerce enabled
- International Business Opportunities Centre (IBOC) — As part of International Trade Canada, IBOC works with Canadian trade officers around the world to connect foreign buyers with Canadian companies. IBOC communicates business leads in two ways: through direct personal contact with individual suppliers, and electronically through e-mails sent to appropriate suppliers. The general IBOC Web site is at **www.iboc.gc.ca**, but you must access IBOC e-leads through the Virtual Trade Commissioner at **www.infoexport.gc.ca**.

3.1 Entering Your Chosen U.S. Market

Your research so far may suggest several ways of actually entering your new market. Depending on your product or service and your 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 a like-minded American business.

These are just two of several possible approaches. In the sections that follow, we'll 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 Chapter 5 of the Step-by-Step Guide to Exporting at **exportsource.ca/step-by-step**. Canadian food exporters should also review the "Getting Your Product to Market" section in Agriculture and Agri-food Canada's specialized guide for their sector; refer to **ats-sea.agr.ca/us/e3272002.htm**.

3.2 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 the ExportUSA Web site at **www.international.gc.ca/can-am**. A combined effort of Team Canada Inc partners, ExportUSA consists of three programs:

- NEBS, the New Exporters to Border States program, focuses on export education. It targets Canadian companies considering exporting to the U.S., introducing them to the essentials of exporting and providing practical export information and first-hand exposure to markets in the United States. You'll find contact information at the above Web site.
- EXTUS, the Exporters to the United States program (formerly known as NEBS Plus), serves Canadian companies already exporting to the U.S. By combining sessions with industry experts, entry to a major national/regional trade show and networking opportunities with distributors, representatives and buyers, EXTUS helps successful exporters expand their markets to other regions of the U.S.
- The Reverse NEBS program, directed to Canadian companies not yet exporting to the United States, provides seminars in Canada on the basics of exporting.

3.3 Market entry for services

Unlike goods, service exports tend to be intangibles. 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're a service company with a unique skill or knowledge, you might consider contracting your service directly to American clients.

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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 service dovetails 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're 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'll have to ensure that your management and staff are sensitive to the culture, values and business practices of your American clients.

3.4 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 it adds a layer of complexity to your operations, having a U.S. presence 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 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. 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 setup 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'll do business; registering with local, state and federal tax authorities; and
  - obtaining any professional licenses necessary.

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.

You can familiarize yourself further with the basics of American business law at BusinessLaw.gov. Refer to **www.businesslaw.gov**.

- ***Sell by catalogue*** — This involves producing and distributing a catalogue, and obtaining a well-targeted mailing list. You'll also require a mechanism to take orders and payment, and a way to deal with returns and warranties. (We'll 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'll need a targeted mailing list, an order-taking procedure and a returns procedure.
- ***Sell through e-business*** — The Internet may provide a very fruitful sales channel for your company. Even when doing business online, though, you'll still have to deal with matters like shipping and customs regulations. Furthermore, you'll 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 can't actually take money for your goods at a trade show. However, you can take orders for later shipping from Canada.

3.5 Payments, returns and warranties in direct selling

If you intend to sell directly to your U.S. customers, you'll need efficient methods of handling payments, returns and warranties. Your specific solutions will vary according to your particular business and product, but the list below describes some of the factors you'll 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 a U.S. company to collect your returns and deal with them, 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). Although these costs might make a return policy prohibitively expensive, don't forget that a "no returns" policy could make your customers go elsewhere.

- ***Warranties and guarantees*** — If the product is returned to Canada, you might incur customs-brokerage and shipping costs. Given this, 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 won't purchase anything if it doesn't come with a warranty or guarantee.

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.

3.6 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 aren't 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 on to its end users. Depending on your product, they may also offer after-sales and warranty service. The drawback is that your profit margins may be lower; you'll 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'll 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 won't develop your own exporting expertise and you'll have very little control over the way your product is represented and sold.

A lesser-known intermediary is the Canadian Commercial Corporation, whose Web site is at **www.ccc.ca**. CCC's International Prime Contractor Service offers an alternative for exporters facing the challenge of competing against better-known suppliers for a sale.

CCC can act as prime contractor on the sale, putting the full weight of the Government of Canada on the exporter's sales team and providing a government–backed Guarantee of Contract Performance to the buyer. This can enhance an exporter's credibility with a customer and bring about more advantageous terms for the sale.

3.7 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, and you can ask other companies in your sector about their experiences with intermediaries.

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

There are also online sources of information about U.S. intermediaries. For manufacturer's representatives, a good place to begin is with the Directory of Manufacturer's Sales Agents (MANA) at **www.manaonline.org**; it's a subscription-based service that allows you to search its listings by state, territory or sector. For information about Canadian-based trading houses, you can go to the Canadian Federation of Trading House Associations at **www.caftha.ca**. Unfortunately, there is no central database of U.S. distributors, but an online search combining "distributors" and some keywords describing your sector will usually give you a list of possibilities.

No matter how you find potential intermediaries, though, it's essential to check them out before choosing one. Also, don't sign up with the first candidate who looks suitable, even if her or she has a good track record and reputation. You'll 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 Chapter 5 of the Step-by-Step Guide to Exporting, available at **exportsource.ca/stepbystep**.

3.8 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'll get the best service if you also 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.

3.9 Selling through strategic alliances

A solo entry into the United States market may not always be the best approach for an exporter. The alternative, forming a strategic alliance with an American company to operate in a particular U.S. market, can be a mutually rewarding arrangement. When setting up an alliance, however, it's 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 an alliance it's 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.

The alliance approach gives you a wide choice of relationships; which one is best will, of course, depend on your company and its needs. Your major options are:

- ***Licensing*** — A license 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 doesn't involve granting all the rights to the property — in the example above, the license 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 licenses 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*** — In an American legal context, 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.

For both producers of goods and producers of services, an alliance of some kind can be a very advantageous way to penetrate the U.S. market, 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 the two businesses can make you both more competitive — and in the highly aggressive U.S. business environment, that can be a very good strategy indeed.

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

Exporting to the United States means that you'll have to become familiar with a new set of business laws. While there's no substitute in this area for good legal counsel, you'll make better decisions if you have a basic knowledge of things like NAFTA rules, U.S. tax laws and Canadian customs and export regulations. We'll 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.cbsc.org/alberta/content/us_reg.pdf**.

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

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

International Trade Canada's NAFTA Web site at **www.international.gc.ca/nafta-alena** 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.

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'll examine this in more detail in Section 6.1, "Dealing with Immigration Issues and Business Travel".

- ***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. 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 (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);

  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, as listed in NAFTA Annex 401 (refer to **www.international.gc.ca/nafta-alena/ann-401-en.asp)**;

4. the good qualifies under NAFTA Article 401(d), (refer to **www.international.gc.ca/nafta-alena/chap04-en.asp?#Article401**), which applies to only a few cases; or

5. the good is automatic data processing equipment or parts qualifying under the provisions of NAFTA Annex 308.1 (refer to **www.international.gc.ca/nafta-alena/chap03ab-en.asp?#Annex308**).

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.

The resources below will introduce you to some of the technical aspects of the rules of origin, including the documentation required to support a NAFTA originating-status claim for verification and auditing purposes.

- International Trade Canada's rules of origin Web site: **www.international.gc.ca/nafta-alena/tech-rect-en.asp**
- The Canadian Border Services Agency's Web page, with links to NAFTA rules of origin documents, at **www.cbsa-asfc.gc.ca/general/trade_agreements/rules-e.html**. The chief pertinent documents are:
  - C-140: Information for Exporters or Producers in the U.S. or Mexico — NAFTA Origin Redetermination Requests. Refer to **www.cbsa-asfc.gc.ca/E/pub/cp/c-140/README.html**.
  - C-142: Information for Importers, Exporters or Producers — NAFTA Advance Ruling Program. Refer to **www.cbsa-asfc.gc.ca/E/pub/cp/c-142/README.html**.
  - C-144: Information for Importers, Exporters or Producers — NAFTA Rules of Origin. Refer to **www.cbsa-asfc.gc.ca/E/pub/cp/c-144/README.html**.
  - RC4006: What to Expect From a NAFTA Verification (describes the process of verifying that a product qualifies for NAFTA originating status). Refer to **www.cbsa-asfc.gc.ca/E/pub/cp/rc4006/README.html**.
  - D11-5-1: NAFTA Rules of Origin Regulations. Refer to **www.cbsa-asfc.gc.ca/E/pub/cm/d11-5-1/README.html**.
  - D11-5-2: NAFTA Rules of Origin Regulations — Amendments to Schedule I — Specific Rules of Origin. Refer to **www.cbsa-asfc.gc.ca/E/pub/cm/d11-5-2/README.html**.

Exporters of certain textiles and apparel are subject to special NAFTA provisions regarding Tariff Preference Levels (TPLs). Annex 300-B, Section 6, and Appendix 6 of NAFTA set out special provisions applicable to these goods.

Under Appendix 6, Part B, goods that would not otherwise satisfy the NAFTA Rules of Origin (Annex 401), will nevertheless qualify for NAFTA duty rates up to specified annual TPLs. Above these levels, non-originating textile and apparel goods will be subject to the Most-Favoured-Nation tariff rate.

To enable U.S. and Mexican Customs officials to recognize those Canadian export shipments which are eligible to receive NAFTA preferential duty rates under Appendix 6 at the point of entry, the Export and Import Controls Bureau (EICB) will issue a Certificate of Eligibility (for details, refer to **www.international.gc.ca/eicb**). This certificate must be transmitted to the U.S. and Mexican importers in advance of shipment for presentation to U.S. and Mexican Customs officials at the border. Without this certificate, such shipments will not receive the NAFTA rate of duty, but instead will receive the Most-Favoured-Nation tariff rate. You'll find more information about TPLs on the EICB Web page that covers textiles and clothing, at **www.international.gc.ca/trade/eicb/textile/textiles-en.asp**.

Once you actually begin exporting, you'll 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". You'll find it at **www.cbsa-asfc.gc.ca/E/pbg/cf/b232/README.html**.

4.3 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'll need legal and accounting professionals to help you avoid unexpected tax liabilities that you didn't factor into your pricing, sales contracts or profits. 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. tax systems evaluate your export trade. Unfortunately, the treaty doesn't apply to state income taxes and this may have consequences for your tax situation. As noted in Canada's International Market Access Priorities 2004, which you'll find at **www.international.gc.ca/tna-nac/cimap-en.asp**:

"…the fact that states are not parties to the Canada-U.S. tax treaty, and therefore can impose income taxes on any entity that conducts business in a particular state, remains an issue. Canadian companies entering the export market may not know that they may be subject to income tax in each state where they do business. Many states are running budget deficits and the collection of taxes from out-of-state businesses presents a potential source of new revenue. Furthermore, the standard by which out-of-state companies reach "nexus" (and are then subject to taxes) has become rather ill-defined in some states. 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."

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 Web site or call the IRS at 1 800 829-1040.

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

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

4.4 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.treas.gov/offices/eotffc/ofac/sanctions**. 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 Web site currently identifies five countries — Myanmar, Cuba, Iran, North Korea and Sudan — against which such trade sanctions are in place. Canadian businesses undertaking, or considering to undertake, exports to the U.S. of goods or services originating in third countries should find out about the current situation with respect to U.S. 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 who also wish 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.

Canadian businesses undertaking, or considering to undertake, exports to the U.S. of goods or services originating in third countries should find out about the current situation with respect to U.S. sanctions.

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.

4.5 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'll find at **canada.justice.gc.ca/en/dept/pub/cfpoa/guide5.html**, 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, and 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. Prosecutions for such offences take 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's at **edc.ca/corpinfo/csr/anti_corrup/anticorrupbrochure_june17_e.pdf**.

4.6 The essentials of export contracts

Export contracts, because they're drawn up between companies from countries often having different business laws, regulations and attitudes, are more likely to cause disputes than straightforward domestic contracts. 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 2000 Web site at **www.iccwbo.org/index_incoterms.asp** or in the Glossary of International Trade Terms in Appendix A.

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.

If the contract involves the licensing of proprietary information or technology, be very sure that it's precise about the licensee's rights. Vagueness about these rights can create serious problems and can 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's sometimes overlooked — be sure that all parties to the contract have signed it. For instance, if you're 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 has an overview of international contracts in Chapter 8, "The Legal Side of International Trade. You can also learn more about export contracts from the two articles about "Structuring an Export Contract" on the Export Development Canada Web site.

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 you've opened the door to an international opportunity, the Canadian Commercial Corporation (**www.ccc.ca**) can help you close the sale—on your terms. From building an advantageous offer to strengthening your negotiations with the full weight of the Government of Canada. They work actively with you to secure the best possible deal.

Proposal Preparation Service (**www.ccc.ca/proposal**) — Tap into the expertise of Canada 's export contracting agency and build a proposal that will result in a profitable win. CCC offers you a complete bid or proposal review to ensure favourable payment milestones, clear terms of acceptance, dispute resolution mechanism availability, and overall acceptability of terms and conditions—all aimed at making your proposal a contract you can live with when you close the deal.

Contract Structuring and Negotiation Service (**www.ccc.ca/negotiation**) — International contracts can be enormously complex—and demanding. If you're concerned about making sure you're well-positioned to succeed, CCC's contracting experts can help, giving everything from advice on contract structure and negotiation strategies to rolling up their sleeves and working with you at the table to get the terms you need to succeed.

Contract Management Service (**www.ccc.ca/management**) — CCC's Contract management service—which include Contract monitoring and administration, Foreign Exchange, and Receivables discounting—can free your company from the administrative burden that sometimes comes with international contracts. At the same time, their experts will help you reduce payment lead times and stabilize liquidity flows while minimizing the risk of non-payment.

International prime contractor solution (**www.ccc.ca/prime**) — Acting as International Prime Contractor, CCC can significantly boost your credibility and clout by underwriting your deal with a performance guarantee signed by the Government of Canada. Take advantage of this unique service and watch the doors to international markets open up.

Contracts for the sale of services diverge in some respects from contracts for the sale of goods. You'll find an overview of service contracts in Chapter 8 of the Step-by-Step Guide to Exporting, under the heading "Contracts for the sale of services."

4.7 Obtaining contract insurance and bonding

As a condition for closing the 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. 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.

Depending on your 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**.

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 so as to have the security paid out to him.

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**, 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.

- ***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**.

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.

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

4.9 Protecting your 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.

According to the Canadian Security Intelligence Service (CSIS), the basic precautions for protecting your intellectual property from industrial or economic espionage include:

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

Refer to the CSIS Web site at **www.csis-scrs.gc.ca** for more advice on intellectual property protection.

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.

4.10 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 sound contract is not enough, and having one by no means guarantees that you won't someday end up as either plaintiff or 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's 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. A mediator's solution isn't 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**; this is 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**.

4.11 Product liability litigation

In both the U.S. and Canada, individuals and groups can sue businesses on the grounds that the 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 U.S. than in Canada, and the result has been a huge escalation in the cost of product liability insurance (PLI) in the U.S. In fact, because of the costs of these lawsuits to the insurance companies, many have stopped offering PLI at all.

Carrying PLI for your U.S. operations isn't 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.

As well as being difficult to get, PLI can be very costly. For example, it's estimated that the PLI needed to cover a football helmet is greater than the cost of making the helmet itself. Therefore, before you settle on a final export price for your product, be sure to find out whether you need PLI and how much it will cost. Insurance-Canada.ca's product liability Web page has more information on this difficult problem. For more information, refer to **insurance-canada.ca/consproducts/categories/prodliab.php**.

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5.1 The Basics of Export Financing

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

Team Canada Inc's Export Finance Guide, which you'll find at **exportsource.ca/finance**, provides a detailed overview of how Canadian exporters can finance their U.S. initiatives. The essentials are fairly straightforward and we'll examine them in the next sections.

Canadian food exporters should also consult the Financing/Insurance/Consulting Services section in Agriculture and Agri-food Canada's specialized guide for their sector. It's at **ats-sea.agr.ca/us/e3272001.htm**.

5.2 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'll need a firm export sale and a contract that is acceptable to the lender in terms of repayment risk, payment terms, production timeframes, 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're considering becoming involved in one, be sure to obtain help from project-finance experts from the very beginning.

If you're intending to export services, you won't have exactly the same financial needs as exporters of goods. You can get an overview of financing service exports from the Take a World View pages, available on the ExportSource Web site at **exportsource.ca/worldview**.

5.3 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** for more information.
  - Export Development Canada (EDC) provides finance services for Canadian exporters and investors, particularly small- and medium-size enterprises. It offers a wide range of financing tools to exporters of all sizes, in all sectors. Thousands of exporters use EDC to make sure they get paid or to provide access to the money they need to export more successfully. Refer to **www.edc.ca** for more information.
  - Industry Canada's *Sources of Financing* Web page may also help you identify other private or public sources of financing.
- ***Assistance from regional agencies*** — Various regional development agencies offer financial assistance to exporters. Contact Team Canada Inc at **1 888 811-1119** or your local Canadian Business Service Centre at **www.cbsc.org** to find out what provincial financing programs may be available.

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

5.4 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 provides direct loans to foreign purchasers of Canadian capital goods so they can buy your product. It can also arrange similar financing through lines of credit or promissory note purchases. To find out more, refer to EDC's Financing page at **edc.ca/financing**.

5.5 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 also has one huge risk — you're fully exposed to your buyer's credit risks; if the buyer refuses to pay, for whatever reason, you may not get your money.

You can insure yourself against such risks. 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 don't sell on open account.
- ***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 L/Cs, because you're exposed to your buyer's credit risks until you receive payment. However, from your point of view, they're preferable to the open-account approach.

5.6 Dealing with non-payment

If you've delivered your goods to your U.S. customer but he hasn't 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 much preferable, if you can arrange it. This, of course, presupposes that you wrote an arbitration/mediation clause into the contract with your buyer.

If you didn't, your best course is to obtain legal advice and consider whether it's even worthwhile to pursue payment.

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

In 2000, 98 public companies in the United States sought bankruptcy protection. In 2001, this number jumped to 151, and in 2002, to 191.

5.7 Reducing financial risk through buyer credit checks

There are major opportunities for Canadian exporters in the United States, and the similarities between the two countries — both having sophisticated business mechanisms, both technologically advanced — can suggest that doing business in the U.S. is largely free of risks.

This is not the case; the risks can be huge, largely because of the frequency of buyer defaults and the level of business bankruptcies south of the border. In 2000, 98 public companies in the United States sought bankruptcy protection. In 2001, this number jumped to 151, and in 2002, to 191. Billions of dollars, much of it owed by these corporations directly to other businesses, vanished almost overnight. This caused a ripple effect throughout international supply and distribution chains.

An American bankruptcy, or merely a buyer's failure to pay, may spell serious financial trouble for a Canadian exporter that is badly exposed to its 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 buyer creditworthy? Is her or she willing and able to pay me?
- How long has the company 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 things you can do to obtain this information. Among them:

- Export Development Canada's database contains detailed credit information on millions of U.S. buyers. Its Export Check service (available for $C45.00) will provide you with a credit profile of the company, any payment or claims experience EDC has had with the company, and EDC's opinion as to whether the buyer is insurable. The service also provides Dun & Bradstreet reports on the company, which include credit and financial information, details of the company history and its management team, and any legal problems the company has.
- 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. Such checking can be expensive, but if it uncovers serious risks for your company, it's 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.

5.8 Reducing financial risk through accounts receivable insurance

After cash in advance, accounts receivable 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 cover up to 90 percent of your losses if your U.S. buyer doesn't pay as the result of a wide variety of commercial and political events, including buyer bankruptcy and default. For more information, refer to **edc.ca/ariinsurance**.
- ***Specific Transaction Insurance*** — EDC protects you against specific political or commercial risks and will cover up to 90 percent of your losses on individual export contracts for services, capital goods or projects. For more information, refer to **edc.ca/sti**.
- ***Wrongful Call Insurance*** (also called Bid Insurance or Performance Security Insurance) — Useful for exporters who have to post a bond, EDC will cover up to 95 percent of your loss if your buyer, without reason, makes a demand against your standby letter of credit or letter of guarantee (a "wrongful call"). For more information, refer to **edc.ca/bonding**.

5.9 Reducing the risk of exchange rate fluctuations

Fluctuations in the value of the Canadian dollar relative to the United States dollar can affect export profits either positively or negatively. This is called foreign exchange risk or FX risk, and you have to factor it into your operations plans and your pricing. If you don't, 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 drops in value against the U.S. dollar by the end of that 60 days. Because of this, your buyer's payment will be worth more to you once it's converted into Canadian currency. Conversely, if the Canadian dollar rises during that 60 days, the payment will be worth less to you after conversion to Canadian currency. The risk of this happening is called transaction exposure.

- ***Economic exposure*** — If transaction exposure is the small picture, this is the big one. If the Canadian dollar rises a great deal, as it did beginning in 2003, Canadian goods and services will cost more in the United States. This may cause U.S. buyers to buy less, drive harder bargains or look for better deals elsewhere.

You can minimize foreign exchange risk by using tools such as:

- ***Forward contracts*** — In these contracts, you agree to sell a fixed amount of U.S. currency to a commercial bank, at a fixed price, at some future date. This removes your uncertainty about what your export deal will actually be worth and protects you if the Canadian dollar rises against the American. On the other hand, if the Canadian dollar goes down (which means the payment will be worth more than formerly), you don't get the benefit.
- ***Exposure netting*** — In this strategy, you match U.S. currency inflows with U.S. currency outflows, to eliminate or "net out" the exposure. If your types of transactions allow it, and if you pick the right financial instruments, you can come out very close to even.
- ***Currency options*** — These contracts give you the right (but not the obligation) to buy or sell foreign currency at a specified price, within a defined time period. Unlike forward contracts, options let you benefit from favourable fluctuations in exchange rates.

6.1 Dealing with Immigration Issues and Business Travel

Since the terrorist attacks of September 2001, the United States has understandably 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.

If you're a Canadian citizen, there's no legal requirement for you to present a Canadian passport in order to enter the U.S. Given American security concerns, however, you'd be wise to acquire and carry one when you cross the border. While a driver's license or birth certificate (if they have photos) might satisfy an American border official, your passport is your only definite proof that you're a Canadian citizen and is the best identification you can carry.

Beginning in May 2002, Canada began phasing in a new passport design with enhanced security features. If your passport is older than that and doesn't have the new technology, however, there's no need to be concerned. It's still a valid passport and will remain so until it expires.

To find out how to apply for a Canadian passport, you can consult the Canadian Passport Office at **www.ppt.gc.ca**.

If you're a Canadian citizen and you're travelling to the U.S. for business purposes, you'll need documentation that states the purpose of your entry and indicates that you don't intend to remain in the U.S. indefinately.

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 basic identification; again, a passport is preferable. However, if you're a Canadian citizen and you're travelling to the U.S. for business purposes, you'll also need documentation that states the purpose of your entry and indicates that you don't intend to remain in the U.S. indefinitely. And while the temporary-entry provisions of NAFTA make it easier to enter the United States, they don't 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 aren't a Canadian citizen, please refer to Section 6.6, "If you're 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. NAFTA entry regulations can change, of course, so be sure to check current requirements before you leave for the border.

You can find additional information about the classifications and their related documentation in two brochures published by International Trade Canada: Cross-Border Movement of Business Persons at **www.international.gc.ca/nafta-alena/cross-en.asp** and Temporary Entry to the United States: A Guide for Canadian Business Persons at **www.international.gc.ca/nafta-alena/temp_entry-en.asp**.

Another useful source of information is Foreign Affairs Canada's Canada-U.S. Relations Web site; refer to **www.can-am.gc.ca**.

The NAFTA classifications are:

- ***Business visitors (B-1)*** — Under NAFTA, business visitors are people "who plan to carry on any business activity related to: research and design, growth, manufacturing and production, marketing, sales and distribution, after-sales service and general service".

  You can qualify for the B-1 classification at the time you enter the U.S. To do so, you must present a letter from your company that outlines your itinerary in the U.S., the names and addresses of the U.S. businesses you intend to contact, and a statement that you will not receive income of any kind from an American source. In addition, if you're entering to perform after-sales service, you'll need a copy of the sales invoice and the related warranty and/or service agreement. You'll also need to present suitable identification; a Canadian passport is best.

  Under the B-1 classification, you can remain in the U.S. until you conclude your business, as long as you don't stay for more than a year. If you expect to make frequent trips across the border, it's 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.

  The need for honesty about your business intentions in the U.S. can't be stressed too much. In particular, resist the temptation to declare your visit as tourism. If you do, and if the customs officer discovers business materials such as brochures or samples in your possession, you may be barred from entering the U.S. for up to five years.

  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'll be taking orders and accepting payment while in the United States. Doing this is not permitted under the B-1 classification.

  Finally, another prohibited activity under the B-1 classification is entering the United States to market U.S.-made products.

- ***Professionals (TN-1)*** — 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 general qualifications you'll need to meet; you can find out about them and about the list of eligible professions on the Cross-Border Movement of Business Persons Web page at **www.international.gc.ca/nafta-alena/cross-en.asp**. Because of the amount of documentation needed, you should contact U.S. immigration officials to find out whether they will want to check your papers before you arrive at the border. The Web page referred to above lists contact numbers for U.S. Free Trade Specialists at various U.S. entry points who may be able to assist you.

- ***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. You'll find details of the required qualifications on the Cross-Border Movement of Business Persons Web page; see **www.international.gc.ca/nafta-alena/cross-en.asp**.

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.

To obtain an L-1 classification, you submit a Petition for Temporary Worker Form (Form I-129, obtainable from **uscis.gov/graphics/formsfee/forms/i-129.htm**) to U.S. Citizenship and Immigration Services and pay a processing fee. In Canada, you can submit the application in advance to the U.S. embassy or a U.S. consulate. U.S. authorities recommend that you do so at least 60 days before you intend to enter the United States.

- ***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 obtain the E-1 or E-2 classification, you'll need to complete Form OF-156E, available from the U.S. consulate in Toronto (call 416-595-1700), and pay the applicable processing fee. You'll also have to meet the qualifications listed on the Cross-Border Movement of Business Persons Web page at **www.international.gc.ca/nafta-alena/cross-en.asp**.

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

There are several entry classifications that don't fall under NAFTA rules. The major ones are:

- ***Performing artists*** — For U.S. entry purposes, these individuals fall into several visa classifications, referred to as the O-1, O-2, P-1, P-2, P-3 and P Support Personnel classifications. The application procedure is complex and it can take months to acquire a visa. For details of the process, check the online publication entitled Canadian Performers: How to Enter the United States, available from the Government of Canada's Consular Affair Bureau; for more information, refer to **www.voyage.gc.ca/main/pubs/canadian_performers-en.asp**.

  During the past few years, unfortunately, cultural workers in general have had increasing problems entering the U.S.

- ***Temporary workers in short supply (H-2B)*** — This classification allows Canadian employees to work in their company's operations in the United States. However, U.S. immigration won't permit this if the employee will take the job of an American worker. In other words, before companies can use their Canadian workers to do a job, they have to prove that they can't find American workers to perform it.

  To obtain an H-2B, you first go through a temporary labour-certification process at the local level. Next, you file a petition with U.S. Citizenship and Immigration Services. It will take 35 to 60 days for the petition to be processed; if you need faster action, you can pay a fee of US$1,000 for premium processing, which cuts the processing time to 15 days. This fee covers all employees in the desired position; it does not have to be paid for each employee individually. You'll find more information about the H-2B on the Cross-Border Movement of Business Persons Web page at **www.international.gc.ca/nafta-alena/cross-en.asp**.

If you need H-2B visas and you're a novice at dealing with U.S. immigration laws, it would be a good idea to 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.

- ***The Jay Treaty*** — 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. 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're 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're importing the samples as accompanying baggage, you'll have to go to the port's entry branch and complete the Form CF 7501 Entry Summary. Then you'll 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 can't 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's valid for one year and you can use it for as many trips as you wish during that period. You'll find more information at **www.chamber.ca/carnet**.

  More information on these arrangements is available on the U.S. Customs and Border Protection Web site at **www.customs.ustreas.gov/xp/cgov/travel/businessgov/samples.xml**.

To ensure a smooth border crossing, find out exactly what documentation you'll need and prepare it carefully.

6.5 Avoiding entry problems

To ensure a smooth border crossing, find out exactly what documentation you'll need and prepare it carefully. This is especially important if you're in some types of service sector, if you're an artist or craftsperson, or if you're participating in a trade show.

- ***Immigration issues for construction services*** — Cross-border movement of workers has become 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 the Association's Web site at **www.cca-acc.com**.

- ***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'll need to prove that the work you'll be doing inside the U.S. does, in fact, fall under the NAFTA regulations. To do so, you'll need a copy of the original sales contract, which must clearly state the service work to be done. Showing a company letter that describes the reasons for the business trip is also a good idea.

- ***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 don't deliver these goods or services (that is, do the work) and provided they don't accept payments for them. If you're transporting samples or business gifts, you'll have to declare them at the border, as described earlier in "Travelling with samples and business gifts."

- ***Immigration issues for people in the performing arts*** — During the past few years, it has become harder for Canadian performers to enter the United States. Some have been forced to cancel performances because they couldn't obtain visas, and a few visa holders have been turned back at the border. The cost of obtaining the visas and documents for a large number of people, such as an orchestra, can be considerable. If you hope to enter the U.S. under one of the performing artist classifications, make sure that you complete all paperwork flawlessly, allow plenty of time for delays and are prepared for the expenses involved.

- ***Immigration issues for artists and craftspeople*** — If you're a craftsperson or visual artist, you'll likely enter the U.S. under the business visitor (B-1) classification. If you're 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 doesn't allow it. If you're 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 filling 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 for both its U.S. entry and its re-entry into Canada, if that turns out to be necessary. This involves documenting the work and having Canada Customs verify the shipment before it leaves the country.

  Having Canada Customs verify the shipment upon export is not required, but it's highly recommended because your export documents will prove the origin of your goods when you return to Canada. 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.

  On your return, you'll fill out a Canada Customs B-3 import form that declares your work to be under HS code 9813.00.00, which is the code that Canada Customs uses for "Canadian Goods Returning". The alternative to doing this yourself is to use a customs broker; unfortunately, this may be very costly relative to the value of the work you're hoping to sell.

The regulations governing entry into the U.S. of non-Canadians vary according to citizenship and may change without much notice.

If you're a Canadian permanent resident check your status with U.S. immigration officials before you set out on your business trip.

If you need comprehensive information on exporting crafts and visual arts to the U.S., you'll find it in the Marketing Guide for Fine Contemporary Craft in the United States. It's available in print through International Trade Canada's Enquiries Service at 1 800 267-8376 or 1 613 944-4000; you'll also find it in electronic form on the Canadian Trade Commissioner Service Web site at **www.infoexport.ca** (register, then do a search for the title).

If you're a producer of Aboriginal art, you'll find information of particular interest in the U.S. Market Report: A Guide for Canadian Exporters of Aboriginal Arts and Crafts, also available in print through International Trade Canada's Enquiries Service at 1 800 267-8376 or 1 613 944-4000.

6.6 If you're not a Canadian citizen

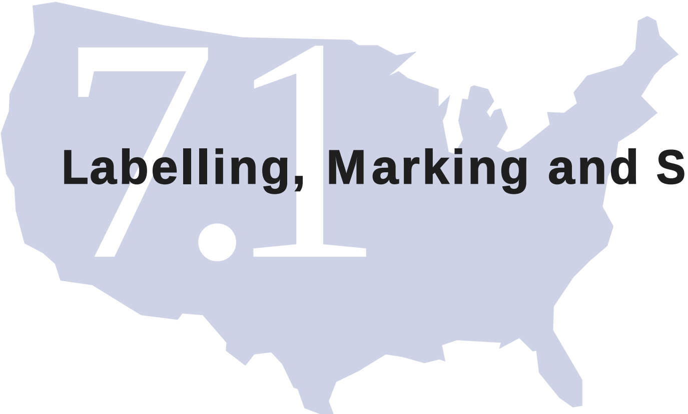
The regulations governing entry into the U.S. of non-Canadians vary according to citizenship and may change without much notice. Consequently, if you're a Canadian permanent resident (defined as "someone who has been allowed to enter Canada as an immigrant, but who has not become a Canadian citizen"), 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**. You might also wish to query the Government of Canada's Consular Affairs Bureau at **www.voyage.gc.ca** for additional information about your particular situation.

Having left Canada, you'll presumably want to return. If you're a Canadian permanent resident, you'll need a Canadian Permanent Resident Card to do so. This card has been required for re-entry since December 31, 2003, and replaces the IMM 1000 Record of Landing document you may have used in the past. You can apply for the card through Citizenship and Immigration Canada's Web site at **www.cic.gc.ca** or by calling 1 800 255-4541.

6.7 Key information sources for cross-border travel

You can obtain detailed information about business entry into the United States from these Web sites:

- Cross-Border Movement of Business Persons: **www.dfait-maeci.gc.ca/nafta-alena/cross-en.asp**
- Temporary Entry to the United States: **www.dfait-maeci.gc.ca/nafta-alena/temp_entry-en.asp**
- U.S. Citizenship and Immigration Services Immigration Manuals and Handbooks (view or download the PDF of the NAFTA Handbook): **uscis.gov/graphics/lawsregs/handbook/hnmanual.htm**
- American Citizen Information Services: Information Services For Non-Americans: **www.amcits.com/foreign.asp**



7.1 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 therefore make it easier for you to export to the U.S. market. In the sections that follow, we'll examine marks, labels and standardization, how you can get them right and whom you can contact for answers to your questions.

7.2 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'll find detailed information about this labelling on the U.S. Bureau of Customs and Border Protection trade publications page at **www.customs.treas.gov/xp/cgov/toolbox/publications/trade/**; scroll down to the document titled "Marking of Country of Origin".

Note that this is not the same requirement as described in the NAFTA rules of origin. See Section 4.2, "The North American Free Trade Agreement," for information about these rules.

7.3 Harmonized System (HS) codes

Before you can export your product, you'll 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'll 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's also a 10-digit version that will give exact statistical information about your exports. You can find out more about these codes on the home page of **exportsource.ca**.

Statistics Canada also has a reference page on Canadian Export Classification at **www.statcan.ca/english/tradedata/cec**. This 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). If you need help determining your code, you can call Statistics Canada at 1 800 294-5583.

You can also see how the U.S. 10-digit version of the system works by visiting the Harmonized Tariff Schedule available on the U.S. International Trade Commission Web site at **www.usitc.gov/taffairs.htm**.

7.4 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.

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 consensus standards and to use them where this will achieve regulatory objectives. The majority of these standards are American in origin. Refer to **www.whitehouse.gov/omb** for more information.

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

Generally speaking, you can reference standards in legislation either directly or indirectly. In the latter case, the legislation establishes a mechanism for recognizing standards. For example, the U.S. Consumer Product Safety Act requires the Consumer Product Safety Commission to defer to voluntary standards unless it can be shown that the standards fail to meet the regulatory objectives.

Conformity-assessment procedures help ensure that products, services, or systems have the required characteristics, and that these characteristics are consistent from product to product, from service to service, and from system to system. 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.

In the year 2000, Part 287 was added to Title 15 of the Code of Federal Regulations, Chapter II, subchapter J. It outlines guidance for each federal agency to use in evaluating the efficacy and efficiency of its conformity assessment activities. For details, refer to **www.gpoaccess.gov/cfr**.

The Standards Council of Canada (SCC) employs a team of bilingual information professionals who can provide free information on where to buy publications about Canadian, international and foreign standards. SCC has also set up a bilingual, custom research service, which can provide you with personalized information on a growing range of standards, legislation, and certification issues in many world markets. Price quotes are available upon request for the following research services:

- identification of applicable standards, regulations and conformity-assessment procedures that would apply to the market acceptance of a product;
- identification of competent authorities to contact in Canada or abroad;
- scopes, tables of contents, and forewords of standards that are currently maintained in SCC's Technical Document Centre at **www.scc.ca/en/help/info_resources/tdc_coll.shtml**.
- verification of the accuracy and thoroughness of standards listings obtained through other sources (date of publication, latest amendments, all parts of a standard, etc.);
- identification of Canadian, international or foreign standards in a particular area; and
- identification of standards published or under development by a specific technical committee.

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

The Enquiry Point also operates a service called Export Alert!, which will help you keep abreast of regulatory changes in global markets. This alert service, the only one of its kind in Canada, is provided by the SCC with the support of International Trade Canada.

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

- automatic notification of proposed regulatory changes in your field of interest;
- access to full texts of draft regulatory measures;
- the opportunity to comment on changes.

You can register for the service, free of charge, at the SCC's Export Alert! Web page. Refer to **www.scc.ca/online/export-e.htm** to do so.

Several agencies test Canadian products for conformity with U.S. standards. The two major agencies are:

- ***CSA International*** — CSA International, with its Web site at **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 Web page at **www.csa-international.org/product_areas** for information about the kinds of products for which standards exist.
- ***Underwriters Laboratories Inc.*** — Underwriters Laboratories, whose Web page is at **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 (Web site at www.commerce.gov) works to ensure 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.

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

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

- 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**.
- The National Institute of Standards and Technology (NIST) is a non-regulatory federal agency within the U.S. Commerce Department's Technology Administration. NIST develops and promotes measurement, standards, and technology to enhance U.S. productivity and facilitate trade. Refer to **www.nist.gov**.
- "A Call to Action to Strengthen U.S. Competitiveness — Initiative to Enhance Commerce Department Standards Activities — Impact of Standards and Technical Regulations on Trade," press release, U.S. Department of Commerce, March 19, 2003. Refer to **www.commerce.gov/opa/press/2003_Releases/March/19_Standards.htm**.
- U.S. Office of Management and Budget, September 17, 2003, M-03-21, Circular No. A-4, "Regulatory Analysis." Refer to **www.whitehouse.gov/omb/memoranda/m03-21.html**.

- National Institute of Science and Technology, "Guidance on Federal Conformity Assessment Activities, Final Policy Guidance," 15 CFR Part 287, Federal Register August 10, 2000, Page 48894-48902. Refer to **http://ts.nist.gov/ts/htdocs/210/gsig/caguidance.htm**.
- U.S. General Accounting Office, "Balancing Federal and State Responsibilities for Standard Setting and Implementation," Report to the Chairman, Committee on Environment and Public Works, U.S. Senate, GAO-02-495, March 2002. Refer to **www.gao.gov/new.items/d02495.pdf**.
- "Report on United States Barriers to Trade and Investment 2003," European Commission, Brussels, December 2003. Refer to **http://trade-info.cec.eu.int/doclib/docs/2003/december/tradoc_115383.pdf**.

7.5 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'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 **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:

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

> "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 which result in higher standards if there is scientific justification. They can also set higher standards based on 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 to reduce barriers to trade. To do so, the agreement sets out a code of practice for the preparation, adoption and application of standards by central government bodies, such as the Federal Government of Canada. Again, the agreement encourages countries to recognize each other's testing procedures and standards to reduce barriers to trade and to ensure that domestically produced goods do not receive an unfair advantage in a country's domestic marketplace. Canada's International Market Access Priorities 2003 has information on Canada's approach to SPS measures at **www.international.gc.ca/tna-nac/cimap-en.asp**.

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 are the Canadian Food Inspection Agency (**www.inspection.gc.ca**) and Health Canada (**www.hc-sc.gc.ca**).

7.6 Labelling and marking requirements of U.S. agencies

As well as requiring licenses for certain types of imports, several United States agencies have special marking and labelling rules. If your shipments don't 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.

If you're a Canadian producer of food or beverages, you'll find specialized labelling information for your sector on the Agriculture and Agri-Food Canada Web site; refer to **ats-sea.agr.ca/us/e3272004.htm**.

The major American agencies with special labelling rules are:

- ***Federal Trade Commission (FTC)*** — The FTC, at **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 isn't consumed, is not.

  There are other regulations that apply to textiles, clothing, wool, fur and leather. The FTC publication, "Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts" is a user-friendly source of information on these rules; you'll find it at **www.ftc.gov/bcp/conline/pubs/buspubs/thread.pdf**. Visit the FTC Business page at **www.ftc.gov/ftc/business.htm** for more information on labelling.

- ***Food and Drug Administration (FDA)*** — The FDA, at **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 **www.cfsan.fda.gov/~dms/lab-ind.html** provides information for industry about such labelling.

  If you're a small business, be sure to check out the Small Business Food Labeling Exemption, described at **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 facts statement, one of the five mandatory statements which FDA requires on a label.

- ***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 Labeling and Consumer Protection page, which you'll find at **www.fsis.usda.gov/OPPDE/larc**, provides much of the information you'll need.

  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 Form FSIS 7234-1, "Application for Approval of Labels, Marking or Device," available through the Labeling and Consumer Protection page referred to above. The same page leads to information about products that may enter the U.S. with generic labelling, which doesn't require pre-approval.

  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.

  Note that the recent U.S. Bioterrorism Act will probably affect you if you export food and agricultural products to the United States; see Section 9.4, "New U.S. regulations affecting exporters".

- ***Bureau of Alcohol, Tobacco and Firearms (BATF)*** — The BATF, at **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 Branch; you can contact them in Washington, D.C. at 1 202 927-8140. You'll need to fill out Form F5100.31, "Application for and Certification/Exemption of Label/Bottle Approval", which you can order online (but not download) through the ATF Distribution Centre at **www.atf.gov/dcof**.

- ***U.S. Customs* —** 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**.

  If you're 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'll be giving away), this label isn't necessary. For more information, refer to NAFTA Article 306 at **www.international.gc.ca/nafta-alena/chap03-en.asp?#Article306** and Chapter 49 of the U.S. Harmonized Tariff Schedule at **http://63.173.254.11/tariff_chapters_2004/toc.html**.

- ***Environmental Protection Agency (EPA)* —** The EPA, at **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-02.htm**. The rules governing the FIFRA are in Title 40, Part 152 of the CFR, accessible by search at **www.access.gpo.gov/nara/cfr/cfr-table-search.html**.

  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, contact one of the EPA regional offices at **www.epa.gov/epahome/comments.htm**.

- ***Consumer Products Safety Commission (CPSC)* —** The CPSC 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. 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.

- ***U.S. Department of Labor* —** 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.

7.7 Labelling of goods not for resale

If you're shipping your product to an end user (that is, someone who will not be re-selling it), you may be able to obtain a marking exemption under Section 134.32f of the U.S. customs regulations, "Goods not for resale." Contact U.S. Customs at **www.customs.ustreas.gov** or a U.S. customs broker to find out if you qualify. If you receive the exemption, be sure that your invoices include the words, "Claiming exemption to marking requirements under Section 134.32f."

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

Canadian food exporters should also consult the “Labelling and Packaging” section in Agriculture and Agri-food Canada’s specialized guide for their sector; refer to **ats-sea.agr.ca/us/e3272004.htm**. Information about shipping for this sector is available in the guide’s “Carriers/Distributors/Freight Forwarders” section at **ats-sea.agr.ca/us/e3272000.htm**. For a link to a list of freight forwarders, go to the “Shipping and Customs Services” section at **ats-sea.agr.ca/access/shipping-e.htm**.

8.2 Basic packing and shipping requirements

How you pack your goods will depend, of course, on what the goods are, how they’ll 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 into a warm, humid one. You’ll need to know what dangers your goods will face on their journey and pack them accordingly.

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

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

The Canadian Trade Commissioner Service offers two comprehensive publications about stowage and packing for international shipments. One is Safe Stowage: A Guide for Exporters; the other is Export Packaging: A Guide for Exporters. You’ll find downloadable versions on the TCS Web site’s International Shipping and Distribution page at **www.infoexport.gc.ca/shipping/menu-e.htm**.

8.3 Shipping labels

Shipping marks and labels 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.

8.4 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'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.

Insurance often won't cover goods shipped in unsuitable or insufficient packaging.

8.5 The Canada Border Services Agency and exports

As an exporter, you'll have to deal regularly with United States customs regulations; sometimes, depending on your product, you'll have to comply with Canadian customs rules as well. This is because the Canada Border Services Agency (CBSA) requires you to file an export permit for goods classed as controlled, prohibited or regulated whenever you ship them to the United States. For more information, refer to the CBSA Web site at **www.cbsa-asfc.gc.ca**.

You do not, however, have to file an export declaration to export them to the U.S., Puerto Rico or the U.S. Virgin Islands. (You're relieved of this paperwork by 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").

For a good general guide to Canadian customs regulations as they affect exporters, be sure to look at the CBSA's Handy Customs Guide for Exporters, available at **www.cbsa-asfc.gc.ca/E/pub/cp/rc4116/rc4116-e.html**.

8.6 Controlled, prohibited and regulated goods

Quite a few goods fall into the controlled or restricted category. Some examples 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**. The EICB 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/formspubs/clientgroup/import-export/export-e.html**. It lists guides, forms and documents for Canadian exporters.

A pamphlet on U.S. import requirements containing a section on controlled goods can be obtained from the CBP Publications page at **www.customs.ustreas.gov/xp/cgov/toolbox/publications**. Use the U.S. Import Requirements link to download the document.

8.7 Using freight forwarders

Dealing with shipping and customs can be very complicated and time-consuming in the early stages of the export experience, when you're learning 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. Don't forget to factor these costs into the price you charge for your product!

When you're selecting a freight forwarder, you should:

- Request the forwarder's credit references and check them out.
- Request a list of customers and find out if they're happy with the forwarder.
- Find out if the forwarder has experience in handling your type of product.
- If you want air shipment, make sure the forwarder is registered with the International Air Transport Association (IATA) to deal with international air cargo.
- Determine whether the forwarder has the capacity to handle the volume of shipping you expect.

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**.

8.8 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 **www.infoexport.gc.ca/shipping/insureship-e.htm** for this information.

9.1 U.S. Border Security

After the events of September 11, 2001, Canada and the United States signed the Smart Border Declaration and Action Plan, which identifies 32 initiatives that promote bi-national cooperation in the areas of border security and management. These initiatives reflect the need to ensure the safety of the public and the security of both countries' economies.

Certain programs, such as the Free and Secure Trade program (FAST), as well as new and pending legislation on both sides of the border, will provide exporters with new options and new requirements. Successful exporters will recognize the importance of being fully informed and of keeping up to date as changes are implemented. You'll find more information about the Smart Border Declaration on International Trade Canada's Canada-United States Relations Web site at **www.international.gc.ca/can-am/menu-en.asp?mid=1&cat=10**.

9.2 The Canada Border Services Agency (CBSA)

In order to enhance public safety and economic security, the CBSA was created in December 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 now 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 new agency at the CBSA Web site at **www.cbsa-asfc.gc.ca**.

9.3 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 (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 following page). 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 though C-TPAT (see below) and whose drivers carry FAST Cards. For more information on FAST, CSA and PIP, visit the CBSA FAST Web page at **www.cbsa-asfc.gc.ca/import/fast**.

- ***The Partners in Protection (PIP) program*** — The PIP program is intended to enlist 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 Web page at **www.cbsa-asfc.gc.ca/general/enforcement/partners**.

- ***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'll have to carry out a very thorough self-assessment of your supply chain security, using the C-TPAT guidelines developed by U.S. Customs and Border Protection. You'll also have to develop a program to enhance your supply chain security in accordance with those guidelines. For more information, refer to the C-TPAT Web page of the U.S. Customs and Border Protection Web site at **www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/**.

- ***Security alerts*** — The U.S. Department of Homeland Security (DHS) issues revised security alerts when it believes there is increased danger of terrorist attack. The level of such alerts may affect movement of goods and people across the border. For details of the alert levels and what they mean, refer to the DHS Threats and Protection Web page at **www.dhs.gov/dhspublic/display?theme=29**.

Border security procedures are continuously evolving. To help you keep track of these and other border-related matters, the CBSA's Web site has a page that provides the latest border news and updates. Located at **www.cbsa-asfc.gc.ca/general/border-e.html**, it includes regularly updated estimates of the wait times at major border crossings.

9.4 New U.S. regulations affecting exporters

Two new U.S. regulatory initiatives may have an effect on your export business.

- ***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'll have to register with the U.S. Food and Drug Administration (FDA). You'll also 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 will also be required to notify FDA of your shipments in advance of their arrival at the border.

  For more information, refer to the FDA Registration Web page at **www.cfsan.fda.gov/~furls/ovffreg.html** and Agriculture and Agri-Food Canada at **ats.agr.ca/access/bioterrorism_e.htm**.

- ***The Trade Act of 2002*** — 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. The requirements for each mode will be phased in over 12 to 18 months following this date. Under these requirements, traders shipping goods to the U.S. will be 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 the new U.S. Customs requirements may have a significant impact on how and when export documents must be completed and submitted to the appropriate border authorities.

  For more information, visit the Imports page of the U.S. Customs Web site at **www.customs.ustreas.gov/xp/cgov/import/communications_to_industry/advance_info/**.

10.1 Dealing with U.S. Customs

It is important to be aware that United States customs regulations, procedures and terminology are often quite different from those used by Canada. As a result, familiarity with Canadian customs practices won't necessarily be an advantage to you.

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.

Although U.S. customs regulations are very complex, clearing goods into the United States can be relatively uncomplicated if you're well prepared for it — for example, by preparing complete and accurate export documentation. As a matter of fact, inaccurate or incomplete documentation is the most common reason for export shipments having trouble entering the United States. Consequently, a little extra time spent on your paperwork will contribute a great deal to problem-free customs clearance.

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 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.

10.2 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**. The site has a searchable membership directory that will direct you to the Web sites 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/**. Select the port of entry and scroll down the page to the link for its brokers list.

Canadian food exporters should also consult the "Getting Your Product to Market" section in Agriculture and Agri-food Canada's specialized guide for their sector, in particular the subsections "Selecting a Food Broker" and "Selecting a Customs Broker". You'll find them at **ats-sea.agr.ca/us/e3272002.htm**.

As already noted, your broker will handle most of the documentation and procedures required to clear your shipments into the United States. We'll look at this process next.

10.3 Formal/commercial entry of goods

U.S. Customs requires formal entry, using a customs broker, for any shipment valued at more than US$2000.00. It 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 licenses to cross the border).

We examined Canadian permit requirements earlier, in Section 8.5, "The Canada Border Services Agency and exports," and the two sections following it. On the U.S. side, licenses or permits are required for the import of:

- alcoholic beverages, firearms and ammunition (Bureau of Alcohol, Tobacco and Firearms): **www.atf.gov**
- animals and animal products, meat and meat products, plants and plant products, poultry and poultry products, vegetables (U.S. Department of Agriculture): **www.usda.gov**
- artifacts and cultural property, trademarked articles (U.S. Customs and Border Protection): **www.cbp.gov**
- biological materials, fruit and nuts, medicines, narcotics and certain drugs, milk, dairy and cheese products (U.S. Food and Drug Administration): **www.fda.gov**
- hunting trophies, fish and wildlife, pets (U.S. Fish and Wildlife Service): **www.fws.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$2,000.00.

The U.S. Bureau of Customs and Border Protection (CBP) provides a downloadable pamphlet on U.S. import requirements that contains much useful information about U.S. customs and entry procedures. Go to the CBP Publications page at **www.customs.ustreas.gov/xp/cgov/toolbox/publications** and use the U.S. Import Requirements link to download the document.

U.S. Customs requires formal entry, using a customs broker, for any shipment valued at more than US$2000.00.

10.4 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're not on the invoice, the customs inspector may hold your shipment at the border until you clarify what's 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 invoice 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 earlier, in Section 4.2, "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.customs.gov/customsrf/getformharness.asp?formName=cf-5106-form.xft**.
- ***Bill of lading or airway bill*** — Your freight forwarder, carrier or broker is responsible for filling it out. A bill of lading isn't needed for mail shipments.
- ***Entry manifest*** — The carrier is responsible for filling this out. Again, this isn't 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 7.3, "HS codes".

Depending on the nature of the goods, the shipment may also need to be accompanied by permits or licenses (if they're controlled goods) and a packing list.

10.5 Informal entry of goods

Your goods are considered an informal entry if their value is less than US$2,000.00, and provided they aren't controlled goods. As we also mentioned earlier, 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.

A downloadable guide, called Exporting Small Commercial Shipments to the U.S., will be useful if you're routinely sending informal, non-controlled exports over the border. You'll find it at **www.cbsc.org/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 isn't legally required by U.S. Customs, providing one will smooth your shipment's path across the border.

10.6 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 the U.S. customs broker.

If you want to defer payment of duties and processing fees until you've 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'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.

10.7 Penalties and seizures

U.S. Customs levies severe penalties for fraud or negligence, so you have be very 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 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. 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 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.

Appendix A

Glossary of International Trade Terms

Exporting is more complex than selling in a domestic market. You'll know better what's 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 commerce (INCO) terms

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 shipping 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/index_incoterms.asp**.

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 glossary entry) or goods destined for countries on the Area Control List (see glossary entry).

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 entitled 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 licenses 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.