

**AVOIDING DELAYS AND UNEXPECTED COSTS:**

# Facilitating the U.S.-Canada Border Clearance Process



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# Introduction

A Pennsylvania-based musical instrument manufacturer thought it had covered all its bases when it began shipping to the Canadian market a few years ago. It had done its research and knew there was demand among Canadian consumers for its highly regarded acoustic guitars. It had lined up an impressive list of music stores that were eager to begin offering its instruments, and it enlisted an internationally recognized logistics/transportation provider to handle distribution and shipping. But what the company failed to anticipate was that some of the types of wood used in the manufacturing process required special export authorization from the [U.S. Fish and Wildlife Service](#).

Without that authorization, the guitars were prohibited from leaving the U.S. Similarly, the Canada Border Services Agency (CBSA), acting on behalf of [Environment Canada](#), required a special import permit along with a detailed description of the goods before they would be eligible for importation.

Failure to understand these requirements resulted in excessive customs delays, missed delivery deadlines, and disappointed Canadian customers.



*Many U.S. agencies, including the U.S. Fish and Wildlife Service, maintain strict export and import requirements for products that fall under its jurisdiction.*

And to make matters worse, the Fish and Wildlife Service insisted on assessing an inspection fee on each individual guitar rather than charging a single fee for an entire lot of identical products.

While this situation was eventually resolved – the manufacturer switched its business to a logistics provider with extensive customs experience that untangled the dispute – it is a good example of how wrong things can go at the border.

As a further example, consider the analysis by [Ernst & Young](#) in assessing the U.S./Canadian customs process: “[I]mporting and exporting goods into and out of Canada is complex and requires a good

understanding of multiple laws and regulations. Many companies fail to appreciate just how complicated and multifaceted the legal and compliance requirements surrounding these commercial activities actually are. There are many potential ‘traps’ and there can be costly consequences for the misinformed and unprepared.”

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*Source: Ernst & Young 2013*

Fortunately, though, it doesn’t have to be this way. Clearing goods through customs can be a painless part of shipping to Canada if a shipper aligns with an experienced logistics provider. A partner with a proven track record will ensure shipments arrive at the border in full compliance with all CBSA mandates and with all taxes and duties paid. But a truly experienced partner will go beyond and take advantage of opportunities to facilitate the process and even reduce clearance costs and duty obligations.

Did you know, for example, that the Canadian government does not allow U.S. businesses to collect sales tax from Canadian consumers or to act as an “importer of record” in shipping goods to Canada? This puts U.S. businesses in the unpleasant position of having to present Canadian customers with an unexpected invoice at time of delivery to collect the taxes and brokerage fees. It can also mean that a Canadian customer would have to become involved in the importation process and travel to a CBSA office to claim a shipment.

This can be avoided though if a U.S. business registers with CBSA as a non-resident importer

(NRI), which entitles the business to collect tax and oversee the importation process. The Non-Resident Importer program has been vital to the success of many U.S. businesses operating in Canada. Unfortunately, though, the program is not advertised, meaning many businesses do not even know it exists.

An experienced logistics provider will automatically register its customers as NRIs, usually as a normal course of business. There are other opportunities as well whereby the customs compliance process can be facilitated by taking advantage of favorable trade programs, by staying abreast of changes to requirements, and – this may seem obvious – by ensuring that all paperwork is completed in full and submitted on time.

As the following discussion will make clear, while every shipment entering Canada must undergo a thorough customs clearance, not every one has the same experience. A business can ensure that its shipments consistently have a highly positive experience by enlisting a logistics provider with deep Canadian customs experience and a commitment to finding efficiencies wherever possible.

## Leaving the United States – Ensure Export Eligibility

For some U.S. businesses, problems with the customs clearance process begin with a failure to determine if their goods are even eligible for export. Most goods are, but a business needs to be certain that its products are not subject to special compliance procedures or to an outright export prohibition.

The [U.S. Customs and Border Protection agency \(CBP\)](#) enforces export regulations on behalf of several government agencies, including the U.S. Fish and Wildlife Service; Department of State; Bureau of Industry and Security; Bureau of Alcohol, Tobacco and Firearms; and the Nuclear Regulatory Commission; among several others. An exporter must determine if its product falls under the regulatory control of any U.S. agency and take steps to ensure compliance.



*Depending on the type of materials used in the manufacturing process, wooden instruments, including guitars, require special permits before they can be exported from the U.S. or imported into Canada. Source: [Jedistar National Flag Guitars](#)*

For example, the guitar manufacturer mentioned previously could have avoided significant delays and fees if the U.S.

Fish and Wildlife Service had been consulted early in the process. Had the agency been brought into the process, it would have been apparent that, since [musical instruments](#) often are manufactured from types of wood and ivory considered “endangered” or “threatened,” exports are subject to an international treaty (Convention on International Trade in Endangered Species – CITES) and several U.S. federal mandates, including the Lacey Act and the Endangered Species Act.

Assuming the instruments did not contain any materials specifically prohibited from export, the manufacturer could have obtained USFW approval by successfully applying for a permit and supplying required information and documentation.

Similarly, a business needs to determine if its product is included on the [Commerce Control List \(CCL\)](#). Maintained by the Department of Commerce, the Commerce Control List includes products that require a special export license or that may be banned from exportation. In general, items on the CCL list are considered “dual-use goods,” which have both military and civilian purposes. This can include computers, software, vehicles, aircraft parts, and even pathogens.

Again, while the vast majority of exports do not require additional scrutiny by the U.S. government, an exporter must err on the side of caution and take steps to ensure that its products are eligible for exportation and that all necessary permits and documentation are in order.

## U.S. Exports to Canada Benefit from an “Understanding” to Share Data

U.S. exports are generally required to comply with specific documentation requirements, including assignment of a product classification code known as a [“Schedule B”](#) number. The Schedule B list of export tariff codes is maintained by the Census Bureau and is used in the compilation of statistical trade data. For most shipments, the Schedule B code would be included on a document called [Electronic Export Information](#) (EEI) and filed with CBP electronically through the [Automated Export System \(AES\)](#).

The process is different though for shipments to Canada.



*Since 1987 the U.S. and Canada have had in place a [“Memorandum of Understanding”](#) through which the two countries agree to exchange import statistics. As the U.S. Census Bureau explains, “in essence, each country shares its import data to be used as the other country’s export data.”*

As a result, the Census Bureau and its Canadian counterpart, Statistics Canada, rely on each other’s import statistics for use as their export statistics, thus reducing the reporting burden on exporters.

While this agreement extends to the overwhelming majority of U.S./Canadian cross-border shipments, electronic filings are required, as outlined in the [Federal Register](#), for shipments that require export licenses and for shipments that will only be held in Canada temporarily.

## Facilitating the Process – Shipment Preparation

Research by [Peerless Media](#) found that 63 percent of respondents have had shipments delayed at the border, and 47 percent of the time the delay was due to incomplete or missing paperwork. Further, delays are taking a toll, with one survey respondent noting: “Delays at the border have increased our costs by driving up man-hours and payroll due to service disruptions.”

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*Source: [Peerless Media](#)*

Interestingly, though, most paperwork and documentation delays can be avoided. Common sense says that a customs form should be completed in full. So the question then is why would anyone submit a form with missing information? In some instances, information is omitted simply because of an oversight. Other times, the individual completing the form may not have the required information or understand what is being requested.

The bottom line is that incomplete documentation and missing paperwork are the top reasons for shipment delays, which is why most businesses choose to entrust the compliance process to an experienced customs broker or logistics provider. According to Customs Border Protection Commissioner R. Gil Kerlikowske, [90 percent](#) of all U.S. import transactions are filed through a broker. And, as Commissioner Kerlikowske said at a meeting of the National Customs Brokers & Forwarders Association, “the complexity of the import process requires a knowledgeable, licensed agent to advise clients and ensure compliance.”

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*Source: R. Gil Kerlikowske, CBP Commissioner*

In addition to ensuring accuracy of all required documentation, a third-party expert can facilitate the compliance process in other ways, including tariff classification, identifying the correct terms of shipping, and identifying any “other government department” compliance mandates.



## Tariff Classification

Every product entering Canada must be assigned a 10-digit [Customs Tariff](#) code that is used to assess tariff and duty obligations and to assist in determining eligibility for free trade agreement benefits. Canada's tariff coding system, like virtually every other developed country's, is rooted in the Harmonized Commodity Description and Coding System (HS), developed and maintained by the Brussels-based [World Customs Organization](#).

In many instances, there are only slight variations between codes. But, assigning an improper code can have a substantial impact on the amount of tariff that is assessed. For example, [Chapter 57](#) of the tariff schedule includes codes for "Carpets and other Textile Floor Coverings." Within that chapter, subsection 5701.10.90 covers carpets and textile floor coverings "with pile inserted and knotted during weaving or knitting," while 5701.90.20 includes products that were "handhooked, that is, in which the tufts were inserted and knotted by hand or by means of a hand tool." Sounds like a slight product variation, but the tariff code assigned to each is different.

## Tariff Classification and NAFTA Eligibility

Selecting the correct tariff code can also affect eligibility for North American Free Trade Agreement (NAFTA) benefits. While NAFTA has eliminated tariffs on domestically produced goods traveling between the U.S., Canada, and Mexico, there are very specific rules with regard to the meaning of "domestically produced." In certain situations, a product can contain a certain percentage of component materials that did not originate in the NAFTA partner countries and still qualify for NAFTA benefits.

To begin the process, two key determinations need to be made: A product must be [assigned](#) a proper tariff code, which will be used to determine if the product is eligible for preferential tariff treatment. Then, NAFTA's "rules of origin" will determine if the product is eligible for NAFTA benefits. NAFTA's rules determine eligibility, including the permissible amount of non-NAFTA components a product may contain. If a shipment qualifies for NAFTA benefits, a Certificate of Origin must be completed and accompany all shipment documentation.

Thus, it is very important for a product to be assigned the tariff code that best meets its precise characteristics. Unfortunately, though, determining the exact code can be a time-consuming and exacting process, and unless the individual making the classification assignment truly understands the process, it is easy for errors to occur.

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And while every business understands the need to pay duties and tariffs, there is no reason to pay more than is legally owed. Not only does a misclassified shipment run the risk of missing out on trade benefits, or of overpaying duties, but it also faces potential fines and legal repercussions.

## Other Government Departments

While most businesses understand the need to comply with CBSA requirements, many are unaware that more than a dozen additional Canadian government departments and agencies also have control over products entering Canada.

Together, these government entities are referred to as “other government departments” and have established very specific importation requirements for products that fall within their jurisdiction. CBSA enforces these mandates on behalf of the OGD, although any final determination about a product’s eligibility will be made by the relevant agency.

The Canadian Food Inspection Agency (CFIA), for example, oversees imports of all food products into Canada, and Transport Canada regulates importation of vehicles and tires.

In general, if a product triggers OGD compliance mandates, a shipper can expect additional paperwork requirements, including a special permit, license, or other certification.

## Terms of Service

Shipping to Canada can be further exacerbated when the parties involved in the transaction fail to agree on established terms of service. This can be a confusing exercise, but is critically important.

International shipping operates under a uniform set of standards – known as Incoterms – that establish clear expectations and responsibilities between buyers and sellers. The word “Incoterms” is shorthand for “International Commerce Terms,” and they are developed and maintained by the International Chamber of Commerce (ICC) located in Paris, France.



*Incoterms allow all parties in an international transaction to have a clearly defined understanding of responsibilities and terms of service. Source: [International Chamber of Commerce](#)*



Because of Incoterms, [all parties](#) in an international transaction – importers, exporters, lawyers, transporters, and insurers – have a clear understanding of what constitutes “delivery,” for example, and which party is responsible for unloading a vehicle, who is liable for certain payments, and who has responsibility for customs compliance. This avoids costly mistakes and misunderstandings.

The current list includes 11 specific Incoterms, which are divided into two categories, based on mode of [transport](#). For purposes of ground shipments traveling between the United States and Canada, Incoterms choices are generally limited to the three terms commonly referred to as “Arrival Group D.” Within this category are the Delivered at Terminal (DAT), Delivered at Place (DAP), and the Delivered Duty Paid (DDP) options.

The primary difference between these three terms of service is that a DDP transaction places most responsibility on the shipper, including responsibility for payment of customs, taxes, and brokerage fees. DAT and DAP shipments place these responsibilities on the importer/buyer.

Another option for a U.S./Canada transaction is the Ex Works (EXW) Incoterm, which places nearly full responsibility for the entire transaction on the buyer/importer. Since most businesses do not have the internal resources to manage their international shipping processes, EXW is generally not a viable option.

The choice then really comes down to “duty paid or duty unpaid.” Does it make more sense for a U.S. business to pre-pay its customers' customs fees and transaction costs at time of purchase, or is it preferable to have the customer pay those costs at time of delivery? Also, under what circumstances is it preferable for a U.S. business's Canadian customer to oversee the importation process, as opposed to having the U.S. business bear responsibility?

## Trade Facilitation Programs



The border clearance process is complicated, but a shipper can avoid making it more burdensome than it has to be. By taking advantage of government programs designed to facilitate the process, a shipper can minimize the time – and cost – of clearing goods through customs.

- **Non-Resident Importer Program:** U.S. businesses are not permitted to collect Canadian sales taxes or to act as an “importer of record” in clearing goods through customs. This puts a U.S. business in the unpleasant position of having to collect duties and taxes from a Canadian customer at time of delivery, via an unexpected – and unwelcome – invoice. In addition, a Canadian customer may need to travel to a CBSA office to collect its shipment. But CBSA allows U.S. businesses to register as “non-resident importers,” whereby they are permitted to collect taxes and act as importers of record. For many U.S. businesses, registering as a non-resident importer has been a game changer. Beware though – a surprising number of logistics providers are either unaware of the program or do not appreciate its implications. As a result, not every U.S. business takes advantage of the program,

which essentially levels the playing field between U.S. and Canadian businesses.

- **Trusted Trader Programs:** A U.S. business can ensure that its shipments benefit from expedited clearance upon arrival at the Canadian border by ensuring that its logistics partner is a “trusted trader” program participant.

Both the U.S. and Canada maintain programs through which qualified businesses voluntarily undergo extensive security reviews and vouch for the integrity of their own supply chain, as well as for their business partners' supply chains. In exchange, trusted trade participants receive a number of benefits, including expedited border clearance.



*The Customs-Trade Partnership Against Terrorism offers expedited shipment clearance and other benefits to qualified U.S. businesses.*



*CBSA's Partners in Protection offers similar benefits to qualified Canadian businesses.*

- In the United States, the primary program is called [Customs-Trade Partnership Against Terrorism](#) (C-TPAT)

and is administered by CBP. In Canada, the program is called [Partners in Protection](#) (PIP) and is administered by CBSA. Fortunately for the trade community, the two programs are highly aligned. A C-TPAT member can join PIP, and vice versa, by completing a brief supplemental package. Thus, members wanting to participate in both programs may avoid completing an entirely new security profile and undergoing an additional validation.

- **Free and Secure Trade (FAST):** Once a business is approved as a member in either PIP or C-TPAT, it is eligible to participate in the [Free and Secure Trade \(FAST\)](#) program. FAST allows expedited processing for commercial carriers whose truck drivers have completed background checks and fulfill certain eligibility requirements. FAST participants have access to designated “FAST lanes” located at several major U.S./Canadian border-crossing points, and this can have a significant impact on the time it takes to move a shipment across the border.
- **Courier Low Value Shipment (CLVS) Program:** Businesses with shipments valued at less than CAD \$2,500 can benefit from CBSA's Courier Low Value Shipment. Essentially, the program simplifies the clearance process for low-value goods transported via a participating courier. Prior to arrival at the border, the courier provides CBSA with a “Consist List,” which details the contents of a shipment. CBSA will then choose to release the goods into Canada or detain the shipment for further inspection. (Please keep in mind, the CLVS program is not available for shipments subject to OGD regulations.)

## Minimize Fees and Duty

Opportunities exist for U.S. businesses to minimize – even eliminate – duty and tariff obligations on shipments to Canada. Duty relief is available via government programs, free trade agreements, and effective application of tariff classification codes. But beware – CBSA and CBP agents generally set a high bar for reduced duty claims. As such, the process can be highly exacting, confusing, and time-consuming – even though businesses are legally entitled to the reduced benefits!

Among the opportunities for duty reductions:

- **Duty Drawback:** U.S. businesses are entitled to a refund of up to 99 percent of import duties paid on products that are subsequently exported. The refund is officially called a “duty drawback,” and the concept dates back to the earliest days of our country. The duty drawback process is administered by U.S. Customs and Border Protection, which considers the refund an “entitlement” rather than a “right.” As a result, the drawback filing process is very complicated and highly exacting. So much so that most businesses do not bother to apply for refunds to which they are legally entitled. In fact, more than \$2 billion in drawback funds go unclaimed each year.
- **Tariff Classification:** Every product entering Canada must bear a 10-digit identifying code, as rooted in the internationally recognized

[Harmonized Commodity Description and Coding System \(HS\)](#). The HS includes thousands of different product classifications, and code assignments can vary based on slight product variations. Products that are misclassified run the risk of being assessed higher tariff rates than necessary or of missing out on trade benefits.

- **North American Free Trade Agreement (NAFTA):** A key NAFTA provision is the elimination of tariffs on virtually all [originating](#) goods traveling between the U.S., Canada, and Mexico. But determining whether or not a product fits within NAFTA’s terms for “origination” can be tricky. Under NAFTA, origination is not restricted only to goods produced within the U.S., Canada, or Mexico. Instead, the agreement makes allowances for products to include percentages of non-NAFTA materials and still qualify for preferential benefits. To determine if a product is eligible for NAFTA benefits, it is necessary to consult NAFTA’s [rules of origin](#), which specify content requirements for all products. Once a product is determined to qualify for preferential treatment, a NAFTA Certificate of Origin must be completed.
- **Consolidation:** Consolidation is offered by qualified logistics providers as a way to gain efficiency in the border clearance process while also reducing freight costs. Essentially, several smaller shipments are

consolidated into one larger unit. The single large shipment clears customs as a single entry, thereby reducing inspection time and eliminating the need to file paperwork for each component. Not every carrier has the capacity to offer consolidation services, so a business must do its due diligence.

## Facilitating the Clearance Process – Electronic Compliance

The good news is technology has revolutionized the way in which both the U.S. and Canada manage the border process. But the not-so-good news is that the two countries still have a way to go before their data entry and processing systems are synchronized. In many cases, U.S. and Canadian businesses must enter identical information multiple times into different electronic data systems before all requirements are satisfied.

Each country is working on a “single window initiative,” whereby data will be entered into a central location and from there funneled to any other agencies that may need the information. For each country, significant parts of the SWI are now operable, with full integration expected by the end of 2016. And to the extent possible, the two countries have committed to finding ways to align data to minimize the burden on the trade community.

Until then, businesses shipping to Canada should be aware of different electronic filing programs offered by CBSA that serve different purposes. In some instances (eManifest), compliance is mandatory, while other systems are offered to facilitate the clearance process.

Participation in any electronic program begins with submission of an [application](#) to CBSA. A separate application must be submitted for each requested service.

Among the [EDI options](#) available to facilitate compliance:

- **Automated Commercial Information – eManifest:**

ACI is the cornerstone of CBSA's efforts to maintain border security and relies on a risk-based model whereby advance notification about incoming shipments will allow border agents to prioritize and focus resources on potential high-risk shipments. This risk-based approach also means that “regular” shipments can usually pass through customs with minimal delays. ACI has been rolled out to the trade community in different stages. The third and final stage, known as eManifest, requires that shipments arriving at the border via highway or rail carrier, submit detailed shipment information to CBSA prior to arrival at the border. For highway carriers cargo information must be received by CBSA at least one hour prior to arrival. After several years of testing, eManifest became mandatory in January 2016.

CBSA also supports other nonmandatory processes, which, depending on a shipper's specific needs, may add efficiency to the clearance process. These options include:

- **Accelerated Commercial Release Operations**

**Support System (ACROSS):** Provides importers and brokers with the ability to transmit release and invoice data in electronic format, removing the need to provide hard copy documentation.

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Beginning January 11, 2016, carriers who do not comply with eManifest requirements may be issued monetary penalties under the Administrative Monetary Penalty System (AMPS) and will experience processing delays.

Source: [CBSA](#)

- **Customs Self-Assessment:** Allows approved importers and carriers streamlined border clearance, trade data reporting, accounting adjustments, and payment options. Also allows clients to use their own system to fully self-assess and meet customs obligations.
- [Pre-Arrival Review System \(PARS\)](#): Allows importers and brokers to submit release on minimum documentation (RMD) to CBSA for review and processing before goods arrive in Canada. This speeds up release process for goods upon arrival at the border.
- [Release on Minimum Documentation \(RMD\)](#): Allows importers to obtain release of goods prior to payment of duties and taxes by presenting interim documentation.
- **Release Notification System:** Notifies participants of CBSA release decisions via electronic messages.
- **Customs Automated Data Exchange (CADEX):** Provides importers and brokers with the ability to electronically transmit accounting documents to CBSA for already-released goods. This removes the need to present hard-copy versions of documentation.

Again, each of these programs is targeted at a very specific type of importer and addresses a certain need. A business should consult with its logistics provider to ensure its shipments are taking maximum advantage of any opportunity to facilitate the process, including having shipments arrive at the border with all documentation filed and precleared for entry.

In addition to taking advantage of CBSA-offered electronic filing programs, a business can improve efficiency by automating its internal documentation processes. Trade management technology solutions allow a business to capture shipment information necessary to generate import and export documents, including commercial invoices, packing lists, and shipper's instructions. In addition, a trade compliance system can assist in meeting CBSA and CBP requirements for recordkeeping and documentation.

A surprisingly large number of businesses still rely on handwritten forms and outdated computer programs to manage their documentation processes. Equally surprising though is how cost efficient a technology solution can be and the impact it can have on facilitating the compliance process.

## Conclusion

A U.S. business that ships regularly to Canada must understand that when it comes to the border clearance process, there are options. Many businesses complain about shipments getting stuck at the border, or denied entry, or being assessed higher-than-expected duties, or about having to pay a fine. Yes, these unfavorable outcomes happen every day.

But they don't have to. A business can ensure that delays and unexpected costs are the exception by being aware of clearance requirements and proactive in its approach to the process. This means enlisting a qualified logistics partner with deep experience with both U.S. and Canadian customs clearance agencies, resources to stay abreast of rapidly changing requirements, and an innovative approach to facilitating the process.

An experienced provider will ensure that shipments arrive at the border ready for expedited review, in full compliance with all security and regulatory mandates, and with all duties and taxes paid. A qualified provider will also ensure that a shipment is not assessed a single penny more in duties or tariffs than is legally owed.

Customs compliance is an unavoidable part of the U.S./Canadian cross-border process. But with the right partner, it can be a "nonissue," with shipments experiencing minimal delays before being delivered on time to your Canadian customers.



## 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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