

U.S. Regulations for Canadian Exporters

EXPORT SERIES

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exportlink

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Visit the Canada-United States Relations web site at:
www.dfait-maeci.gc.ca/can-am

Agents

Prepare a profile of what you consider as the ideal agent based on your market research. Then decide where you can learn, by the most efficient means, about prospective agents active in the sector.

Trade Shows

You can obtain good leads about agents by approaching other exporters at trade shows in the U.S. Their agents might sell a line which does not directly compete with your products, but which is sold to the same potential customers. In fact, there is little substitute for a word-of-mouth recommendation for an agent who has performed well for someone else. Many experienced Canadian exporters in non-competitive lines will often be able to give you advice about specific agents. Also, a Trade Show is a great way to approach many agents. They are attending these shows to exhibit the different lines they sales but also to look at the latest trends of the market and future prospect products such as yours. The Trade Show organization might be able to give you a list of agents that are participating at the event.

Trade Commissioners

Trade Commissioners keep records of many agents and distributors operating in their area. They can also give you some advice before selecting a manufacturer agent. The Trade Commissioner Service helps companies that have researched and selected their target markets and can demonstrate their commitment to succeed in the global marketplace. Before contacting Trade Commissioners ensure that your company is profiled in The Virtual Trade Commissioner(<http://www.infoexport.gc.ca/ie-en/login.jsp>). The Virtual Trade Commissioner is your personal gateway to the Canadian Trade Commissioner Service.

Agent associations

Most organizations listed below have a full range of publications including membership directories, newsletters, and information devoted specifically to helping companies find a representative in the U.S.

Manufacturers Agents National Association

Toll Free: 1 800 626 2776

Web: <http://www.manaonline.org>

Manufacturers' agents in all fields representing two or more manufacturers on a commission basis.

National Association of General Merchandise Representatives

Web: <http://www.nagmr.org>

Manufacturers' agents specializing in selling drug, health, beauty products, and non-food products to food chains and the same products and grocery items to the non-food market.

A US agent of a Canadian company can be considered a “permanent establishment” subjected to US tax, if it is not independent and has the power to bring the Canadian company into contract. An unrelated distributor which takes title to the product and sells in its own name (buy-sell agent) will not constitute a permanent establishment. A commission agent on the other hand, even if unrelated, has that potential but generally only if it is economically dependent on the Canadian company. Again, the commission agent would have to have the ability to contract in the name of the Canadian company. The Canadian company's employee/salesman, absent the power to contract, and given no physical place of business in the US, will also not constitute a permanent establishment. Accordingly, with proper planning the Canadian company can sell its products in the US without subjecting its US profits to tax.

Business Travel

Chapter 16 of the North American Free Trade Agreement (NAFTA) assists with the cross-border movement of businesspersons who are citizens of member countries of NAFTA. NAFTA permits businesspersons to engage in some business activities without an employment authorization (work visa) such as attending trade shows and business meetings, conducting market research, marketing products, negotiating contracts, or taking orders.

Documentation

When traveling to the U.S. for business purposes, you should carry a letter on company letterhead stating the following:

- Purpose of the business trip
- Entry is for business activity which is international in scope
- Where you will be staying
- List of businesses you plan to visit (address and contact person)
- You will be receiving no remuneration of any kind from any U.S. source
- Your salary is paid by the Canadian company

U.S. Immigration also requires your passport or other forms of photo identification, such as your driver's license.

Samples

Business people entering the U.S. with product samples and/or a trade show booth should contact a U.S. Customs Broker, as a Temporary Import Bond (TIB) may be required. Goods that are not controlled or regulated and qualify for NAFTA entry do not require a TIB but you will need the NAFTA Certificate of Origin. For controlled or regulated products that qualify for NAFTA, and for products that are non-NAFTA, contact a U.S. Customs Broker for information on entry procedures.

When entering the U.S. with samples not covered by a TIB, the samples must be torn or perforated to make the product unsuitable for sale and must be indelibly stamped with the word "Sample". The stamping must be in a contrasting colour to the article. The invoice for samples must contain the statement "Marked Sample - Not for Resale". A user fee is charged to business visitors if a commercial transaction is taking place or if samples are to be left in the United States.

To avoid paying GST and duty on commercial samples when you return to Canada, you will need to fill out Canada Customs Form E-15 which is available from Canada Customs at your port of exit. Business-related goods hand-carried by a traveler may be documented on Form Y38. These include items such as computers, cellular telephones, and tools.

Business Gifts

If you wish to bring "gifts" (such as pens, pins, mouse-pads, etc.) with you on your business trip, U.S. Customs & Border Protection requires an invoice listing the articles and their value. Shipments less than US\$2,000 can be entered as an informal entry. The exception to this rule is textiles and textile articles (such as t-shirts or baseball caps) where the limit is US\$200. Should the shipment be greater than US\$200 then it must be entered as a formal entry and a Textile Declaration form will be required. Please be aware that textiles and textile articles which are not NAFTA qualifying may not be allowed entry as the United States has quota restrictions in place with some non-NAFTA countries.

Workshops/Seminars

Chapter 16 of NAFTA does not remove general immigration regulations imposed by Canada or the U.S. Persons wishing to enter the U.S. for the purpose of leading workshops or seminars must either have a) a working visa; or b) your profession listed in the professional category and the subject must deal with aspects of that profession. For a complete list of professions that are exempt from the job-validation process, please refer to "Cross-Border Movement of Business Persons and the North American Free Trade Agreement".

First Nations and the Jay Treaty

Under the Jay Treaty, Canadians who claim "Registered Indian Status" are allowed to work in the United States without an employment authorization. However, U.S. Immigration and Naturalization Service does not accept Status Cards issued by Indian and Northern Affairs as proof that you have at least 50% native blood. To meet this criteria, U.S. Immigration advises that you must present, at the port of entry, a letter (referred to as a blood quantum letter) from your Band and Indian and Northern Affairs (Ottawa) going back two generations to show your native ancestry. If you are claiming just 50% native blood, then U.S. Immigration advises that you must go back three generations. You must present both letters to U.S. Immigration every time you enter the United States.

Additional Information

Direct selling, as opposed to taking orders, is prohibited in the United States unless you have a work visa, are a dual citizen, or hire a U.S. citizen to do the selling. Please be aware that this is an immigration, not a customs, issue.

Printed material must indicate the country that it was printed in. For example, material that was printed in Canada must state "Printed in Canada". The exception to this rule would be printed goods that are NAFTA qualifying and not intended for resale, such as brochures and promotional material that would be given away (supplied free of charge). This information is covered in Article 306 of NAFTA and covers all printed material classified in Chapter 49 of the Harmonized Tariff Schedule.

For more information:

- Cross-Border Movement of Business Persons and the North American Free Trade Agreement: <http://www.dfait-maeci.gc.ca/nafta-alena/>

Customs

It is the importers responsibility to ensure that his or her goods being imported meet admissibility requirements - such as proper marking, safety standards, etc. - and that the proper permits, if required, have been obtained in advance of the goods arriving in the United States.

Formal entries are generally commercial shipments supported by a surety bond to ensure payment of duties and compliance with Customs requirements. Personal shipments valued over \$2,000 will also require a formal entry. Informal entries cover personal shipments, commercial shipments and mail shipments that are being entered for consumption, i.e. for use or sale. In most cases informal entry can be used if the merchandise is valued at

\$2,000 or less. There are some exceptions such as textiles, certain types of footwear and other goods subject to quota/visa restrictions. The difference between an informal entry and a formal entry is the bond requirement and the liquidation process. Liquidation is the final computation of duties or drawback accruing to an entry and is the final step in the entry process.

The importer is responsible for properly determine the classification number of the merchandise being imported before entry. The Harmonized Tariff Schedule of the United States (HTSUS), issued by the United States International Trade Commission, prescribes the classification of merchandise by type of product; e.g., animal and vegetable products, textile fibers and textile products. The duty rate of an item is tied to its classification number. The HTSUS provides several rates of duty for each item based on the country of origin. You can find the U.S. Tariff Database on-line on The United States International Trade Commission at: <http://dataweb.usitc.gov/>. Customs makes the final determination of what the correct rate of duty is, not the importer. For very specific duty information on a particular item you may request a Binding Ruling. Requests for tariff classification rulings should be addressed to:

Director, National Commodity Specialist Division
U.S. Customs
Attn: CIE/Ruling Request
One Penn Plaza-10th Floor
New York, NY 10119

or to any service port office of the Customs Service (contacts available at: <http://www.customs.ustreas.gov/xp/cgov/toolbox/ports>).

Restricted Merchandise

Customs officers are called upon to enforce laws and regulations of other government agencies. A license or permit from the responsible agency may be necessary to import:

- **Alcoholic Beverages:** Bureau of Alcohol, Tobacco, and Firearms - (202) 927-8110
- **Animal and Animal Products:** Animal and Plant Health Inspection Service - (301) 734-8364 (animal imports) and (301) 734-3277 (animal products imports). Entry procedures for livestock and animals from Canada are not as rigorous as those for animals from other countries. Entry of animals is restricted to certain ports which are designated as quarantine stations. All non-domesticated animals, endangered species of wildlife and hunting trophies or game must meet the requirements of the Fish and Wildlife Service (703-358-2104)

- **Certain Drugs:** Food and Drug Administration - (301) 443-6553
- **Firearms and Ammunition:** Bureau of Alcohol, Tobacco, and Firearms - (202) 927-8320
- **Fruits and Nuts:** Animal and Plant Health Inspection Service - (301) 734-3277
- **Meat, Poultry and Egg Products:** Food Safety and Inspection Service - (402) 221-7400. The Food and Drug Administration has jurisdiction over fish, buffalo, rabbits, venison and wild game.
- **Milk, Dairy, and Cheese Products:** Food and Drug Administration - (301) 443-6553
- **Plants and Plant Products:** Animal and Plant Health Inspection Service - (301) 734-8896
- **Petroleum and Petroleum Products:** Department of Energy - Office of Natural Gas and Petroleum Import and Export Activities. An import license is no longer required, but an import authorization may be needed to import natural gas (available online at: http://www.fe.doe.gov/oil_gas/im_ex/authorizations/obtain_authorization_process.html).
- **Vegetables** (including fresh herbs and sprouts): Animal and Plant Health Inspection Service - (301) 734-3277

There are also restrictions on the importation of certain trademarked and copyrighted articles (for further information see Customs Publication No. 549 U.S. Customs and Protection of Intellectual Property Rights.)

Certain items in these categories may also be prohibited. The following items must comply with applicable regulations of other agencies:

- **Art Materials:** Art materials cannot be imported into the United States unless they meet the Labeling of Hazardous Art Materials Act (Consumer Product Safety Commission - (301) 504-7913)
- **Cultural Property:** United States Department of State - (202) 619-6612
- **Hazardous/Toxic/Flammable Materials:** Consumer Product Safety Commission - (301) 504-7913
- **Household Appliances:** Consumer Product Safety Commission - (301) 504-7913. The Food and Drug Administration has jurisdiction over radiation-emitting consumer products including microwave ovens.
- **Some Electronics Products:** Consumer Product Safety Commission - (301) 504-7913. The Food and Drug Administration has jurisdiction over radiation-emitting consumer products including cell phones.
- **Toys and Children's Articles:** Consumer Product Safety Commission - (301) 504-7913

For more information:

- General Quota Information: http://www.customs.ustreas.gov/xp/cgov/import/textiles_and_quotas
- Animal and Plant Health Inspection Service: <http://www.aphis.usda.gov/>
- Bureau of Alcohol, Tobacco, and Firearms: <http://www.atf.treas.gov/>
- Consumer Product Safety Commission: <http://www.cpsc.gov/businfo/businfo.html>
- Fish and Wildlife Service: <http://international.fws.gov>
- Food and Drug Administration: <http://www.fda.gov/>
- Food Safety and Inspection Service: <http://www.fsis.usda.gov/>
- United States Department of State: <http://exchanges.state.gov/education/culprop/>

Shipments to the U.S. require the buyer's federal tax ID number. Should your buyer not have one, you'll need their IRS number. If your customer is reluctant to provide this information, simply explain that it's a rule of the U.S. (not Canadian) government for all direct imports. Then be sure to keep it on file so you'll never need to request it again!

Do not deliver product with you when traveling on business into the United States. Product must be shipped separately to be processed by Customs officials. Samples can be a "gray area". Well in advance of traveling, it is best to phone a U.S. Immigration's Officer for advice on transporting samples (see "Business Travel").

For more information:

- Harmonized Tariff Schedule of the United States: <http://www.usitc.gov/taffairs.htm>
- U.S. Customs and Border Protection: <http://www.customs.gov>
- U.S. Import Requirements: <http://www.customs.ustreas.gov/xp/cgov/import>
- FDA's Import Program: http://www.fda.gov/ora/import/ora_import_program.html

Import information related to products subject to FDA's control of foods (except for certain meats and poultry products), drugs (human, animal and biological), cosmetics, medical devices and radiation emitting devices, etc. offered for entry into the U.S. through U.S. Customs & Border Protection

You can also contact a local U.S. Customs Port at:

<http://www.customs.ustreas.gov/xp/cgov/toolbox/ports/>

Cosmetics

Cosmetics marketed in the United States, whether manufactured in the U.S. or imported

from abroad, must be in compliance with the provisions of the Federal Food, Drug, and Cosmetic (FD&C) Act, the Fair Packaging and Labeling (FP&L) Act, and the regulations published under the authority of these laws.

What is considered a cosmetic?

The FD&C Act defines cosmetics as articles intended to be applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance without affecting the body's structure or functions. Included in this definition are products such as skin creams, lotions, perfumes, lipsticks, fingernail polishes, eye and facial make-up preparations, shampoos, permanent waves, hair colors, toothpastes, deodorants, and any material intended for use as a component of a cosmetic product. Soap products consisting primarily of an alkali salt of fatty acid and making no label claim other than cleansing of the human body are not considered cosmetics under the law.

Cosmetics that are also drugs

Products that are cosmetics but are also intended to treat or prevent disease, or affect the structure or functions of the human body, are considered also drugs and must comply with both the drug and cosmetic provisions of the law. Examples of products which are drugs as well as cosmetics are anti-cavities toothpastes (e.g., "fluoride" toothpastes), hormone creams, suntanning preparations intended to protect against sunburn, antiperspirants that are also deodorants, and anti-dandruff shampoos.

Most currently marketed cosmetics which are also drugs are over-the-counter drugs. Several are new drugs for which safety and effectiveness had to be proved to the Food and Drug Administration (FDA) before they could be marketed. The regulatory requirements for drugs are more extensive than the requirements applicable to cosmetics.

For more information:

- Information on Imported Cosmetics: <http://www.cfsan.fda.gov/~dms/cos-imp.html>
- FDA Cosmetics: <http://www.cfsan.fda.gov/~dms/cos-toc.html>
- Cosmetic Handbook for Industry: <http://www.cfsan.fda.gov/~dms/cos-hdbk.html>
- FDA's Import Program: http://www.fda.gov/ora/import/ora_import_program.html

Drugs

It is the responsibility of the company seeking to market a drug in the United States to test it and submit evidence that it is safe and effective. A team of Center for Drug Evaluation and Research's (CDER) physicians, statisticians, chemists, pharmacologists, and other

scientists reviews the sponsor's new drug application (NDA) containing the data and proposed labelling. The FDA prohibits the importation of dishonest prescription and non-prescription drugs and medical devices. These may include unorthodox "cures" for medical conditions including cancer, AIDS, and multiple sclerosis. While these drugs and devices may be legal elsewhere, they may not have been approved for use in the United States, even under a prescription issued by a foreign physician.

For more information:

- Information for Importation of Drugs: <http://www.fda.gov/ora/import/pipinfo.htm>
- FDA's Center for Drug Evaluation and Research: <http://www.fda.gov/cder/index.html>
- Drug approval application process:
<http://www.fda.gov/cder/regulatory/applications/default.htm>
- Guidance for the coverage of personal-use quantities of FDA-regulated imported products in baggage and mail:
http://www.fda.gov/ora/compliance_ref/rpm_new2/ch9pers.html

Food and Beverages

Food and food-related products

The United States Food and Drug Administration (FDA) regulates all food and food-related products, except commercially processed egg products, and meat and poultry product, including combination products (e.g., stew, pizza), containing two percent or more poultry or poultry products, or three percent or more red meat or red meat products which are regulated by the United States Department of Agriculture's Food Safety and Inspection Service (FSIS).

Fruits, vegetables and other plants

Fruits, vegetables and other plants are regulated by the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to prevent the introduction of plant diseases and pests into the United States. The voluntary grading of fruits and vegetables is carried out by the Agricultural Marketing Service (AMS) of the USDA.

Non-alcoholic beverages

All non-alcoholic beverages, and wine beverages containing less than 7% alcohol, are the responsibility of the Food and Drug Administration (FDA).

Alcoholic beverages

All alcoholic beverages, except wine beverages (i.e. fermented fruit juices) containing less than 7% alcohol, are regulated by the Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of Treasury.

Important: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with the Food and Drug Administration (FDA) by December 12, 2003. These facilities will also have to provide the FDA with advance notice on shipment of imported food. For more information on the registration and notification process, please visit: <http://www.fda.gov/oc/bioterrorism/bioact.html>.

For more information:

- FDA Information for Domestic/Import Food Industry: <http://vm.cfsan.fda.gov/~dms/qa-topin.html>
- FDA's import procedures: <http://vm.cfsan.fda.gov/~lrd/import.html>
- Food Facilities Registration: <http://www.cfsan.fda.gov/~furls/ovffreg.html>
- U.S. Department of Agriculture – Import Requirements: <http://www.fas.usda.gov/import.html>
- Agricultural Marketing Service: <http://www.ams.usda.gov>
- Animal and Plant Health Inspection Service: <http://www.aphis.usda.gov/>
- Food Safety and Inspection Service: <http://www.fsis.usda.gov/OPPDE/IPS/Importing.htm>
- Bureau of Alcohol, Tobacco and Firearms: <http://www.ttb.gov/alcohol/index.htm>

Government Procurement

The US government offers extensive contracting opportunities for Canadian firms in the closest foreign market to Canada. The US government buys services and products offered in the commercial market, as well as highly specialized systems and custom-tailored professional services. No matter which you offer, the US government could be a potential new customer. However, there are a lot of things to consider before you tackle the US government market.

Strategic Considerations

Do you have senior management commitment to:

- a long sales cycle?

It can take 3-5 years to make a sale in defence agencies and government departments and 2-4 years to make a sale to civilian agencies and government departments. During this time you may make little or no money from government sales.

- **a local presence?**

Government agencies and prime contractors buy from those they know. You will need a local presence, be that living on airplanes, moving personnel to the area, or hiring a rep.

How to Find Opportunities

Use FedBizOpps To Identify Procurement Opportunities

FedBizOpps (<http://www.fedbizopps.gov/>), as the single government-wide point of entry for agency procurement opportunities, provides a synopsis of procurements valued at more than US\$25,000 and can serve as a preliminary indicator of whether you should consider submitting a bid.

Get on the Bidders List of the Agencies You Wish to Market

Advance notice of procurements and prompt access to bid sets can be accomplished by placement on agency bidders lists, referred to as Solicitation Mailing Lists (SMLs). To be placed on an SML, fill out a form SF 129, (available in electronic format at: http://www.toolkit.cch.com/tools/sf129_m.asp) and send it to each agency with which your firm desires to be listed. Agencies must maintain SMLs, but a firm may be removed from the list for failure to respond to a solicitation mailing. Therefore, to remain on a list, sign and return any notice of a procurement to which you do not intend to respond.

Call on Your Prospects - Get to Know Them

During the conduct of a procurement, and before submission of bids or offers, you can talk to the contracting officer. But after submission and prior to award of a contract, you cannot solicit, or obtain from US contracting officials any source selection or proprietary information regarding the procurement. After contract award the prior prohibition against communicating with technical or program people is replaced by a duty to deal with them during the administration of that contract. During this period, take the opportunity to learn more about agency programs to develop a sharper understanding of the overall needs of the agency.

Read Trade-related and Federal Publications

Newspapers, agency newsletters and association homepages all report major projects, government initiatives and trends that can suggest new acquisition long before a formal announcement...as well as who you should call up to find out more. You can find a list of trade-related and federal publications available on-line on DFAIT's web site (Sell2USGOV).

For more information:

- Sell2USGOV – Department of Foreign Affairs and International Trade: <http://www.can-am.gc.ca/sell2usgov/menu-en.asp>
- U.S. General Services Administration (federal government procurement): <http://www.gsa.gov/Portal/home.jsp>
- State and Local Government Procurements: <http://www.businesslaw.gov> (select a state and then click on “Selling to Government”)
- Canadian Commercial Corporation (information, support and seminars on U.S. government procurement): <http://www.ccc.ca/>

Immigration

Canadian citizens may enter the U.S. from Canada in several business-related categories. A brief description of each category, and a summary of the documents required to establish eligibility for admission in that category is provided below. All of these categories are for non-immigrant (temporary) visits and do not authorize the traveler to live or work permanently in the United States.

B-1 TEMPORARY BUSINESS VISITOR

Purpose of Travel: To engage in commercial or professional activities, attend conferences, meetings or consultations. No remuneration may be received from a United States source.
Documents Required: Evidence of identity and Canadian nationality, evidence of a residence in Canada and intent to depart the U.S., documentation describing the traveler's business purpose.

E-1 TREATY TRADER

Purpose of Travel: To carry on trade between the U.S. and Canada. The applicant may be the principal trader or an employee in an executive, supervisory, or essential skills capacity.

Documents Required: E-1 visa must be obtained from the U.S. Consulate General in Toronto. Application forms and information may be acquired by faxing (416) 595-5466.

E-2 TREATY INVESTOR

Purpose of Travel: To direct the operation of a bona fide investment enterprise. The applicant may be the principal investor or an employee in an executive, supervisory, or essential skills capacity.

Documents Required: E-2 visa must be obtained from the U.S. Consulate General in Toronto.

Application forms and information may be acquired by faxing (416) 595-5466.

H-1B TEMPORARY WORKER IN A SPECIALIZED OCCUPATION

Purpose of Travel: To perform temporary work (maximum period of six years) requiring specialized knowledge and a university degree or its equivalent.

Documents Required: Evidence of identity and Canadian nationality, approved I-129 petition or notification thereof (petition must be filed by prospective U.S. employer with U.S. Immigration and Naturalization Service), employment letter (indicating nature and duration of employment and remuneration offered).

H-2B SEASONAL WORKERS

Purpose of Travel: seasonal or other short-term job (maximum period of one year) that cannot be filled by available U.S. labor. The requisite temporary job need can arise in one or more of four categories:

1. One-time occurrences (i.e. foreign professional needed to train U.S. workers),
2. Recurring seasonal jobs (i.e. ski instructor or landscape laborer),
3. Peak load demands (i.e. special expertise or additional positions on one-time complex or large-scale projects), and
4. Intermittent/occasional jobs (i.e. technicians upgrading foreign machinery).

Documents Required: Evidence of identity and Canadian nationality, approved I-129 petition or notification thereof (petition must be filed by prospective U.S. employer with U.S. Immigration and Naturalization Service), employment letter (indicating nature and duration of employment and remuneration offered).

H-3 TRAINEE

Purpose of Travel: To receive training (other than medical or academic) at the invitation of an individual, organization, firm, or other trainer.

Documents Required: Evidence of identity and Canadian nationality, approved I-129 petition or notification thereof (petition is filed by the individual/institution in the U.S. which is providing the training.)

L-1 INTRACOMPANY TRANSFEREE

Purpose of Travel: To be employed in the U.S. in a managerial, executive, or specialized knowledge capacity by a branch, parent, affiliate, or subsidiary of a Canadian or international employer. (To be eligible, one must have worked for the Canadian/international firm continuously for one year within the three years preceding transfer to the U.S.).

Documents Required: Evidence of identity and Canadian nationality, I-129 petition (petition may be filed by the applicant at the U.S. port of entry), employment letter (indicating nature and duration of employment and remuneration offered). L-1 applicants may direct questions to one of the U.S.

Immigration Service free trade specialists listed under "Additional Information" below.

TN NAFTA PROFESSIONAL

Purpose of Travel: To engage in business activities at a professional level. (Over 60 qualifying professional occupations are listed in Appendix 1603.D.1 of the NAFTA.) Canadian citizens may direct questions to a free trade specialist at one of the U.S. Immigration Service offices listed under "Additional Information" below.

Documents Required: Evidence of identity and Canadian nationality, proof of necessary educational background and experience in one of the qualifying professions, employment letter (indicating nature and duration of employment and remuneration offered).

If you are traveling on business, phone a U.S. Immigration Officer for advice well in advance of your trip. Documentation, such as copies of contracts or a letter from an American company as to why you are going to the United States, can be very important to U.S. Immigration. Selling services in the U.S. without products or investment is highly controlled. You must contact a U.S. Immigration's Officer for entry advice well in advance of your trip.

For more information:

- U.S. Consular Services: Canadian Business Travel to the U.S.:
http://www.usembassycanada.gov/content/content.asp?section=travel&subsection1=visa_services&document=canbustravel
- TN Visa Application Process: http://travel.state.gov/tn_visas.html

If you have any questions relating to the law and how it may affect a special situation, it is best to call U.S. Immigration for clarification:

U.S. Consulate in Alberta: (403) 266-8962

U.S. Immigration at the Alberta international airports:

Edmonton International (780) 890-4486, 10:00 a.m. to 12:30 p.m.

Calgary International (403) 221-1730, 1:00 p.m. to 4:00 p.m.

You can also contact U.S. Immigration at Sweetgrass (border crossing), Montana (406) 335-2911.

Importing a Vehicle

For Customs clearance you will need the shipper's or carrier's original bill of lading, the bill of sale, foreign registration, and any other documents covering the vehicle. You will

also need written prior approval from EPA, which will be evident to the Customs inspector at the port of entry in the form of an approval letter from the EPA, or a manufacturer's label in the English language affixed to the car, stating that the vehicle meets all U.S. emission requirements. Or, you may make arrangements to import your vehicle with an Independent Commercial Importer (ICI). In this case, the ICI will import your vehicle and perform any EPA-required modifications and be responsible for assuring that all EPA requirements have been met. ICIs can only import certain vehicles, however, and in general, their fees are very high.

Foreign-made vehicles imported into the U.S., whether new or used, either for personal use or for sale, are generally dutiable at the following rates:

Autos.....	2.5%
Trucks	25%
Motorcycles.....	3% or 3.4%

Duty rates are based on price paid or payable. Most Canadian-made vehicles are duty-free.

Motor vehicles not more than 25 years old must conform to the DOT motor vehicle safety standards that were in effect when these vehicles were manufactured. Passenger cars manufactured after September 1, 1973 must also meet bumper standards. For additional information or details on these requirements, contact the U.S. Department of Transportation, National Highway Traffic Safety Administration.

Certain imported automobiles may be subject to the gas-guzzler tax imposed by section 4064 of the Internal Revenue Code. An individual who imports an automobile for personal use, or a commercial importer, may be considered an importer for purposes of this tax and thus liable for payment of the tax. The amount of the tax is based on a combined urban/highway fuel-economy (miles per gallon) rating assigned by the EPA for gas-guzzler tax purposes. This EPA rating may be different from fuel-economy ratings indicated by the manufacturer.

Vehicles that do not comply must be imported for you by a currently certified Independent Commercial Importer (ICI), a list of which is available from the EPA. This list should be obtained before you decide to import a car. The ICI will be responsible for assuring that your car complies with all U.S. emission requirements. You can obtain additional information on emission control requirements or on ICIs from the U.S. EPA Imports team at (202) 564-9240.

Individual state emission requirements may differ from those of the federal government. Proper registration of a vehicle in a state may depend upon satisfaction of its requirements, so you should contact the appropriate state authorities prior to importation.

For more information:

- U.S. Customs & Border Protection Publication "Importing or Exporting a Car" can be found in "related links" on the U.S. Customs & Border Protection web site at:

<http://www.customs.ustras.gov/xp/cgov/toolbox/publications/trade/>.

- Environmental Protection Agency - Imports of Vehicles:

<http://www.epa.gov/otaq/imports/>

- National Highway Traffic Safety Administration:

<http://www.nhtsa.dot.gov/cars/rules/import/>

Intellectual Property**Patents**

A U.S. patent for an invention is the grant of a property right to the inventor(s), issued by the U.S. Patent and Trademark Office. The right conferred by the patent grant is, in the language of the statute and of the grant itself, "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. The term of a new patent is 20 years. US patent grants are effective only within the US, US territories, and US possessions. To get a U.S. patent, an application must be filed in the U.S. Patent and Trademark Office.

- **Utility Patent**

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or compositions of matters, or any new useful improvement thereof.

- **Design Patent**

Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture.

- **Plant Patent**

Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

The USPTO has an electronic filing system, which allows you to submit patent applications via the Internet.

Trademarks and Servicemark

A trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms "trademark" and "mark" are

commonly used to refer to both trademarks and servicemarks.

Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks which are used in interstate or foreign commerce may be registered with the Patent and Trademark Office.

Unlike copyrights or patents, trademark rights can last indefinitely if the owner continues to use the mark to identify its goods or services. The term of a federal trademark registration is 10 years, with 10-year renewal terms. However, between the fifth and sixth year after the date of initial registration, the registrant must file an affidavit setting forth certain information to keep the registration alive. If no affidavit is filed, the registration is canceled.

Applicants not living in the United States must designate in writing the name and address of a domestic representative -- a person residing in the United States "upon whom notices of process may be served for proceedings affecting the mark." The applicant may do so by submitting a statement that the named person at the address indicated is appointed as the applicant's domestic representative under §1(e) of the Trademark Act. The applicant must sign this statement. This person will receive all communications from the PTO unless the applicant is represented by an attorney in the United States.

State Registration of a Trademark:

Trademarks and service marks may be registered in a state for a term of ten years. For more information about Applications for Registration of Trademark or Service Mark in a state, contact the state government.

For more information:

- US Patent and Trademark Office: <http://www.uspto.gov/>

Copyright

A copyright protects original creations of "authorship," such as books, music, original paintings, sound recordings, motion pictures, sculptures, and computer programs. It gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phono-records of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly. Copyrights may be registered with the Copyright Office, Library of Congress, for a non-renewable term consisting of the life of the author plus 50 years. Works made for hire (created for an employer) are copyrightable by the employer for a term of 75 years from publication or 100 years from their creation, whichever comes first. The copyright protects

the form of expression rather than the subject matter of the writing. For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine. Copyrights are registered by the Copyright Office of the Library of Congress.

Mask Work

A mask work is, in essence, the design of an electrical circuit, the pattern of which is transferred and fixed in a semiconductor chip during the manufacturing process. Mask works may be registered with the Copyright Office for a non-renewable term of 10 years.

For more information:

- U.S. Copyright Office: <http://www.loc.gov/copyright/>

Labelling

Today, an increasing number of goods and products such as textiles, clothing, automobiles, boats, radios, television sets, and medical devices are subject to special standards, declarations, certification, and marking or labelling requirements. Other merchandise must be examined for fitness of use, freedom from contamination, or may be subject to quotas on the quantity imported. All these requirements must be met before the merchandise is released by Customs.

Country of Origin Marking

The U.S. Tariff Act states that every product imported into the United States must be "marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin". Examples of markings are "Made in Canada" and "Product of Canada".

When exporting for resale in the U.S., you must be very careful when labelling and marking goods and be sure to follow all guidelines set out for your particular product(s). "Marking of Country of Origin on U.S. Imports" can be found on the U.S. Customs & Border Protection web site in the list of publications available at: <http://www.customs.ustras.gov/xp/cgov/toolbox/publications/trade/>.

Those exporters that are shipping their good(s) to an end-user, not for resale, will not be as restricted when it comes to labelling. Check with a U.S. Customs Office (see

Customs) or a U.S. customs broker to see if you can obtain a marking exemption. When filling out your invoice you may wish to write on the form, "The end user knows the country of origin". It is still the exporter's responsibility to make sure all necessary steps have been taken to ensure Customs approval. "Marking of Country of Origin on U.S. Imports" includes a list of products exempt from marking.

Questions on country of origin marking may be directed to the Special Classification & Marking Branch, Office of Regulations and Rulings at (202) 572-8810.

Food products

The Food and Drug Administration (FDA) is responsible for assuring that foods sold in the United States are safe, wholesome and properly labelled. This applies to foods produced domestically, as well as foods from foreign countries. The Federal Food, Drug, and Cosmetic Act (FD&C Act) and the Fair Packaging and Labeling Act are the Federal laws governing food products under FDA's jurisdiction. To help manufacturers and importer of food products comply with the law, the FDA's Center for Food Safety and Applied Nutrition publishes A Food Labeling Guide, which provides a summary of statements required on food labels, questions and answers, useful guides and tables.

To help minimize legal action and delays, it is recommended that manufacturers and importers become fully informed about the applicable laws and regulations before offering foods for distribution in the United States. The Nutrition Labeling and Education Act, which amended the FD&C Act requires most foods to bear nutrition labeling and requires food labels that bear nutrient content claims and certain health messages to comply with specific requirements. It is the responsibility of the food industry to remain current with the legal requirements for food labeling.

Canadian companies may be exempt from including the Nutritional Facts panel on food products, on a 12-month renewable basis, under certain conditions. For additional information and the application form for the Small Business Food Labeling Exemption program, visit the FDA web site at: <http://vm.cfsan.fda.gov/~dms/sbel.html>. This exemption deals only with the necessity of having the Nutrition Facts panel and has no effect on the mandatory labelling information.

Meat, poultry, and egg products

The Food Safety and Inspection Service (FSIS) checks labels on both shipping containers and retail size packages. Most labels on retail packages of meat or poultry shipped to the U.S. must be approved in advance by FSIS. FSIS has developed a generic labelling category. This category does not require pre-approval of labelling and any labels submitted to the Labeling Review Board, which qualify under this category, will be returned to the company unapproved.

For more information:

- Food and Drug Administration - Center for Food Safety and Applied Nutrition

<http://vm.cfsan.fda.gov/label.html>

- Food Labeling Guide: <http://vm.cfsan.fda.gov/~dms/flg-toc.html>

Questions concerning the labelling of food products may be directed to:

Division of Programs and Enforcement Policy (HFS-155)

Office of Food Labeling

Center for Food Safety and Applied Nutrition

Food and Drug Administration

200 C Street, S.W.

Washington, DC 20204

Telephone (202) 205-5229

- Food Safety and Inspection Service – Labelling Procedures (meat, poultry, and egg products): <http://www.fsis.usda.gov/OPPDE/larc/Procedures.htm>

Alcoholic Beverages

To ensure alcohol beverage labels do not contain misleading information and follow the Alcohol, Tobacco and Firearms (ATF) regulations, the Alcohol Labeling and Formulation Branch will examine all label applications for approval. For a copy of the “Application for and Certification/Exemption of Label/Bottle Approval” visit the ATF Web Site at:

<http://www.atf.treas.gov/forms/pdfs/f510031.pdf> .

Cosmetics

The cosmetics distributed in the United States must comply with the labelling regulations published by the FDA under the authority of the FD&C Act and the FP&L Act. Cosmetics bearing false or misleading label statements or otherwise not labeled in accordance with these requirements may be considered misbranded and may be subject to regulatory action.

For more information:

- Cosmetic Labeling Manual: <http://www.cfsan.fda.gov/~dms/cos-lab1.html>

Textile, Wool and Fur Products

Textile, wool and fur products manufactured, imported, sold, offered to sell, distributed, or advertised and covered by the Textile and Wool Acts, must comply with the labelling requirements published by the Federal Trade Commission.

The law requires that most textile and wool products have a label listing:

- Fiber Content
- Country of Origin
- Manufacturer or Dealer Identity

For more information:

- Federal Trade Commission - Textile, wool, fur and apparel matters:

<http://www.ftc.gov/os/statutes/textilejump.htm>

- Federal Trade Commission's guide to help you comply with federal labelling requirements for textile, wool and fur products:

<http://www.ftc.gov/bcp/online/pubs/buspubs/thread.htm>

Printed Materials

Printed material must indicate the country that it was printed in. For example, material that was printed in Canada must state "Printed in Canada". The exception to this rule would be printed goods that are NAFTA qualifying and not intended for resale, such as brochures and promotional material that would be given away ("supplied free of charge"). This information is covered in Article 306 of NAFTA and covers all printed material classified in Chapter 49 of the Harmonized Tariff Schedule.

Additional Information

You should also be aware that individual States might have their own labelling requirements. This is generally the case for food and beverage products. For example, the state of Washington requires all pasta to be made from enriched flour therefore, the label must indicate enriched flour. The County of King, Washington, requires specific labelling indicating country of origin on all foreign beef. In the state of New York, labels for smoked fish must say "keep refrigerated at 38 degrees or less". It is very important to research the labelling requirements for your export market. For more information on state regulations, visit: BusinessLaw.gov at <http://www.businesslaw.gov>.

NAFTA

The North American Free Trade Agreement (NAFTA) entered into force in Canada, the United States and Mexico on January 1, 1994. Designed to foster increased trade and investment among the partners (United States, Mexico and Canada), the NAFTA contains an ambitious schedule for tariff elimination and reduction of non-tariff barriers, as well as comprehensive provisions on the conduct of business in the free trade area. These include

disciplines on the regulation of investment, services, intellectual property, competition and the temporary entry of business persons.

How does the NAFTA affect the tariff rates between Canada and the U.S.?

NAFTA did not affect the phase-out of tariffs which had been agreed upon under the Canada-U.S. Free Trade Agreement (FTA). The phase-out of FTA tariffs was completed on January 1, 1998. As of that date, virtually all tariffs on Canada-U.S. trade in originating goods were eliminated. Some tariffs remain in place for certain products in Canada's supply-managed sectors (e.g. eggs, dairy and poultry products). In the U.S., tariffs remain in place for certain products such as sugar, dairy, peanut and cotton.

What are the NAFTA rules of origin?

Each NAFTA country retains its external tariffs vis-B-vis non-members' goods and levies a lower tariff on the goods "originating" from the other NAFTA members. Rules of origin provide the basis for customs officials to make determinations about which goods are entitled preferential tariff treatment under the NAFTA agreement. Certificates of origin are available at any Canada Customs office. They can also be obtained from Canada Customs and Revenue Agency's website at <http://www.ccradrc.gc.ca/E/pbg/cf/b232/README.html>, the form number is B232.

How can I find out which national tariffs apply for different originating goods under the NAFTA?

For U.S. rates (exportations), please consult the U.S. Customs & Border Protection website at: http://www.customs.ustreas.gov/xp/cgov/import/duty_rates.

Canadian tariff lines (importations): http://www.ccradrc.gc.ca/customs/general/publications/customs_tariff-e.html

How can I obtain information on NAFTA customs procedures?

You can consult the U.S. Customs publication "NAFTA: A Guide to Customs Procedures" available on-line at: <http://www.customs.ustreas.gov/nafta/docs/us/guidproc.html>.

For more information:

- Department of Foreign Affairs and International Trade: <http://www.dfait-maeci.gc.ca/nafta-alena/menu-e.asp>

- U.S. Customs & Border Protection Service (information on practical aspects of the NAFTA): <http://www.customs.ustreas.gov/nafta/>

If you prefer to direct a NAFTA question to the U.S. Customs & Border Protection Service via telephone, contact a local U.S. Customs Port:

<http://www.customs.ustreas.gov/xp/cgov/toolbox/ports>

Standards

CSA International

CSA International is a non-profit, voluntary membership association engaged in standards development and certification activities. Chartered in 1919, CSA International offers certification and testing services in support of its standards development activities.

CSA International became a Nationally Recognized Testing Laboratory (NRTL) in 1992. What this means is that the CSA can test and certify your products for the U.S. market as well as Canadian market.

The following information was obtained from the CSA web site. For additional information on other CSA marks and services, please visit their web site at <http://www.csa-international.org>.

The *CSA mark* may appear alone or with indicators. If it appears alone, it means that the product is certified for the Canadian market, to the applicable Canadian standards.



If this mark appears with the indicator "C and US" or "NRTL/C" it means that the product is certified for both the U.S. and Canadian markets, to the applicable U.S. and Canadian standards.



Underwriters Laboratories Inc.

Underwriters Laboratories Inc. (UL) is an independent, not-for-profit product safety testing and certification organization. Founded in Illinois in 1894, UL now has 193 inspection centers in 71 countries. For contact information, see Appendix E.



C-UL Listing Mark: This mark is applied to products for the Canadian market. The products with this type of mark have been evaluated to Canadian safety requirements, which may be somewhat different from U.S. safety requirements. You will see this type of Mark on appliances and computer equipment, vending machines, household burglar alarm systems, lighting fixtures, and many other types of products.



C-UL US Listing Mark: UL introduced this new Listing Mark in early 1998. It indicates compliance with both Canadian and U.S. requirements. The Canada/U.S. UL Mark is optional. UL encourages those manufacturers with products certified for both countries to use this new, combined Mark, but they may continue using separate UL Marks for the United States and Canada.

For more information:

- CSA: <http://www.csa-international.org/>
- Underwriters Laboratories Inc. (UL): <http://www.ul.com/>

Setting up a Business

For information on the rules and regulations on opening a business in the United States, contact the U.S. Small Business Administration (SBA). For a complete listing of SBA offices, visit their web site and click on "Offices & Services" and select the state you are interested in establishing your business.

Information on State rules and regulations that govern establishing a business can also be found on BusinessLaw.gov. Select the State you are interested in and you will access information not only on regulations, but also state government assistance available to businesses.

For more information:

- Small Business Administration (SBA): <http://www.sba.gov/>
- BusinessLaw.gov: <http://www.businesslaw.gov/>

Taxation

Doing Business with the US

The US assesses tax either because the income being realized by a foreign company is sourced in the US or is derived from the active conduct of a trade or business in the US. The US has an extensive network of income tax treaties, which reduce the level of withholding (on gross payment) to 0-15%. In the absence of a treaty reduced rate, the

rate of withholding is 30%. The Canadian company is eligible for treaty relief, and must provide the US payor with the documentation needed to ensure that the US payor will withhold at the reduced treaty rate.

Doing Business in the US

At some point, the Canadian company may decide that it is in its best interest to be directly involved in the marketing and sale of its products in the United States. At this juncture, the Canadian company must choose the most appropriate form of business organization. There are many forms to choose from, with each offering advantages and disadvantages that should be carefully weighed.

Transfer Pricing

The principal tax issue confronting Canadian-owned US subsidiaries today is justifying to the US that they are dealing with their foreign parents at arm's length. The U.S., like other countries, seeks to ensure that it receives the appropriate tax revenue from commercial activity within its borders. One area of particular concern to the U.S. taxing authority (the IRS) is the sale of products between companies under common ownership or control (related parties). The tax due on such sales is based, in part, on the difference between the price at which the goods are bought and the price at which they are sold (transfer pricing). The IRS's concern is that related parties may set transfer prices at artificial levels, purely to avoid the full tax that would have been due had unrelated parties negotiated the price (arm's length result).

State and Local Taxation

State and local governments tax profits from activity within their borders. State and local tax on business profits range from 5% to approximately 18%. Federal taxable income is generally the starting point in determining the tax to be assessed. State and local tax on profits is deductible in computing federal taxable income, but is generally added back to compute tax at the state and local levels. If a business operates in more than one state, its income is usually allocated among the states using a formula based on property, sales and wages within and outside the various states. State and local governments impose other tax burdens on businesses. These include the duty to collect and remit sales taxes on sales to in-state customers, the collection of payroll taxes with respect to local employees, and taxes on property maintained within the state. The tax cost and administrative burden of state and local taxes are probably the fastest growing areas of tax concern in the US, and must be carefully considered. For more information on state taxes, visit BusinessLaw.gov at: <http://www.businesslaw.gov>.

Doing Business Over the Internet

Businesses around the world have discovered the Internet. The worldwide taxing community is now reacting to this change in how companies may do business

internationally. A thorough analysis of your Internet transactions would have to be made to determine if your company is required to pay taxes in the U.S.

For more information:

- IRS – Tax Info For Businesses: <http://www.irs.ustreas.gov/businesses/index.html>
- Law article "Tax Issues When Contemplating Doing Business With or Within the US": <http://www.gibney.com/LegalNews/Record/taxarticle.cfm>

Trade Shows and Business Events

While Canadian business people may enter the U.S. to attend trade shows, meet with buyers, look for reps and take orders, it is not legal to actually sell your products while you're there. You can take orders while you are in the States, but you cannot accept money in exchange for actual products while there. This is a law of U.S. Immigration and Naturalization (not U.S. Customs) and unknowing Canadians have been shocked to be turned back from the border or in some cases, have even had their products seized as they attempted to pass through Customs and Immigration.

There are only two ways to comply with the Immigration rules if you wish to have your products featured in a trade show. The first is to bring samples only to a show and write orders (which is how most trade shows are conducted), then ship your products when you return to Canada. The second option is to sell your products to an American distributor who will, in turn, resell. The only way you can be exempt from this law is if you hold dual citizenship (U.S. and Canadian) or you can provide proof of "50 per centum or more of the blood of the American Indian race".

For more information:

- Trade and Investment Event Database: <http://www.dfait-maeci.gc.ca/can-am/nonnebs/menu-en.asp>
- Export USA Calendar: <http://www.dfait-maeci.gc.ca/can-am/export/menu-en.asp>
- Exportsource - Trade Shows/Events: http://exportsource.ca/heading_e.cfm?HDG_ID=78
- Exportsource - "Successful International Trade Show Marketing": <http://exportsource.ca/tradeshows>

Disclaimer

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