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NAFTA: THE NEW TRADE DEAL

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994. While business would appear to have proceeded as usual these first weeks, implementation of NAFTA changes many aspects of Canadian business dealings with its partners in the agreement, the United States and Mexico. In addition, there are some improvements to the Canada-U.S. Free Trade Agreement (FTA) built into the new trilateral agreement.

Some of the elements negotiated in the NAFTA take effect immediately, others over time; some are technical and relatively straightforward (e.g. elimination of a tariff), others represent new opportunities. Access will examine some of these themes in detail in subsequent issues; here, some highlights of the many ways in which the NAFTA will have impact on Canadian business.

Tariff Reductions: There are thousands of tariffs affected by the NAFTA, and exporters are advised to consult the Tariff Schedules for specific guidance. Among the Mexican tariffs eliminated as of January 1, 1994: aircraft, parts, radar and navigational equipment; most fresh and frozen fish, and most dried and smoked fish and many shellfish, including crabs; sulphur, aluminum oxide and hydroxide, carboxylic acids, nitrogen function compounds, sulphates. Tariffs on passenger cars and light trucks are reduced by 50 per cent immediately.

Government Procurement: For the first time, government procured services in the U.S. and Mexico will be open to Canadian suppliers. In the U.S. alone, the services market is approximately U.S.$30 billion per year. Among new opportunities created by this provision is access to construction contracts procured by the U.S. Army Corps of Engineers. In Mexico, NAFTA opens access to, among other things, contracts procured by PEMEX, the state-owned oil company, and CFE, the state-owned electricity company.

Investment: All investors from the NAFTA countries are to be treated equally; investment restrictions in Mexico will be reduced in numerous sectors, including autos, mining, agriculture, fishing, financial services, transportation and most manufacturing.

Transportation Services: Opening up the trucking of cargo between the United States and Mexico (over a six-year period) will ease shipment of goods by land across borders throughout North America. Canadian truckers will be able to pick up loads in the U.S., ship them into Mexico, and return bearing goods for both U.S. and Canadian destinations.

Telecommunications: Mexican trade barriers to the provision of enhanced services (e.g. advanced data processing) are eliminated. NAFTA guarantees access to contracts offered by government-operated telecommunications services in Mexico, in a market expected to grow by 42 per cent before the end of the decade.

Financial Services: Access to Mexico's financial markets, previously closed, will be opened over time to Canadian and U.S. financial institutions. Firms will be able to open wholly-owned subsidiaries in Mexico; while these will initially be subject to market-share limitations, these will disappear by the year 2000.

Temporary Entry: Business people will find it easier to gain temporary entry to any NAFTA country.

NAFTA and the FTA

While all elements of the FTA remain intact, the NAFTA preserves, expands and strengthens the gains Canada made in that agreement. Key improvements include:

- clearer and more precise rules of origin, which will narrow the scope in disputes.
- expanded access to the U.S.

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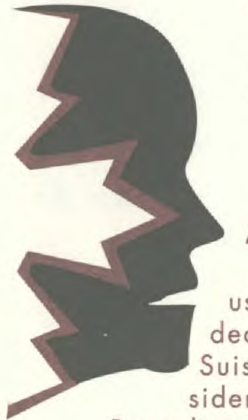

Canadian Exporter Profile

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

Omega has hopes for the NAFTA side deal on environment.

"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.

NAFTA – *from page I*

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

CONFIDENTIAL

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.

Maritime Transport to Mexico

How to get your goods to Mexico is going to depend on a number of considerations: where you are located, what you are shipping, its value, the time-sensitivity of the product, the destination in Mexico.

While transportation by water is the slowest mode today, it remains the most economical and energy-efficient way to move large-volume and high-density bulk commodities over long distances. In addition, the development of containerized shipping of freight has enhanced the importance of maritime transport to Canada's overseas trade.

Shipment by sea is the mode of almost 33 per cent of Canada's exports to Mexico (as of 1992), and while that percentage has dropped since 1988, when it was over 40 per cent, the value of shipments in that period has risen by about 20 per cent. All provinces except Prince Edward Island use the marine option for some of their exports to Mexico. It may seem surprising that the heaviest users of ocean transport are the landlocked provinces of Saskatchewan and Alberta — until one recalls the major use of ships. The top exports by this mode of transport include wheat and meslin, crude or refined sulphur, and petroleum oils and oils obtained from bituminous materials other than crude.

The marine option works best when time is not the key factor in the shipment of goods, as, to take one example, regular service from Saint John, New Brunswick to Veracruz, Mexico takes eight days.

As to price, maritime shipping rates are very competitive with road and rail rates. For products such as bulk grains, oil, etc., it is a very suitable mode. Containerization and the use of freight forwarders can lead to consolidation of shipments, reducing the rates to shippers by joining their loads to others to achieve volume discounts. And while bulk handling is the major advantage of marine transport, many lines have a capacity for loose freight.

Service from Canada to Mexico exists on both east and west coasts to a range of Mexican ports; options are increased by looking into ships destined for South America with Mexican stops, or by using another mode of transport as far as certain U.S. ports, such as Galveston or Los Angeles, and shipping by sea thereafter.

Canada's major container terminals — Vancouver, Montreal, Saint John and Halifax — are served by CN or CP Rail (some by both), as well as motor carriers in intermodal operations.

Shipping documents required for exporting to Mexico were discussed in ***Access*** in December; briefly, the specific requirement in maritime documentation is three originals of the necessary papers, plus three copies. These should be sent through an international messenger service to the importer or customs broker in Mexico.

Marine insurance is an essential element in international trade and transportation, providing financial protection against loss or damage to cargo incurred by reason of maritime peril. It is a specialized field even in the arcane world of insurance, and exporters should consult expert advice in selecting the most suitable package of insurance offered. Freight forwarders can be of great assistance in this area, as well as in the complexities of documentation and in consolidation of shipments.

For further information, and a document on transportation services between Canada and Mexico, contact InfoEx.

For Your Reference Shelf...

The third, updated edition of **Canada-Mexico — Partnering for Success** *will be published this month. This valuable overview of opportunities in Mexico and the strategies for successfully doing business there has been produced by Prospectus Publications, and is sponsored by the Department of Foreign Affairs and International Trade, the Bank of Montreal, Baker & McKenzie, the Atlantic Canada Opportunities Agency and Western Economic Diversification Canada. To obtain your copy, contact InfoEx.*

Access

Access, the newsletter of the new A... North America (ANA) program, is published monthly and only in *CanadExport*. Subscribers to *CanadExport* automatically receive *Access*. It examines opportunities for Canadian businesses, introduces some Canadians already operating in the Mexican market, profiles specific sectors, and notifies readers of forthcoming events related to doing business in Mexico.

Your feedback is welcom... dence should be sent to ... Department of Foreign Affai... tional Trade, Ottawa, Ont., K... fax, (613) 992-5791.

For further information on the program, or a copy of a brochure on Access North America, contact InfoEx at 1-800-267-8376 (In Ottawa 944-4000).

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