MNDM's Logistics Newsletter

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EXPORTING TO THE U.S. - THINGS YOU SHOULD KNOW

Complying with U.S. Customs and NAFTA regulations can make exporting to the United States a challenging proposition, encompassing many risks and obligations. This newsletter provides many of the general requirements you need to know to improve your export practices.

NAFTA - North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) has been in effect now for a dozen years and since January 1, 1998, most commodities that meet preferential treatment under NAFTA are **"Duty Free"** when exported/imported between Canada and the United States. To obtain duty free treatment under NAFTA, the exporter must complete and qualify under the terms of the NAFTA **"Certificate of Origin."** This certificate verifies that the goods qualify for preferential treatment based on one of the six specified criteria listed therein. As an example, Criteria A states; "The good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries, as referred to in Article 415" of the act. **NOTE: The purchase of a good in the territory does not necessarily render it, "wholly obtained or produced."**

Documentation Requirements

Generally when exporting to the United States, four documents are required:

- Bill of lading
- Commercial/proforma invoice
- Packing slip
- Certificate of Origin

Bill of Lading - is a contract of carriage between the shipper and the carrier for the transportation of goods between specified points.

Commercial Invoice - is considered by US Customs as the primary import document since it is used to examine, release, appraise and classify imported goods. It is imperative that the importer provides the specific invoice information required by Customs otherwise the release of shipments might be delayed until the proper, adequate information is supplied; shipments could also be designated for intensive examination.

Packing Slip - document showing exactly what goods are packed into each particular package. A separate packing slip is required by Customs when mixed or multiple items are exported.

NAFTA Certificate of Origin - must be completed in duplicate for all shipments when claiming preferential treatment under NAFTA. The original is attached to the Commercial Invoice. A blanket certificate may also be issued to cover shipments of the same product for one year and are kept on file by your Customs Broker.

Exception: In accordance with Article 503 of NAFTA, Customs does not require a Certificate for non-commercial importations nor for commercial importations with a total value of US$2500 or less (regardless of whether the entry is formal or informal). A declaration is required on the customs invoice and it is recommended that U.S. Customs be contacted for the required wording.

It is further recommended that a Certificate of Origin accompany all shipments.

THE U.S. CUSTOMS *MOD ACT*

To compete successfully in U.S. markets, most Ontario exporters sell their product on a *FOB Destination / Freight and Duty Prepaid* basis. The destination point in the United States may be the customer's actual place of business, or it may be a facility in a border city from where goods are forwarded to a final destination. Although this type of trade term puts an Ontario firm on equal footing with U.S. competitors, it also requires the exporter to retain ownership of (and responsibility for) the goods until delivery to the customer. In short, the Ontario firm becomes the "importer of record" as the goods cross the border into the United States.

Changes implemented in the *MOD ACT* redefined the responsibilities between the US Customs and the importer of record. Legal responsibility has been placed on the importer of record to ensure that "reasonable care" and "due diligence" has been exercised in providing accurate and complete information. Failure to comply can result in penalties. Exporters to the U.S. should make themselves aware of the requirements of this act and the implications on their exports.

U.S. Customs Valuation and Statistical Reporting

The most commonly used basis for Customs valuation is the "Transaction Value." US Customs will accept bona fide sales prices subject to certain deductions and additions, i.e. a payment discount such as 2% net 30. If such a discount were shown on the invoice, the customs broker would reduce the invoice value by 2% to arrive at the dutiable value on the assumption that the importer takes advantage of the discount. If the discount is not taken, Customs and the broker must be notified so the dutiable value can be adjusted. Additional duty or fees could result.

As reported, U.S. import law requires accurate reporting for all imports. This includes reporting the value in accordance with the valuation statute for all merchandise including that free of duty, or dutiable at either ad valorem or specific rates. On exports from Canada, reportable costs include freight, insurance and all other charges, costs and expenses incurred in bringing the goods from the point where the shipment begins its journey to the U.S. to the first U.S. port of entry. Export invoices should reflect the cost of Canadian inland freight.

The valuation law requires the following adjustments to the transaction value:

Additions: *selling commissions; value of assists to produce the goods; royalty or license fees; proceeds of any subsequent sale, disposal or use of the imported goods accruing to the importer.*

Deductions: *international freight, insurance and other costs incidental to the goods; customs duties and U.S. Federal taxes currently payable on the imported goods; after-importation transportation costs associated with the goods; after-importation cost for construction, erection, assembly, maintenance or technical assistance.*

Customs User Fee

Every vehicle carrying merchandise (including private vehicles) when crossing the U.S. Border is assessed a customs user fee of $5.00 per shipment by U.S. Customs at the time of exportation. If frequent border crossings are anticipated, a decal that is valid for one year may be purchased for US $100.00.

Federal Identification Number

When exporting to the United States, the commercial invoice must show the consignee/buyers Federal Identification Number (F.I.N.). This number that is also known as the IRS Number, Tax Number or Employee I.D. Number is the U.S. Federal Government number that is used to identify American firms for tax purposes.

If a shipment is made to an individual in the U.S. versus a company or business, then the individuals American Social Security Number must be shown on the commercial invoice and not the F.I.N. If the American consignee's F.I.N. is not shown on the commercial invoice, the US Customs Broker can obtain the number from the consignee and include this service as part of their normal brokerage fees.

If the F.I.N. is not available an importer identification shall be assigned on the customs form by the U.S. Customs office where the entry is received. The Canadian exporter receives a copy and this number then becomes the F.I.N. to be used on all future customs transactions.

Marking Country of Origin

The United States requires country of origin markings on most imported articles. In general terms, i.e. "Made in Canada", "Printed in Canada", "Made in Japan." If the article (or the container when the container and not the article must be marked) is not properly marked at the time of importation, a marking duty of 10 per cent of the customs value of the article will be assessed.

In the U.S.A., the Marking Rules are very complex and to ensure compliance, it is strongly recommended that guidance be sought from an U.S. Customs Broker or contact the United States Customs Service at the nearest border crossing.

Merchandise Processing Fee (MPF)

The U.S. Customs assesses a user fee called the Merchandise Processing Fee or MPF that applies to all commercial shipments entering the United States. Fees vary for both informal and formal entries. **However, if the goods qualify under the terms of the NAFTA, the MPF is not charged.**

The above is a brief overview of customs requirements for exporting to the United States. For more comprehensive information, contact a US Customs Broker or contact the US Customs Service at www.customs.ustreas.gov

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