

*The International  
Trade Compliance  
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## Responsibilities of the U.S. Exporter to Canada

Too often U.S. companies who export to Canada are lulled into a complacency regarding compliance with U.S. export clearance and U.S. export control requirements. After all, isn't Canada our largest trading partner, with a huge shared border and a history of closely aligned economic and security coordination? It's almost like shipping goods to a 51<sup>st</sup> state.

Canada is still a foreign country and a U.S. exporter has all the same obligations and responsibilities under U.S. law and regulation as if their goods were destined for anywhere else in the world. Yes, there are some exceptions and we'll discuss those first.

Exports to Canada do not generally require a U.S. exporter to file Electronic Export Information (EEI) via the Automated Export System (AES). The reason for this unique situation is that the Canada Border Protection Agency (CBPA), Canada's customs service, and U.S. CBP share data electronically. What gets exported from the U.S. and is imported into Canada is recorded in the CBPA system and this data is then shared with U.S. CBP representing export data from the U.S.

However, there are exceptions to the exceptions. Any export to Canada of goods subject to an export license issued by any agency of the U.S. Government, regardless of the value of that export shipment, must be reported via the AES. The license for an export shipment could be required by the Department of Commerce's Export Administration Regulations or be a requisite by the Department of State under Title 22 CFR parts 120-130 (ITAR). Though there is not a wide range of goods that the U.S. requires a license for export to Canada, exporters must be aware of what is or is not licensed to this destination. U.S. companies must be particularly mindful of goods subject to the Munitions List (USML) found in the U.S. International Traffic in Arms Regulations (ITAR).

Another exception to the exception of filing an AES record is when the export from the U.S. is merely transiting Canada. A shipment from the U.S. that will be loaded aboard a ship at the port of Montreal for ultimate destination in continental Europe requires the filing of EEI via AES.

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The shipment is moving *through* the country of Canada in order to reach Europe. The AES record is filed in the exact same way and under the same requirements as if this shipment was to depart from, say, the port of Baltimore.

In general, Canada has no special requirements beyond to customary commercial documents. Many years ago the Canada Customs Invoice (CCI) became optional for use. If the commercial invoice, prepared by the U.S. exporter and then submitted by the Canadian importer bears substantially all the information that, heretofore, would have been found on the CCI then the exporter's standard invoice document will suffice. To cite Canadian Government requirements:

#### **For Shipments Over \$C1,200**

- A commercial invoice prepared by any means (typed, handwritten, telex or computer prepared), containing all the data required in the Canada Customs Invoice, or;
- A commercial invoice prepared by any means that indicates the buyer and seller of the goods, the price paid or payable, and an adequate description, including quantity of the goods; accompanied by a Canada Customs Invoice containing all other required information, or;
- A fully completed Canada Customs Invoice.

#### **For Shipments Under \$C1,200**

- Canadian goods returned to Canada with a value added of less than \$C1,200, and for goods that qualify for unconditional duty free entry, or goods entering under HS codes 9400, 9450 or 9810.00.00.00:
- --A commercial invoice prepared by any means that indicates the buyer and seller of the goods, the price paid or payable, and an adequate description, including quantity of the goods.

A packing list is not required by CBPA but very likely is required by the Canadian customer for business purposes and is, therefore, recommended as an inclusion in document preparation for an export to Canada. For textile and apparel products, it is very likely that the Canadian customer will require a certificate of origin. If the goods are not of U.S. origin, then the certificate must be one prepared and executed by the true manufacturer wherever located.

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If the exported goods are of U.S. or Mexican origin then a NAFTA certificate of origin must accompany the shipment or, recommended, sent directly to the Canadian importer so that it may be conveyed to the importer's customs broker. If the U.S. exporter is the manufacturer, then the NAFTA certificate will reflect the company as both the producer and exporter. Otherwise, the U.S. exporter will complete the certificate as the "Exporter" and either name the producer or note "available to Customs upon request".

It is critical to note that goods entered on a NAFTA certificate may only be those that the exporter knows or has evidence to the effect that they are originating (eligible) under the NAFTA. It is possible and acceptable that the commercial invoice and the NAFTA certificate do not match. The commercial invoice may have, say, five different items on it; three of which are NAFTA originating and two are non-NAFTA. The NAFTA certificate must only show the three NAFTA originating items. The exporter has signed the NAFTA certificate attesting to the fact the above described goods are NAFTA originating. The exporter must be in a position to prove what it is attesting to. Failure to be able to prove the validity of information on the NAFTA certificate can lead to monetary penalties imposed by U.S. CBP and a claim by CBPA for duties otherwise due from your Canadian customer.

Though Canada is an economically and strategically allied neighbor, there are still some "bad guys" to our North. Every export destined for Canada should be screened against the various U.S. denial lists, such as the BIS Denied Persons List, Entity List and OFAC's Specially Designated Nationals list. Though there are few controls over goods exported to Canada, the controls over exports to Denied Parties are the same as to any other global destination.

If few, if any, AES submissions are required for exports to Canada, then how does the U.S. monitor an exporter's compliance with U.S. regulations? The answer is that information collected by CBPA is communicated and readily available to U.S. CBP. The same scrutiny is applied to this information as is applied to export data filed directly into AES. In fact, much of the data is identical. Not only is CBP looking at the data, so too is CBPA. It is not uncommon for CBPA to notify their colleagues at USCBP about questionable exports to Canada.

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Don't be misled that because exporting to Canada seems to be so relatively simple there is not the same recordkeeping requirements imposed by U.S. regulations. A U.S. exporter must be able to provide, upon request, documentation within a reasonable period of time to support all elements related to an export transaction to Canada. Think about it this way. To any other country the exporter has a record, of some sort, as to the data filed with AES. That exporter must then be able to produce ordinary books and records of the company that support (prove) all the information entered into AES.

What are these "ordinary records"? Well, what proves what you told the government? Let's look at purchase order acknowledgements, sales orders, accounts receivables, inventory decrements, shipping department records, transport bills of lading. "Proving" what was exported to Canada requires the same kind of evidentiary documentation. It's not just a copy of the bill of lading and the accompanying invoice.

If the exported goods were declared as NAFTA originating there is then the need for a separate set of "proofs". What does the U.S. exporter have in its possession or can demonstrate through its ordinary business records that the goods shown on the NAFTA certificate were, indeed, eligible to be on it?

*There are no denominated monetary penalties for failure to maintain records at export. OEE or CBP can establish whatever monetary penalty they feel is appropriate to the infraction. Unlike import recordkeeping violations that have denominated amounts per violation. The denominated penalties found in the Foreign Trade Regulations speak only to AES filings (or lack thereof).*

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