NORTH AMERICA FROM CANADA
CETA & CUSMA

How European companies can serve the North American market from Canada

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Introduction

Objectives of this guide

This guide is designed to assist European companies, particularly SMEs targeting both Canada and the US, in defining a practical strategy to enter these markets. In the absence of an EU-USA Free Trade Agreement, European companies can first establish and develop in the Canadian market by taking advantage of the CETA FTA. Then as a second step, they can approach the US market from Canada, using a combination of the advantages provided by the CUSMA FTA and the proximity of the market.

Timelines and acronyms

The ***Comprehensive Economic and Trade Agreement (CETA)*** is a free-trade agreement between Canada and the European Union, in place since September 2017. This guide assumes that CETA is known and used by the reader. For more information on CETA, refer to EUCCAN's website

The **Canada-United States-Mexico Free Trade Agreement (CUSMA)** replaced NAFTA, the North American Free Trade Agreement, on July 1st, 2020. It is called USMCA (the United States- Mexico-Canada Agreement) in the United States and TMEC (Tratato Mexico-Estados Unidos- Canada) in Mexico. NAFTA had been in effect since 1994. Prior to NAFTA, Canada and the United States had a bilateral Free Trade Agreement in force since 1989, which was preceded by the ‘’Auto Pact’’, the Canada-United States Automotive Products Agreement of 1965. The ‘’Auto Pact’’ started the integration of the North American automobile industry and interestingly, the automobile industry is the one most affected by the changes contained in CUSMA.

The core of CUSMA: the Rules of Origin

CUSMA contains more chapters than NAFTA. With the exception of adding labour, environmental and e-commerce issues, it is essentially a cut and paste of NAFTA. Regarding the trade in goods, the only significant changes are in the Rules of Origin, particularly for the automotive industry, the details of which are as follows.

For assembled vehicles, the Regional Value Content (RVC), that is, parts coming from the trade region, went from 62.5% to 75% for passenger vehicles and light trucks and from 60% to 70% for heavy trucks. In addition, certain core parts, engines, advanced batteries for electric/hybrid vehicles, transmissions, suspension and steering systems must originate from the trade region for the entire passenger vehicle or light truck to qualify for preferential treatment. Heavy trucks do not face this requirement. CUSMA also requires that automakers source 70% of their steel and aluminum purchases in North America.

An added complexity that did not exist in NAFTA is a new Labour Value Content (LVC) requirement that certain vehicle manufacturing expenditures must be "high-wage", i.e. at facilities that pay at least US$16 an hour. For passenger vehicles, 40% must be high-wage, while for light and heavy trucks, 45% must be high-wage. This provision was designed to halt the relocation of assembly plants from the USA to Mexico.
For vehicle parts, depending on whether a part is defined as a core part, principal part, or complementary part, content requirements range from 65% to 75% for passenger vehicles and light truck parts, and 60% to 70% for heavy truck parts, using the net cost calculation. The equivalent NAFTA content requirement for parts was 60%.

There are minor changes for textiles, chemicals and soaps, and the ''de minimis'' exemption was raised from 7% to 10%, putting it at par with CETA. There are exceptions to the ''de minimis'' allowance, namely for some food preparations.

The core of CUSMA: the Rules of Origin

The Origin Certification process

Regarding Origin Certification, the NAFTA Certificate of Origin form has been replaced by an Origin Certification that can be on any form, so long as it provides the required data elements. In that sense, it is similar to the CETA Origin Certification process but it requires more information. It can be filled out by the exporter/processor and now by the importer, which is new and unusual. In Canada and USA, there is no equivalent to the European REX system. Companiessimply fill it out and have an authorized company representative sign it.

Where to find the information

Where to find the CUSMA product-specific Rules of Origin and the Origin Certification requirements? The CUSMA Rules of Origin are contained in Chapter 4 section B, with specific rules for automotive goods in the Appendix to Annex 4-B. The Minimum data elements for the Origin Certification are found in Chapter 5, Annex 5-A.

Duty/tax exemption thresholds

The Duty/Tax exemption value threshold in Canada was CA$20 and was increased to $40 for GST (Good and Services Tax) and to CA$150 for customs duties for shipments coming from the USA and Mexico via courier companies. For goods coming into Canada via the Postal system, the CA$20 threshold remains, no matter what the origin of the product. The corresponding duty/tax exemption in the US of US$800 is unchanged, irrespective of a product's origin. This US threshold is very advantageous for e-commerce merchants, since it is a rather high limit, and it applies across the board to goods coming from anywhere in the world. Consequently, it is detrimental to brick-and-mortar retailers and their distributors.

CUSMA: Other changes compared to NAFTA

The new Agreement has is a 16-year sunset clause, which means it will expire in 2036, unless it is extended. This provision, which US negotiators insisted upon, adds a small element of uncertainty. CUSMA has an automatic 6-year review process, which in itself is a good principle.

Regarding Intellectual Property, there are possible challenges for geographic indicators, as it prevents the parties from recognizing new GIs for products which the US considers as ‘’common’’ names. This could potentially conflict with CETA, which protects 143 European food and drink products through GIs. There other notable changes affecting intellectual property and copyrights, including the copyright protection period being extended from 50 to 70 years after the life of the author.

As far as government procurement is concerned, usually an important part of most FTAs, that area was excluded from the new Agreement, as the newest WTO provisions are more favourable than the NAFTA provisions were. The relationship between Canada and the US on this issue is governed by the WTO’s Agreement on Government Procurement (GPA).

Process for European companies interested in both the Canadian and US markets

As we know, nearly all E.U. products that meet CETA’s Rules of Origin enter Canada free of duties. Serving the USA from a Canadian-based distribution center is easy, efficient and cost-effective, thanks to the proximity and the existing huge flows of products, since the US market receives 75% of total Canadian exports.

It is possible to sell through a delivery duty paid (DDP) agreement in the USA – it requires representation from a US Customs Broker, whereby the foreign exporter becomes the Importer of Record in the US, called a Non- Resident Importer. This is a proven strategy used by most Canadian companies exporting to the US, as it becomes more encouraging for American consumers to buy Canadian products.

It is also possible to consolidate several shipments sent from Canada on the same transport document, which customs clear once at the border, saving customs fees. After customs clearance at the border, the shipment can be split into several shipments via 3PL for subsequent distribution within the US, where domestic transport rates are often more competitive.

Another point to consider is that European products that are sufficiently transformed in Canada could benefit from the CUSMA preferential tariff treatment, providing they meet CUSMA’s Product Specific Rules of Origin.

For small orders and for e-commerce, the high US duty/tax exemption for transactions valued at US$800 and less is powerful. These orders enter the USA duty-free, irrespective of their origin – this is very advantageous for e-commerce merchants, including European e- tailers serving the US market from a distribution center located in Canada. Additionally, it is practical to work with a US 3PL located at the US-Canada border to handle returns.

Process for European companies interested in both the Canadian and US markets

Ideal locations for European companies operating in Canada from a base in Québec or in Ontario are the Plattsburgh and Buffalo areas in Upstate New York. Both are located a short distance from Montréal and Toronto and have many 3PLs offering this type of service to Canadian exporters. Similar possibilities exist from BC, Alberta and other Canadian provinces, though with fewer economies of scales due to smaller flows.

Regarding taxes, there are three key elements to be aware of. First, there is no federal sales tax similar to the VAT or the GST payable upon importation in the USA. Secondly, maintaining some stock in a US distribution center is not considered a ‘’permanent establishment’’ for tax purposes and does not generally trigger federal fiscal obligations to the IRS. Lastly, e-commerce vendors must be prepared to the fact that when they become successful and reach a certain threshold, they must collect state tax from their customers and remit them to the individual state of the transaction. The thresholds vary from state to state, but average US$100.000 of annual turnover or 200 orders per year. When the threshold is reached in a given year, the obligation also applies the following year.

Conclusion

Although this guide is a bit technical, it’s purpose is to highlight the fact that it is relatively easy for European companies to approach the Canadian and US markets quasi-simultaneously by combining the advantages of CETA, CUSMA and geographic proximity. This can be done within a short time frame and without heavy long-term investments, therefore providing a powerful, flexible and easily implementable solution for success in North America.

Resources

Canadian Customs Tariff: https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2021/menu-eng.html

United States Customs Tariff: https://hts.usitc.gov/current

CUSMA text of the Agreement: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng

CUSMA Product Specific Rules of Origin: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/04.aspx?lang=eng

North Country Chamber of Commerce, Plattsburg, NY: http://northcountrychamber.com/

Invest Buffalo Niagara, Buffalo, NY: https://buffaloniagara.org/

Note: the information given in this document is designed to demystify and illustrate the various tools available, for guidance only and without engagement. Companies must validate them precisely with the respective authorities and based on their specific circumstances.

Guide written in collaboration with

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