Legal Update: The Export/Import Journey – 3 Key Ways Choosing a Free Trade Agreement Country Can Simplify the Trip (McInnes Cooper)

Corporate Tax Centre - Megan Seto discusses three key ways that choosing a country with which Canada has a free trade agreement can simplify the export/import journey.
approximately 3 pages.

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The market for the sale and the supply of goods is a global one for many businesses in today's economy. Both exporting goods from Canada and importing goods into Canada can be a complex journey for any business, and especially for first-timers or small and medium-sized businesses (SMEs). There are alot of players, alot of information to process – and alot of decisions to make. One of the most crucial: selecting the country to target for export or from which to import. Here are 3 key ways that choosing a country with which Canada has a free trade agreement can simplify the export/import journey.

THE EXPORT/IMPORT JOURNEY

Exporting goods from and importing goods into Canada can be a daunting task for any business:

The players. It typically involves alot of players in addition to the seller and the buyer, like the Importer of Record, a Freight Forwarder, and a Customs Broker. It also often involves one or more government departments depending on the product(s) involved. For example, the Canadian Food Inspection Agency might be involved if the goods are animal or food products; Health Canada might be involved if the goods are medicine, vitamins or substances like creams; the Department of Natural Resources might be involved if the goods are heating or lighting related.

The information. It also requires you to obtain and to process alot of information. For example, the Harmonized Commodity Description and Coding System (HS), the international uniform standard tariff classification system of goods, is made up of 29 sections and 11 chapters. The HS tariff classification affects the duty rate for the importer – and in turn affects the cost.

The decisions. Deciding to reach beyond your local market to sell or obtain goods also requires you to make alot of decisions, such as: what's the best mode of transportation to use? What the most appropriate method to use to value the goods (transaction value, transaction value of identical goods or of similar goods, deductive, computed or residual)? What duties and taxes are payable? Should you engage a customs broker?

One of the most crucial decisions: what country will you target to export your goods or to import the goods from?

FREE TRADE AGREEMENTS

The selection of the country to target for export to, or for import from, will significantly affect – and could even dictate – some or even many of your other decisions. For example, it might increase your price because of the applicable duties, or limit your choice of transportation mode. So how do you make this decision? There are several criteria to consider and you'll have to do your homework, including thorough market research and assessment. But one of the key factors should be whether Canada has a free trade agreement (FTA) with that country.

A FTA is, basically, a contract between two or more countries intended to reduce the trade barriers between their respective countries. Many governments create artificial barriers in the form of tariffs and subsidies on goods intended to restrict the flow of goods and services between its country and others, and ultimately to protect the domestic market. A FTA essentially removes some or all of these artificial barriers and promotes the freer flow of goods and services between the member countries. The most obvious and familiar FTA example is the North American Free Trade Agreement (NAFTA) between Canada, the US and Mexico. The Canada-European Union: Comprehensive Economic and Trade Agreement (CETA) is another well-known example; it's not yet in force but is expected to take effect in 2016.

International FTA's. Canada is currently a party to 11 FTA's with these 15 other countries:

• US (via NAFTA)

• Mexico (via NAFTA)

• Honduras

• Panama

• Costa Rica

• Columbia

• Peru

• Chile

• Iceland (via the free trade agreement between Canada and the European Free Trade Association (EFTA) countries)

• Norway (via the Canada-EFTA Free Trade Agreement)

• Switzerland (via the Canada-EFTA Free Trade Agreement)

• Liechtenstein (via the Canada-EFTA Free Trade Agreement)

• Israel

• Jordan

• Korea (the Canada-Korea Free Trade Agreement took effect on January 1, 2015)

Domestic FTA's. Don't just look outside Canadian borders for FTA's. The Agreement on Internal Trade is a domestic free trade agreement between Canadian Provinces and Territories (except Nunavut) and the Federal Government with a purpose and aim similar to that of FTA's with other countries: to promote an open, efficient and stable domestic market by reducing barriers, including import barriers, for certain goods.

3 KEY WAYS A FTA COUNTRY CAN SIMPLIFY THE EXPORT/IMPORT PROCESS

Here are 3 key ways that choosing a country with which Canada has a free trade agreement can simplify the export / import journey:

1 **It's faster because the negotiating is already done for you.** Free trade agreements are usually the result of extensive, often protracted and sometimes very hard negotiation by the member countries. The negotiations are typically lengthy (think in terms of years) and they typically deal with everything from A to Z, including things like how disputes will be resolved, provisions to facilitate movement of people (like employees, business visitors, traders and investments) between member countries, and many others – things that you might not think of. If you select a country with which Canada doesn't have a FTA, you're basically going to have to negotiate the equivalent of a FTA yourself. It might be worth it to you – but know what you're getting into so you can make that assessment.

2 **There are also probably cost benefits.** FTA's typically have several goals, including cost reduction by eliminating tariff barriers for certain goods to move between the member countries, and strengthened relationships with specific businesses in the other member countries that have developed an expertise with key sectors – which ultimately increases production efficiency and transaction efficiency.

3 **Greater certainty – and less risk.** Another typical goal of free trade agreements is to provide clear rules for trade across the member countries' borders – and thus increased predictability of the process. For example, legal mechanisms (such as dispute resolution and protection mechanisms to address discriminatory practices that could impact trade and investment (such as rules related to the treatment of investors or importers) are generally spelled out. Clarity in the process usually makes things faster and cheaper – and it also reduces risks, like those of non-compliance with national export / import laws and the related consequences. Those consequences can be harsh: importing privileges can be revoked, monetary penalties imposed, goods seized, customs audits conducted and shipment refused or delayed.

Please contact your McInnes Cooper lawyer or any member of our McInnes Cooper Cross-Border Law Team to discuss this topic or any other legal issue.

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