



Canadian Exporter Profile

Sam Suissa, Vice-President • Omega Recycling Systems • Montreal, Quebec

"NAFTA has kept us in Canada," declares Sam Suissa, Vice-President of Omega Recycling Systems of Montreal, Quebec.

"Our market is in the States," he says of the family business, which began as a manufacturer of dry-cleaning equipment in 1987 and has since added a branch dedicated to producing filtration and distillation systems to purify and recycle oil and other solvents. "Our chief competitors are European, mainly German and Italian firms, and they are aggressive. The tariff position for Canada under free trade meant we didn't have to move to the U.S. — we opened a small branch in New York State to provide parts, but we stayed in Montreal."

Omega has no domestic competitor in its dry-cleaning equipment component, and has a good market share in Canada. But Suissa says that over 70 per cent of the company's \$5 million annual sales is in exports. Most as yet are in the United States. Interest has been expressed by customers in Australia and New Zealand, but it is to Mexico that Omega has been looking recently in order to expand.

"In the United States, recycling is a growth industry. Environmental regulations are even tougher there than here, and the generator of waste material has a cradle to grave responsibility for it. What our machinery does is completely clean solvents — paint thinner would be a simple example — and make them re-usable rather than turned into hazardous waste that would have to be carted away.

"We can show that it is not just a matter of environmental compliance

— there's an economic benefit. A company that used to buy 50 gallons of thinner and then dispose of it when it has been used can now buy four or five gallons in the same time period. The machinery will pay for itself."

Suissa is obviously pleased by the tariff elimination in Mexico, which will allow a Canadian firm a certain

Omega has hopes for the NAFTA side deal on environment.

advantage over those aggressive Europeans. But the aspect of NAFTA that interests him most at this point is the environmental provisions.

"Mexico has good environmental laws, but enforcement has been ... less than vigorous," he says. "I hope the implementation of NAFTA, especially since the side agreement on the environment, will put some bite into those laws. If so, we are well positioned to enter that market more significantly."

Omega personnel have made several visits to Mexico. A recent trip by one company executive resulted in a substantial order for dry-cleaning machines in San Luis Potosi, a city of about a million. Suissa

attended the first Canada Expo in Monterrey in 1992, where he also found some interest, and he will attend the forthcoming Canada Expo in Mexico City in March, showing wares from the recycling arm of the company.

Suissa clearly sees the company's future growth in the recycling end of the business. Clients range from small corner garages to Hydro-Quebec and Pratt and Whitney, among other large enterprises. The former can buy from one of the company's lines of fairly standardized machines; the latter will receive equipment tailor-made for the specific project. "In Mexico City, customers can weigh the alternatives."

Omega had a representative in Mexico at one point, but, as can happen in a new market, "It didn't work out." But a key employee in Montreal is a Salvadoran, fluent in Spanish and familiar with Latin American markets and practices. "He reminds us that patience is necessary," says Suissa, who seems to have plenty of it. His long-term vision of his company includes reaching into South America. And he has already concluded that Mexico is "one of the best stepping stones" to do just that.

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market for textiles and apparel under special quotas.

- addition of intellectual property rights protecting work and inventions of Canadian creators, inventors and researchers.
- extension of duty drawback for two years beyond the FTA expiry date in 1994; this will be

replaced in 1996 by a permanent duty refund system that will reduce input costs for Canadian manufacturers.

All exporters are urged to make themselves familiar with the provisions of NAFTA. InfoEx can direct callers to the material that will assist them and to their nearest International Trade Centre for advice and support.

PROTECTION OF TRADE SECRETS

It has been widely, if somewhat erroneously, believed in Canada that Mexican laws do not provide sufficient protection for trade secrets and other proprietary information.

However, many important provisions of the Mexican Penal Code and the Mexican Law on the Promotion and Protection of Intellectual Industrial Property (which came into force on June 27, 1991) do provide for legal protection of trade secrets.

Nonetheless, the reluctance of Mexican courts in the past to issue injunctions related to trade secrets has historically made recourse to the Penal Code the more practical way of dealing with problems.

Under NAFTA, a comprehensive chapter on intellectual property, including trade secrets, provides protection for inventions, designs and creative works. Certain paragraphs of the NAFTA should facilitate the obtaining of injunctions before the Mexican courts.

Article 1711, dealing specifically with trade secrets, outlines the obligations of all three parties to the NAFTA to "prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices."

Article 1715 provides that "Each party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right provided for in the Chapter."

Part of Article 1716 provides that "Each party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder..."

Some specific elements of Chapter 17 will require legislation from all the NAFTA part-

ners. Changes to the patent laws of all three countries, for example, are required by Article 1709, which refers to technology. Mexico has to introduce, within four years, legislation to protect integrated circuit designs, and both Mexico and Canada must introduce new regulations in the context of marketing approval procedures, in

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order to safeguard confidential data submitted to the government against unfair commercial use.

There are other legislative and regulatory changes to be made, and the time required to implement them varies. It is generally understood that the Mexican courts should be more agreeable to render injunctions as an additional means to enforce adequate protection of trade secrets.

There are measures the individual companies doing business in Mexico can undertake to strengthen the security of trade secrets in business dealings with Mexico.

Appropriate confidentiality and non-disclosure agreements can be drafted when someone wishes to disclose

trade secrets either for the purpose of negotiations or the implementation of actual agreements with a Mexican counterpart.

Such agreements will generally be enforceable, so long as they fall within Mexican Law: if the confidential information falls within categories mentioned in Mexican laws; is clearly identified; is contained on material supports; and the Mexican partner is warned of its confidentiality.

A Canadian business person may add some provisions to discussions, such as:

- an arbitration clause providing that any difficulty arising from the agreement and any breach thereof is to be decided by arbitration, in Canada, Mexico or elsewhere;
- a clause providing for the application of laws of another country than Mexico (e.g. a provincial law from Canada);
- a liquidated damages provision for the event of breach of confidentiality and non-disclosure agreement.

It should be remembered that the drafting and execution of a confidentiality and non-disclosure agreement must be specific to each particular situation, that its preparation and drafting must be done by legal specialists in this type of law, and, in relation to any transaction between Canada and

Mexico, such specialists should be versed in both Canadian and Mexican applicable laws. Exporters are strongly advised to seek expert legal counsel before undertaking any activity subject to these laws.

NAFTA provides, where the Canada-U.S. Free Trade Agreement did not, protection across a wide range of intellectual property issues, and although they have yet to be put to the test, it was the clear will of all three partners to make this increasingly important component of trade as free from theft and abuse as trade in goods.

Upcoming Events

ANTAD EXPO 94 (Guadalajara) February 26-28, 1994 — Food, store fixture and consumer product sectors.

CANADA EXPO 94 (Mexico City) March 22-25, 1994 — Canada's largest ever commercial trade show.

PRO-ECO FORUM (Monterrey) May 3-6, 1994 — Trade show and conference on environmental equipment and services.

EXPO-PAK '94 (Mexico City) May 17-20, 1994 — Fair for suppliers/manufacturers in the packaging and labelling industries.

Details on these and other events may be obtained from Latin American and Caribbean Trade Division, Department of Foreign Affairs and International Trade. Facsimile: (613) 944-0479.