Border Hassles That Put the Canadian Market Out of Reach:

What Your Business Should Know

The following paper will discuss the regulatory and logistical hurdles that a U.S. business must be aware of when shipping across the U.S./Canadian border. Each of these challenges must be understood and addressed as part of the cross-border experience.

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Background

Consider the following statement from a Canada Revenue Agency website discussion about tax changes scheduled to take effect in Ontario and British Columbia: "Under proposed changes, effective July 1, 2010, Ontario and British Columbia (BC) would combine their respective provincial sales taxes with the GST to create an HST in each of these provinces. The HST rate for Ontario will be 13% (a 5% federal part and an 8% provincial part). The HST rate for BC would be 12% (a 5% federal part and a 7% provincial part)."

This announcement from Canada Revenue Agency is typical of the policy changes that are regularly announced by the U.S. and Canadian governments – changes that have a direct impact on cross-border commerce. If your business exports regularly to Ontario or British Columbia, would you be in a position to know that the tax structure had changed? And here are some other questions to consider if you are a U.S. business that ships to Canada:

- Do you understand how any changes to tax policy might affect your liability?
- How will a change in the tax code affect the amount you charge your customers?
- How do you ensure that you are in compliance? Are you documenting the transactions accurately?

While the United States and Canada maintain the closest and most extensive trade relationship of any two countries – more than $526 billion in goods and services crossed between the two countries during 2010 (based on 2010 U.S. Census Bureau data) – the fact remains that doing business in Canada is doing business with a foreign country. While both the U.S. and Canadian governments have taken significant steps to facilitate the flow of goods, there are regulatory protocols that must be complied with for a U.S. business to successfully ship goods to Canada.

Many U.S. businesses underestimate the complexity of navigating the U.S./Canadian customs clearance process and do not thoroughly investigate their logistics carrier's Canadian capabilities. Few logistics carriers have the cross-border experience and track record needed to successfully navigate the border clearance process. And even fewer have the broad distribution capacity necessary to offer service options and flexibility to help businesses better serve their Canadian customers. U.S. businesses have learned the hard way when their shipments have been denied entry or hit with unexpected duties and penalties.

Another often overlooked – and underestimated – aspect of doing business in Canada is the country's largeness and the challenge of reaching parts of the population that live in remote regions. While the vast majority – about 80 percent of Canada's 32 million residents – live within 100 miles of the U.S. border, a business must also take into account potential consumers who live in nonurban areas. In the province of Manitoba, for example, population density is 2.1 people per square mile, and in the Northwest Territories, the figure is 0.1 people per square mile! Reaching nonurban Canadians can be a real challenge, but is an issue that a U.S. business must contend with in order to compete in the Canadian market.

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Trade Between United States and Canada

YEAR	EXPORTS	IMPORTS	TOTAL
2011	161,631.40	182,104.00	343,735.40
2010	249,105.00	277,647.50	526,752.50
2009	204,658.00	226,248.40	430,906.40
2008	261,149.80	339,491.40	600,641.20
2007	248,888.10	317,056.80	565,944.90

Source: U.S. Census Bureau, "Foreign Trade"
http://www.census.gov/foreign-trade/balance/c1220.html

Issue Overview

A thickening of the border caused by new regulatory mandates, security protocols, increased random inspections, decreased border personnel, and conflicts between systems has taken an economic toll on cross-border trade.

At a January 2011 panel discussion on U.S./Canadian border issues, one industry expert warned U.S. businesses that when shipping to Canada, "[i]f you are inefficient, you are going to pay for it…"

The speaker was Jack Ampuja, a 30-year veteran of the logistics industry and the executive director of Niagara University's Center for Supply Chain Excellence. Ampuja was commenting on the growing challenges facing U.S.-Canada cross-border shipping – challenges that have resulted from the lingering economic recession and from increased security mandates imposed since 9/11. His message to business owners was clear: Transporting goods across the border has become an increasingly complicated process as businesses must comply with a growing number of stringent – and sometimes conflicting – government regulations and security mandates. At the same time, a recession-fueled downsizing of U.S./Canada cross-border carriers means fewer qualified trucks on the road, further exacerbating the border clearance process.

In recent years, a "thickening" of the border has occurred and caused concern among businesses on both sides. This "thickening" has been caused by new regulatory mandates, security protocols, increased incidences of random inspections, decreased numbers of border personnel, and technological "improvements" that sometimes conflict with other systems and protocols. A 2008 report by Alexander Moens and Michael Cust of the independent research group The Fraser Institute found that regulatory differences between the two countries were taking an economic toll on cross-border trade – putting the two countries at a competitive disadvantage. The report found that "waiting, processing, and security measures costs can be 2 to 3 percent of total trade."

There is an economic price to be paid for the current inefficiencies in U.S.-Canada clearance procedures. The tab generally falls to businesses who find themselves faced with increased compliance fees, higher transportation costs, and penalties associated with shipments denied border entry. Navigating the border can be a tricky process for a U.S. business. Businesses make the mistake of utilizing the same carrier for both their U.S. domestic loads and Canadian shipments – assuming that domestic capabilities make them suitable for cross-border transactions. In fact, though, not every carrier has the cross-border experience to complete the job. Transporting goods into Canada requires a comprehensive understanding of the continually changing regulatory environment, compliance with electronic filing mandates, knowledge of the country's tax and tariff systems, as well as access to a solid Canadian distribution network.

A 2009 joint report by the U.S. and Canadian Chambers of Commerce concluded that the border clearance process will likely get more complicated and onerous before it improves. While the report, "Finding the Balance: Shared Border of the Future," outlined several recommendations for easing the clearance process, it is not certain what steps the U.S. or Canadian governments are likely to take in the near future. In fact, border relations was the subject of a February 2011 meeting between U.S. President Barack Obama and Canadian Prime Minister Stephen Harper. The two leaders issued a "Declaration on a Shared Vision for Perimeter Security and Economic Competitiveness" through which they expressed support for a "security perimeter" around the two countries while simultaneously attempting to remove trade barriers. The proposal must undergo strenuous U.S. and Canadian legislative and regulatory review before it can be finalized. This challenging road has led many to believe that the two leaders' vision will join other previous efforts that were unsuccessful at addressing the delicate balance between enhanced security and free trade.

Transporting goods into the Canadian market is a complicated process and must not be underestimated. Regulations and protocols are constantly changing, often with little notice. A U.S. business seeking to enter the Canadian market would be wise to entrust its Canadian-bound shipments to a qualified logistics provider that cannot only transport its goods into Canada and navigate the vast Canadian landscape but can also ensure that shipments are afforded every trade enhancement, priority clearance review, and duty/tax reduction to which they are entitled. ■

The Road to Canada is Lined with Regulatory Obstacles

From duties and fees to security compliance mandates to cargo documentation, there are a number of hurdles to cross before a shipment can be cleared for entry into Canada. In fact, a cursory look at the Canada Border Services Agency's (CBSA's) "A to Z" Index of border resources gives a good idea of just how extensive the border clearance process can be. Failure to properly comply with any of these requirements can result in punitive penalties, unexpected duties and fees, and costly delays. Every U.S. business with an interest in shipping to Canada or those that are already shipping to Canada should become familiar with the applicable requirements so there are no surprises at the border.

U.S. businesses with an interest in the Canadian marketplace or those already doing business in Canada should become familiar with the regulatory requirements to avoid border hassles.

Register Your Business with the Canadian Government. Any business that ships goods to Canada is known as a "commercial importer" and must register with the CBSA. In addition, businesses must obtain a Business Number (BN), which allows the government to readily identify a business and track its shipping – and tax payment – history.

U.S. and Canada Require Paperwork to be Filed Online – Before a Shipment Reaches the Border. U.S. businesses must comply with the Canadian government's Advance Commercial Information (ACI) system. ACI mandates that all companies sending goods into Canada submit an electronic manifest before a shipment arrives at the border. The goal is to provide prenotification and risk assessment to Canadian officials about incoming cargo so necessary security protocols can be in place when a "questionable" shipment arrives at the border.

In addition to the previously discussed pre-arrival filing mandates, other requirements may include:

- **NAFTA Certificate of Origin:** NAFTA, implemented in 1994, eliminated virtually all tariffs on goods traveling within the U.S., Canada, and Mexico that originate in the exporting country. For example, a U.S. business sending a shipment of footwear to Canada will be exempt from tariffs if every component of the footwear – leather, canvas, heels, etc.– is U.S. made. If any of the materials were obtained from a non-U.S. source, then tariffs must be paid on those non-U.S. parts. The NAFTA Certificate of Origin must be completed as a way to (a) verify that a shipment should be exempt from tariffs or (b) list those parts of the shipments that are liable for tariff assessment.

- **Shipper's Export Declaration:** This is a form required by the U.S. Census Bureau and must accompany all shipments that contain more than US$2,500 worth of a single commodity.

- **Harmonized System Code:** Before a shipment can clear the border – in fact, before a shipment can even begin the clearance process – it must have an appropriate Harmonized System (HS) Code attached. In its most basic form, the Harmonized System is an international agreement to classify goods and commodities using the same coding standards worldwide. A shipment of televisions originating in Italy would have the same six-digit Harmonized System Code assigned to it as would a shipment of televisions coming from Korea or the U.S. Each country then attaches its own supplemental code, which allows it to further categorize goods to meet unique record-keeping and reporting requirements.

The regulatory requirements listed above are not intended to be a comprehensive overview of border clearance requirements. Volumes of regulations are on the books that affect shippers of "special" products – items ranging from agricultural products to medical devices to automobiles. Businesses – or their designated logistics carrier – have the onus of determining which regulations are applicable, and then taking the steps necessary to ensure compliance. Businesses – or their designated agents – are also responsible for staying current with the frequent changes to Canadian and U.S. customs procedures. ■

Costs of Cross-Border Shipping Can Add Up

Taxes

While NAFTA eliminated tariffs on most U.S. goods crossing the border into Canada, there are still other taxes and fees with which a business must contend. First, there are three types of sales taxes imposed throughout Canada:

1.) Goods and Services Tax: Most goods entering Canada are subject to a Goods and Services Tax (GST), which is a 5 percent federal tax imposed on goods and services sold in Canada for domestic consumption.

2.) Harmonized Tax: Goods destined for Ontario, Brunswick, Newfoundland, and Labrador will have an 8 percent provincial retail sales tax added to the 5 percent GST. (The Provincial Sales Tax (PST) in British Columbia is 7 percent, and Nova Scotia increased its provincial rate to 10 percent in July 2010). Together, the combined taxes comprise a Harmonized Sales Tax (HST). The HST is administered by the Canada Revenue Agency, which, after collection, disburses the appropriate amounts to each participating province.

3.) Provincial Sales Tax: Provinces that do not participate in the HST collection process do impose their own taxes – they collect at the local level, rather than through the Canada Revenue Agency. Provincial Sales Tax (PST) vary by province but range from a low of 5 percent imposed by Saskatchewan to a high of 10 percent collected by Prince Edward Island.

Tariffs

NAFTA eliminated tariffs on all goods manufactured in the U.S. that are shipped to Canada. However, tariffs are imposed on any non-U.S. manufactured components. In other words, if your business manufactures products that include parts obtained from non-U.S. suppliers, you will have to pay a tariff on those parts.

If goods are eligible for preferential NAFTA tariff treatment, a Certificate of Origin must be filed, affirming that the goods meet NAFTA eligibility requirements. If it is determined that products are not NAFTA-compliant, and are therefore subject to tariff collection, the shipper must take steps to understand and comply with Canada's customs tariff policies and procedures.

Customs Brokerage Fees

Enlisting the services of a customs broker to navigate the border clearance process is a common practice. Businesses generally find that allowing an experienced, reliable broker to handle the regulatory and security processes on their behalf is well worth the price. But buyer beware! According to the CBSA, customs brokerage fees are not regulated, so it is important to understand the cost of a broker's services. When reviewing cost proposals, confirm – in writing – that the carrier has included customs brokerage fees as part of the overall cost.

Penalties

Failure to comply with the applicable CBSA regulations comes at a cost – namely, in the form of monetary fines and delays as CBSA personnel determine how to process a noncompliant shipment. Shipments that arrive at the border without having fulfilled pre-arrival requirements, or that have incomplete or missing documentation, are forwarded to CBSA's Administrative Monetary Penalty System for review. Penalties are generally assessed based on the type, frequency, and severity of the failure to comply. ■

Beware Of Hidden Fees That Create Customer Service Nightmares

Avoid customer service nightmares by providing a landed cost for your customer.

As complex as the revenue side of the border clearance process can be, it does not compare to the outrage from a consumer who is presented – at time of delivery – with an unexpected invoice for duties, fees, and shipping changes, all due to a shipper not including the fees in the original invoice. In retaliation, consumers have refused to accept delivery of these U.S.-based shipments, and others have sought relief in the courts.

A U.S. business can avoid this customer service nightmare by ensuring – in writing – that the shipper transporting the goods into Canada has provided a landed cost for the entire transaction. A landed cost is a firm price quote that includes all shipping costs, brokerage fees, duties, taxes, and associated border clearance fees. With a landed cost, all shipping costs are paid up front at the time of purchase, so there are no surprises at the time of delivery. Assessing the total shipping and border clearance costs for a given shipment is not difficult for a logistics provider that is experienced and knowledgeable about customs requirements and has a reliable Canadian transportation network in place to guarantee delivery. ■

Identify Government Programs That Reimburse Your Business

U.S. businesses may be eligible to participate in the U.S. Customs and Border Protection's Duty Drawback Program. Intended as a way to prevent businesses from being overtaxed, the Duty Drawback Program gives special consideration to businesses that pay duties on goods imported into the United States that are then used in the manufacture of products that are subsequently exported. For example, a U.S.-based clothing manufacturer may import silk ribbon from Japan for use in a new line of dresses. The company is required to pay duties on that ribbon when it is imported into the U.S. After the ribbon is sewn onto the dresses and packaged for export, it will again be subject to taxation. The Duty Drawback Program is intended to address this inherent unfairness by returning the "second" duty paid on the same item.

To participate in the Duty Drawback Program, a business needs to be proactive – the government will not reimburse a business unless proper paperwork is filed. One customs broker estimates that as much as 90 percent of duty drawback refunds go unclaimed each year as unaware businesses simply do not file claims.

Another important program is Canada's Non-Resident Importer (NRI) program. Through NRI, U.S. companies are able to act as "importers of record" and prepay all taxes, duties, and fees on goods entering Canada, before they arrive at the border. There are two major benefits of this program. First, it levels the playing field between U.S. and Canadian companies by eliminating any trade obstacles that may have dissuaded a U.S. business from entering the Canadian market. Second, it allows a U.S. company to pass along all fees to consumers at the time of purchase. No more instances of the delivery man arriving at a consumer's doorstep with a second invoice full of unexpected customs and brokerage fees. ■

Returns Management Triggers a New Set of Customs Regulations

On average, 8% of purchases are returned from Canada – as much as $20 billion in goods will be transported back to the U.S.

During 2010, U.S. companies sent almost $250 billion worth of goods to the Canadian market. Given that an average 8 percent of purchases are returned for one reason or another, as much as $20 billion worth of those goods will be transported back to the U.S. With this much at stake, and with customer relationships on the line, U.S. businesses need to factor in a reliable returns process for bringing goods back from the Canadian market.

The Canada-to-U.S. returns process involves an international transaction, which mandates compliance with the regulatory and border regulations of both the United States and Canada. And while the two countries have made great strides in recent years to facilitate the border clearance process, several regulatory and legislative mandates remain. And unless a logistics provider has a complete understanding of those mandates, the border-crossing process can be a bureaucratic nightmare resulting in shipments that are refused clearance into the U.S., penalties and fees, and precious time wasted filling out forms that could have been (and should have been) completed prior to the shipment's arrival at the border.

Border Hassles

A March 2008 report by the Canadian American Business Council compiled a list of paperwork requirements necessary to return goods to the U.S.:

- **Invoice**
- **Manifest Packing Slip**
- **Bill of Lading**
- **Hazardous Materials Form (for flammable/explosive materials)**
- **Other Government Agency (OGA) Form (for regulated products)**
- **Customs Form 3461 - Release Document**
- **Customs Form 7501 - Customs Entry Form**
- **Canada Customs Export Document**
- **NAFTA Certificate of Origin**
- **Making Waiver (for unfinished consumer goods)**
- **Foreign Shipper's Declaration (if goods were orginally purchased in U.S.)**
- **Manufacturer's Affidavit (if goods were orginally purchased in U.S.)**

In addition, goods entering the U.S. may also be subject to tariffs and product fees, depending on the nature of the shipment. Every product entering the U.S. is assigned to a specific "product category" and "tariff code" as outlined in the Harmonized Tariff Schedule of the United States. The Schedule outlines specific duties associated with each product category. Failure to properly code a particular shipment could result in processing delays, penalties, and higher duties owed than originally expected. ■

Security Mandates Have Increased Border Wait Times

Cross-border volume between the U.S. and Canada declined by more than 30%. During the volume decrease, border wait times actually increased.

The U.S. and Canadian governments have taken steps to ensure the safety of their national borders by proactively monitoring shipments attempting to enter their countries. The Canada Border Services Agency (CBSA) and the U.S. Customs and Border Protection (CBP) have imposed several mandates in order to (a) learn about items enroute to the U.S. and Canada before the shipments arrive at the border; (b) prepare for any incoming shipments that include potentially hazardous materials; and (c) prevent contraband, illicit materials, or terrorist-related materials from entering the country.

While there is little dispute about the goals of the security enhancements, many businesses and transportation providers are increasingly concerned about the impact compliance has had on the border clearance process. Specifically, concerns that increased random inspections are causing inordinate delays and that new compliance mandates are confusing and redundant.

At the height of the recent economic recession, cross-border volume between the U.S. and Canada declined by more than 30 percent. During this volume decrease, border wait times actually increased during that same period. While some have speculated that the border delays were caused by reductions in manpower stationed at the border – which may have been a contributing factor – a greater concern is that increased "random" inspections are resulting in longer lines. As the economic recovery picks up steam and trade between the two countries accelerates, there is legitimate concern that these delays will become even more pronounced and destructive to the flow of traffic.

A report by The Conference Board of Canada found that many businesses that rely on cross-border sales have begun to stockpile inventories – at an increased cost – because of the uncertainty of the border-crossing experience. Businesses simply cannot be certain that a shipment will be delivered on time and have incurred the expense of maintaining high inventory levels as a way to mitigate the risk of a late delivery.

While there is strong support within both the U.S. and Canadian business communities for securing the border, there is growing frustration at the lack of coordination among government agencies charged with border security and the inclination to address security

As the economic recovery and trade between the two countries accelerates, there is a legitimate concern that delays will become more pronounced.

concerns with a "one-size-fits-all" approach to screening. In the United States alone, border security falls under the purview of the Department of Homeland Security, via the Customs and Border Protection agency, the Department of Justice, via the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, and Firearms (as well as under the U.S. Congress). With so many agencies involved, it is not surprising that many security mandates are redundant and sometimes even contradictory.

The U.S. and Canadian governments have recognized the onerous burdens the new security requirements have placed on businesses and have taken steps to try and streamline the process wherever possible. Each country has committed to improving its "expedited clearance" programs, which allow shippers and businesses that have met certain criteria to preclear their cargo. In August 2008, the two countries signed an agreement to align security standards so that a business approved for expedited clearance in Canada would receive similar treatment in the U.S. and vice versa.

In February 2011, an agreement was announced to move forward on the creation of a "security perimeter" around the two countries, which would have the dual purpose of enhancing border security while simultaneously facilitating the flow of goods across the border. The fate of that agreement remains uncertain, however, as neither the Canadian or U.S. legislature has taken steps toward formalization. ■

Conclusion

As the above discussion makes clear – it can be very difficult to navigate the U.S./Canadian border clearance process. Paperwork, security clearances, duties and taxes, customs declarations, and screening procedures are just some of the hurdles that every shipment must clear. And once over the border, a shipment then must enter a Canadian distribution network that can ensure delivery to its final destination – regardless of where that final destination may be, given Canada's vast geographic landscape.

Managing the cross-border process is not to be taken lightly. It is a highly bureaucratic process that can be very confusing – and very fluid. Both the U.S. and Canadian governments continually issue new clearance requirements and security protocols – almost on a daily basis. Unless a business is prepared to dedicate a significant amount of time and resources to ensuring compliance with the clearance process, enlisting a qualified logistics provider is probably a smart option. But once the decision is made to enlist a logistics provider, it is essential to choose wisely. Many logistics providers claim to have cross-border capabilities but few have the proven track record and expertise to offer a seamless border crossing and guaranteed on-time delivery within the Canadian market.

A qualified cross-border provider will be able to provide the following:

- Documentation that they are a participant in "trusted shipper" programs offered by both the U.S. and Canadian governments
- A "landed" or all-inclusive quote – in writing – stating exactly what the total cost will be for all customs fees, taxes, brokerage fees, and shipping costs
- A detailed Canadian supply chain that offers flexibility and service options to meet your schedule
- An extensive distribution network throughout Canada that can guarantee delivery to even the most remote regions of that vast country

Having a qualified and competent logistics partner on your team will not only eliminate the hassles and headaches of cross-border shipping but will also help you identify new opportunities within the Canadian market as well as efficiencies within your supply chain.

As U.S./Canada cross-border trade continues to rebound from the economic recession – surface trade during the first quarter of 2011 was up more than 30 percent over 2009 levels – logistics will be an important factor in determining whether a business is able to compete in the Canadian market or whether its goods are left at the border. ■

Purolator. We deliver Canada.
Purolator is the best-kept secret among leading U.S. companies who need reliable, efficient, and cost-effective shipping to Canada. We deliver unsurpassed Canadian expertise because of our Canadian roots, U.S. reach, and exclusive focus on cross-border shipping.

Every day, Purolator delivers more than 1,000,000 packages. With the largest dedicated air fleet and ground network, including hybrid vehicles, and more guaranteed delivery points in Canada than anyone else, we are part of the fifth largest postal organization in the world.

But size alone doesn't make Purolator different. We also understand that the needs of no two customers are the same. We can design the right mix of proprietary services that will make your shipments to Canada hassle free at every point in the supply chain.

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