THE 'JUST IN CASE' PLAN

How western Canadian small businesses can prepare for the potential end of NAFTA

CANADA WEST FOUNDATION
TRADE & INVESTMENT CENTRE

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CARLO DADE
& NAOMI CHRISTENSEN

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This report was prepared by Carlo Dade, Director of the Trade & Investment Centre and Naomi Christensen, Senior Policy Analyst. The authors extend thanks to Sam Woods, Chris Dekker from STEP, Alberto Velasco from WTC Winnipeg, Trevor Lewington from Economic Development Lethbridge, the Edmonton Chamber of Commerce, Curtis Hemming from the Saskatchewan Chamber of Commerce, the Government of Alberta and others from government for providing comments on a draft of the report.

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As the North American Free Trade Agreement (NAFTA) renegotiations lurch from forced optimism to apprehension, small businesses in Canada need to face the possibility that the trade deal might collapse.

BUT, NOW IS **NOT** THE TIME TO PANIC – IT IS THE TIME TO PREPARE.

THIS GUIDE

This guide is offered as a first step for small businesses to understand what is happening, and to start contingency planning. We present the scenarios likely to unfold should the United States try to withdraw from NAFTA, and what businesses can do now.

If the U.S. withdraws from NAFTA, we would be in uncharted legal and political territory marked by confusion and uncertainty at home and with customers and suppliers in the U.S. A number of different situations could unfold. The following scenarios cover a range of possible outcomes to provide an idea of what could happen.

U.S. NAFTA WITHDRAWAL SCENARIOS

01

NAFTA REMAINS

President Donald Trump issues a U.S. withdrawal notice from NAFTA, likely as a negotiating ploy to use the six-month withdrawal period to increase pressure on Canada and Mexico to make concessions. The U.S. business community and/or Congress take legal action to stop the withdrawal. There is a period of confusion, but ultimately the U.S. remains in NAFTA.

02

CANADA-U.S. FREE TRADE AGREEMENT (FTA) IS RESURRECTED

The Canada-U.S. Free Trade Agreement (FTA) was suspended when NAFTA came into force, but not terminated. If the U.S. withdraws from NAFTA, one possibility is that the FTA will be resurrected, but most believe that would require action on the part of the two governments.

03

WORLD TRADE ORGANIZATION (WTO) TARIFF RULES TAKE OVER

The U.S. successfully withdraws from NAFTA but the FTA is not resurrected. The World Trade Organization's most-favoured-nation (MFN) tariff rates, and other trade rules, automatically apply to trade between the U.S. and Canada. **We see this as the most likely scenario.**

04

HIGHER THAN WORLD TRADE ORGANIZATION (WTO) TARIFFS

The U.S. withdraws from NAFTA and does not reactivate the FTA with Canada. The Trump Administration uses emergency powers to impose higher than WTO MFN rates on certain products from Canada. While possible, this is unlikely.

For more details on each scenario, refer to page 8

PREPARATION

WHAT YOU NEED TO DO

There are practical steps that businesses should take now to prepare. These steps should not cost significant time or other resources. Not all products sold by Canada to the U.S. would be more costly – and neither would all goods imported by Canada.

STEP ONE: UNDERSTAND WHAT IS HAPPENING NOW AND WHAT MAY HAPPEN LATER. This is the most critical step. If the U.S. does withdraw from NAFTA, there will be uncertainty and confusion in Washington, D.C. as Americans face uncharted constitutional authority questions and legal challenges. Waiting until this happens will be the *worst* time to try to figure this out, start talking to your U.S. customers, seek help, or make decisions. If businesses understand the likely scenarios ahead of time, they can prepare for what happens – and avoid panicking and making decisions under pressure.

STEP TWO: FIGURE OUT IF YOU ACTUALLY HAVE A PROBLEM. The potential impacts, negative or even positive, will vary by business, and in the case of tariffs, by specific item traded. Four probable scenarios for tariff changes are outlined in detail on page 8. Businesses can run the scenarios and calculate these potential impacts on their own or have it done at a reasonable cost by customs brokers or other agents.

STEP THREE: TALK TO YOUR U.S. (AND MEXICAN) PARTNERS AND CUSTOMERS – NOW. Once you understand the potential scenarios and related potential impacts, you are better prepared for a productive and potentially business-saving conversation. It is important to signal that, based on your analysis of the withdrawal scenarios and tariff change, either your trade will not be affected or that you have a plan to deal with tariff changes. If a withdrawal is announced, your business partners in the U.S. will inevitably face a barrage of doom and gloom headlines. A calm, informed conversation now can avoid a panicked conversation later. This is especially true if the largest immediate impact of a U.S. withdrawal from NAFTA – the elimination of tariff reductions – turns out not to matter for your business. Also, a withdrawal will not likely affect other aspects of cross-border business, such as customs pre-clearance or regulatory harmonization. A conversation now can lead to ideas to mitigate potential repercussions. If any of these ideas involve action by state or local government, step four becomes even more important.

STEP FOUR: GET TO KNOW WHO CAN HELP YOU. The federal government has multiple resources (see page 9). Provincial resources are important, especially for small business. Each provincial department responsible for trade includes a division responsible for North America. Some provinces also have quasi-governmental agencies that provide trade support. An added benefit to provincial agencies is that talking to staff at these ministries and agencies does not require queueing up behind businesses from other provinces. For small businesses, provincial governments likely know your business better than the federal government and may know counterpart agencies in U.S. state governments. Provincial officials and the Canadian Consulate General for the regions in which you do business can also help keep you abreast of what is happening in the U.S. Trade officials can answer specific questions and direct to other sources of information or assistance. Getting on their mailing list assures that you are to date on information that may affect your business. While the help that these agencies can offer may be limited and varies by agency, *now is the time to get on their radar and email lists.*

Taking these steps will benefit your business no matter what happens with NAFTA.

CASE STUDIES

HOW TO NAVIGATE TARIFF SCENARIOS

The following three case studies are examples of how three fictional companies would run the tariff numbers. They illustrate different NAFTA, FTA and WTO MFN tariffs on exports to and imports from the U.S., and how companies may want to prepare for potential tariff changes.

The case studies focus on tariff changes, which will have an immediate impact on some small businesses if the U.S. leaves NAFTA. There will also, of course, be broader economic impacts such as slowing growth and investment.

Businesses may also want to review other export competitiveness factors. There are many initiatives in place between Canada and the U.S. to facilitate trade that exist outside of NAFTA (such as the Free and Secure Trade program [FAST] that expedites the trucking of commercial goods across North America). These will most likely not be affected by a U.S. withdrawal from the agreement.

In addition, what companies do once they run the tariff numbers depends on each business. For example, a company that has been selling to the same family company in the U.S. for generations may not be as worried by a tariff bump as a company that has just begun selling into the U.S. market.

NAFTA
North American Free Trade Agreement

FTA
Canada-United States Free Trade Agreement

WTO MFN TARIFFS
World Trade Organization
most-favoured-nation tariffs

* *Page ix of the FTA:* www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusfta-e.pdf

HOW TO FIND WTO MFN tariffs

For U.S. WTO MFN tariffs on **exports** from Canada, use the Canada Tariff Finder and enter the HS code of the product(s) you are exporting. This will also tell you the tariff under NAFTA (zero for the majority of products).

- **Canada Tariff Finder**
  tarifffinder.ca

For Canada's WTO MFN tariffs on **imports**, use the WTO's Tariff Download Facility. Search using an HS code or a keyword, or browse HS categories.

- **World Trade Organization's Tariff Download Facility**
  tariffdata.wto.org

HOW TO FIND Canada-U.S. FTA tariffs

To find tariffs on Canadian **exports** to the U.S.

- **Tariff Schedule of the United States**
  *Page ix of the FTA**

To find tariffs on Canadian **imports** from the U.S.

- **Tariff Schedule of Canada**
  Page ix of the FTA

If the FTA is resurrected, its tariff rates would likely be the same as if it were Jan. 1, 1994 (year six of the agreement). If this occurs, only goods that had tariffs phased out over 10 years would face tariffs; some simple math is required to determine the tariff rate in year six of the agreement.

- **Tariff elimination timeframes**
  page 49 of the FTA

You can also ask your customs broker to run the codes for you. Your local Chamber of Commerce or business trade association may have recommendations. Businesses in Saskatchewan can contact Saskatchewan Trade and Export Partnership (STEP).

Note: Trade agreement tariffs cannot be higher than WTO MFN tariffs.

THE FARM MACHINERY RETAILER

The company

Headquartered in Saskatoon, Sask., *Company 1* is a major retailer of farm machinery in the province, with locations throughout western Canada.

The product

Farm machinery such as balers and threshers. The majority of products sold are imported from the U.S.

EXPORTS

All sales are in western Canada. *Company 1* does not need to worry about export tariffs because it does not have customers outside of Canada.

IMPORTS

Company 1 has been in operation for 20 years and knows that under NAFTA, there are no tariffs on the machinery it imports from the U.S. But if the U.S. withdraws from NAFTA, the company is concerned about having to pay higher prices on imports if its U.S. suppliers suddenly face Canadian tariffs.

To prepare, *Company 1* asks its customs broker to check the HS codes of the machinery it imports against Canada's WTO MFN tariffs and the Tariff Schedule of Canada under the previous Canada-U.S. FTA.

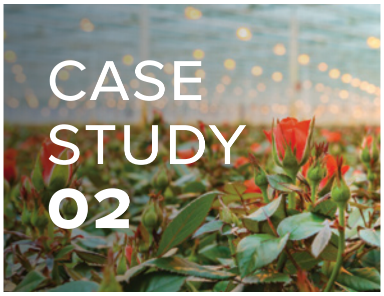
COMPANY 1 IMPORTS FROM THE U.S.

Product	HS Code	NAFTA tariff	Canada FTA tariff	Canada WTO MFN tariff
Haymaking machinery (excl. mowers)	843330	zero	zero	zero
Straw or fodder balers (incl. pick-up balers)	843340	zero	zero	zero
Threshing machinery (excl. combine harvester-threshers)	843352	zero	zero	zero
Root or tuber harvesting machines	843353	zero	zero	zero

Source: World Trade Organization Tariff Download Facility; The Canada-U.S. Free Trade Agreement Tariff Schedule of Canada

CONCLUSION

Company 1 now knows its business should not face higher prices on its imports even if the U.S. withdraws from NAFTA. Relieved, it calls its key suppliers in the U.S. to share the information with them.



THE GREENHOUSE

The company

Company 2 is a greenhouse located south of Winnipeg, Man. Its major customers are floral shops in southern Manitoba and across the border in North Dakota and Minnesota.

The product

The greenhouse specializes in growing plants used in floral arrangements. These include a variety of flowers sold freshly cut and fresh foliage and branches. It also sells flower bulbs for planting.

EXPORTS

About 50% of *Company 2's* customers are in North Dakota and Minnesota. The owners are concerned about a possible U.S. withdrawal from NAFTA, something they keep hearing about on the evening news. They contact the World Trade Centre Winnipeg for help determining if their exported plants would be affected if this were to occur.

COMPANY 2 EXPORTS TO THE U.S.

Product	HS Code	NAFTA tariff	U.S. FTA tariff	U.S. WTO MFN tariff
Hyacinth bulbs, without soil attached	0601.20.10	zero	24¢/1000	38.4¢/1000
Fresh cut roses	0603.11.00	zero	3.20%	6.80%
Fresh cut miniature (spray) carnations	0603.12.30	zero	1.6%	3.20%
Fresh cut orchids	0603.13.00	zero	3.20%	6.40%
Fresh foliage and branches	0604.20.00	zero	zero	zero

Source: The Canada Tariff Finder; The Canada-U.S. Free Trade Agreement Tariff Schedule of the United States

IMPORTS

Company 2 imports plastic crates from a supplier in the U.S. It uses the crates to ship orders to both its Canadian and U.S. customers. This is the only packaging the greenhouse uses.

COMPANY 2 IMPORTS FROM THE U.S.

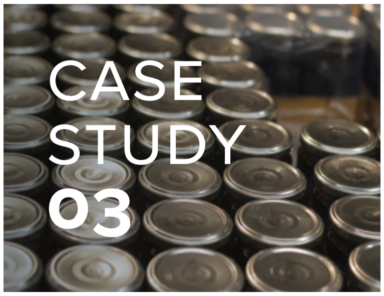
Product	HS Code	NAFTA tariff	Canada FTA tariff	Canada WTO MFN tariff
Plastic crates	3923.10.00	zero	N/A*	4.50%

Source: World Trade Organization Tariff Download Facility; The Canada-U.S. Free Trade Agreement Tariff Schedule of Canada

CONCLUSION

By running the HS codes of their exports, *Company 2's* owners discover all their exports except fresh foliage and branches will face some level of tariff. They can now calculate added costs they would face when selling to their U.S. customers. They may want to look for new customers in Manitoba or Saskatchewan so they rely less on orders from the U.S. They are also concerned about a potential price increase on the plastic crates they import if their U.S. supplier were to suddenly face a tariff at the Canadian border. They have a good relationship with their supplier and call him to discuss options.

* Note: The tariff on plastic crates was not fully phased out when NAFTA superseded the FTA. If the FTA is resurrected at the point NAFTA was implemented, the tariff on plastic crates would be 5.44%. However, a trade agreement cannot impose a tariff higher than the WTO MFN level, and Canada's MFN level on plastic crates is currently 4.5%. The FTA tariff could not be applied.



THE SPECIALTY FOOD PRODUCER

The company

Company 3, based in Vernon, B.C., is a producer of specialty foods, mostly food condiments.

The products

Products include pickles, mustard, an assortment of fruit jams, and tomato and other types of ketchup. The company supplies grocery stores in B.C. and also exports some of its products to the U.S. Pacific Northwest.

EXPORTS

U.S. sales account for roughly 20% of the company's total sales. The GM wants to know if a potential U.S. withdrawal from NAFTA would increase the company's costs for condiments shipped into the U.S. Out of curiosity, the GM also looks at comparable tariffs on its products if it were to export to the European Union, a region with which Canada just signed a trade agreement (the Canada-European Union Comprehensive Economic and Trade Agreement, or CETA).

COMPANY 3 EXPORTS TO THE U.S.

Product	HS Code	NAFTA tariff	U.S. FTA tariff	U.S. WTO MFN tariff	CETA* tariff
Pickles	2001.10.00	zero	4.8%	9.6%	zero
Prepared mustard	2103.30.40	zero	1.76¢/kg	2.8¢/kg	zero
Fruit jam – lingonberry	2007.99.45	zero	N/A**	1.8%	zero
Fruit jam – strawberry	2007.99.10	zero	1.96%	2.2%	zero
Fruit jam – cherry	2007.99.25	zero	6¢/kg + 4%	4.5%	zero
Tomato ketchup	2103.20.20	zero	3%	6%	zero
Other ketchups	2103.20.40	zero	5.44%	11.6%	zero

Source: World Trade Organization Tariff Download Facility; The Canada Tariff Finder; The Canada-U.S. Free Trade Agreement Tariff Schedule of the United States

The company finds that all the products it exports tariff-free under NAFTA could suddenly face a wide range of tariffs if the U.S. were no longer part of the trade deal. The company also discovers that all its products now have a zero tariff if shipped to the European Union (EU), due to Canada's new trade deal now in effect with the region, the Comprehensive Economic and Trade Agreement (CETA). The pre-CETA tariffs (the EU WTO MFNs) were so prohibitive, the company had not considered exporting to Europe.

The company decides to look more closely at the European market and discovers it has a huge tariff advantage over companies from countries that do not have a trade agreement with Europe – namely, the U.S. If the company sold its pickles in the EU, it would have a 17.6% price advantage over American companies, but it would need to find a way to sell its products there, given higher shipping costs compared to European competitors.

* The Canada Tariff Finder has tariff rates only for countries with which Canada has trade agreements. To find CETA rates, select any European country to represent all CETA tariff rates.

** Note: If FTA measures are resurrected at the point NAFTA was implemented, the U.S. FTA tariff on lingonberry jam would be 2.8%. However, a trade agreement cannot impose a tariff higher than the WTO MFN level, and the U.S. MFN level on lingonberry jam is currently 1.8%. The FTA tariff could not be applied.

17.6%

IF THE COMPANY SOLD ITS PICKLES IN THE EU, IT WOULD HAVE A 17.6% PRICE ADVANTAGE OVER AMERICAN COMPANIES.

IMPORTS

Company 3 imports specialized glass jars from a supplier in the U.S. for packaging its condiments that are then sold both domestically as well as exported back to U.S. customers. The GM also checks to see if there would be any tariffs applied on the jars it imports if NAFTA were no longer in place between Canada and the U.S.

COMPANY 3 IMPORTS FROM THE U.S.

Product	HS Code	NAFTA tariff	Canada FTA tariff	Canada WTO MFN tariff	CETA tariff
Mason jars	7020.00.90	zero	4.08%	6.5%	zero

Source: World Trade Organization Tariff Download Facility; The Canada-U.S. Free Trade Agreement Tariff Schedule of Canada

If the U.S. withdraws from NAFTA, *Company 3* will consider shifting its critical input of mason jars from the U.S. to a domestic supplier in Canada, or even a new European supplier. The combined cost of paying an additional 4% to 6.5% to import jars and 1.8% to 11% to export the packaged condiments back to the U.S. may be too much for its U.S. customers to bear. The cost of shipping jars from new sources may end up erasing any tariff advantage, but it makes sense to check. For example, Canadian suppliers may have been more expensive, but now, the tariffs make them competitive.

CONCLUSION

If the U.S. withdraws from NAFTA, *Company 3* is going to face increased costs because of tariffs on both its exports to and imports from the U.S. It plans to do further contingency planning to prepare for this.

It also decides that regardless of what happens with NAFTA, Canada's new trade deal with the EU makes this a good time to think about expanding exports to Europe. After looking at the numbers for CETA, the GM contacts the B.C. provincial trade ministry and is connected with the representative in charge of trade with Europe. She schedules a phone call to get briefed on the CETA agreement, to see if it makes sense for the company to expand operations, and if so, what next steps it should take.

U.S. NAFTA WITHDRAWAL SCENARIOS

01 NAFTA REMAINS

President Donald Trump may try to terminate NAFTA out of frustration or as a negotiating ploy to increase pressure on Canada and Mexico, hoping that the ticking clock of the six-month withdrawal period will force concessions. If Trump issues notice of intent to withdraw from NAFTA without explicit Congressional approval, it could violate the U.S. constitution's granting of sole power to regulate trade to Congress. No president has ever withdrawn from a trade agreement. If Trumps tries to do this, there will certainly be legal challenges from U.S. businesses that claim damage from the withdrawal; these challenges would likely wind up in the U.S. Supreme Court.[1] Members of Congress may also take legislative action such as blocking funding for any activities needed to carry out a withdrawal.

02 CANADA-U.S. FREE TRADE AGREEMENT (FTA) IS RESURRECTED

When NAFTA came into effect in 1994, it built upon the earlier Canada-U.S. Free Trade Agreement (FTA). The FTA was suspended, but not terminated. NAFTA essentially rolled over the tariff elimination schedules of the FTA and added the Mexican market. The FTA could be resurrected, but most believe this would require action from the U.S. Congress and Canadian Parliament. This would take time – it is difficult to imagine the U.S. administration passing on an opportunity to wring additional concessions out of Canada on trade irritants.

If the U.S. withdraws from NAFTA, Canadian and Mexican officials have been clear that the pact would remain in effect between their two countries as a bilateral agreement. This is the stated intention; how things would actually work out may differ. If NAFTA continues as a Canada-Mexico agreement, then Canadian firms exporting to or importing from Mexico would operate under the same tariffs and rules as the present. However, an added challenge would be the transshipment of goods from Canada to Mexico through the U.S., and vice versa. The U.S. government could throw up non-tariff barriers, such as longer inspections at the border, to make trade between Canada and Mexico much more difficult.

[1] NAFTA News Vol. V, http://mailchi.mp/tactix/nafta-news-volume-5#US.

[2] A president can impose tariffs during national emergencies and times of war. It is possible that the U.S. administration could argue that either, or both, of these conditions are currently in effect giving it the power to unilaterally impose tariffs.

03 WORLD TRADE ORGANIZATION (WTO) TARIFF RULES TAKE OVER

If neither NAFTA nor the FTA are in place, the World Trade Organization (WTO) most-favoured-nation (MFN) tariff rules would govern Canada-U.S. trade. This should be a straightforward process with no Congressional drama, negotiations or other complications.

In 2016, the U.S. MFN average tariff was 3.5%; but WTO MFN tariffs vary widely by item – some goods have a WTO MFN of zero while some have tariffs much higher than 3.5%. It is important to check the U.S. WTO MFN tariff on the goods you export. You can use the Canada Tariff Finder to do so.

04 HIGHER THAN WORLD TRADE ORGANIZATION (WTO) TARIFFS

Despite the U.S. Congress's sole authority to regulate foreign trade, other U.S. laws give the president extraordinary emergency authority to impose tariffs.[2] Trump has mused about imposing 35% tariffs on imports from companies that move operations out of the U.S. and placing a 20% tariff on imports from Mexico to fund construction of a border wall. He has also threatened to impose a 45% tariff on imports from China.

However, it is difficult for WTO members to increase tariffs. The WTO states "countries can break a commitment (i.e., raise a tariff above the bound rate), but only with difficulty. To do so, they have to negotiate with the countries most concerned and that could result in compensation for trading partners' loss of trade."[3]

It is unlikely, but technically possible, that the U.S. could impose tariffs on Canada higher than the WTO MFN, or the tariffs that were in place before the FTA was implemented. If the U.S. imposes higher than MFN tariffs, Canada (and Mexico) may decide to retaliate, causing tariff escalation. It is also possible a U.S. withdrawal from NAFTA could be combined with trade action against other countries, which could have trickle-down impacts on Canadian supply chains.

If the U.S. takes this route, it is more than likely that tariff raises would not be across the board but rather would be targeted to specific commodities and products to achieve bargaining and political leverage. If this occurs, Canada could appeal higher U.S. tariffs through the WTO dispute settlement process.

[3] World Trade Organization, "Tariffs: more bindings and closer to zero," https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm, accessed Dec. 20, 2017.

BOTTOM LINE

The continued participation of the U.S. in NAFTA is uncertain. Understanding what is happening, how scenarios may unfold if the U.S. leaves NAFTA, and if and how these scenarios will affect your business is important. Reaching out to your customers/suppliers in the U.S. and Mexico now is recommended. No matter what happens with NAFTA renegotiations, however, using provincial and federal resources will help. **Now is not the time to panic – it is the time to prepare.**

ADDITIONAL RESOURCES

The contacts below can help you navigate to appropriate resources.

British Columbia
B.C. Ministry of Jobs, Trade and Technology
Trade Policy and Negotiations
Steve Anderson, Executive Director
ph: 778-698-8769

Alberta
Alberta Economic Development and Trade
Trade Policy – International
Daryl Hanak, Executive Director
ph: 780-422-1339

Trade Policy – Americas
Tristin Sanregret, Executive Director
ph: 780-427-4605

Saskatchewan
Executive Council, Government of Saskatchewan
Intergovernmental Affairs
Robert Donald, Executive Director, Trade Policy
ph: 306-787-8910

Saskatchewan Trade & Export Partnership (STEP)
Chris Dekker, President and CEO
ph: 306-787-1550

Manitoba
Manitoba Intergovernmental Affairs and International Relations
International Relations
Robert Roe, Senior Policy Analyst/Manager, International Projects
ph: 204-945-7031

Manitoba Trade and Investment
Sean Hogan, Acting Executive Director
ph: 204-945-1639

World Trade Centre Winnipeg
Derek Earl, Vice President
ph: 204-289-4086

Government of Canada
Global Affairs Canada
Trade Commissioner Service
trade@international.gc.ca

WTO AT A GLANCE

The World Trade Organization

The World Trade Organization (WTO) is the global organization that deals with trade between countries. Under WTO rules, member countries (there are 164) cannot discriminate between trade partners – this is called most-favoured-nation (MFN) treatment. For example – if you lower a tariff rate on potatoes for one country, you must apply the same rate to potatoes imported from all WTO member countries.

The WTO also settles disputes between member countries, among other things.

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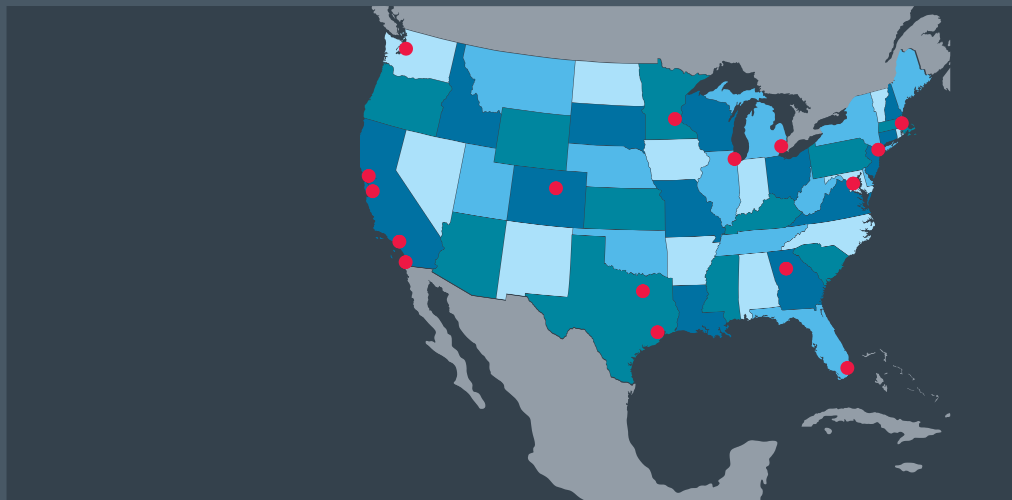
Photo (page 02): Tim Marshall, Unsplash
Photos (page 04-07): iStock.com



ADDITIONAL RESOURCES

If there is a federal trade commissioner in the region(s) you do business in the U.S., you may want to contact them and get on their mailing lists for updates. Most consulates have a team that includes a trade commissioner for each sector (ie., agriculture, technology, oil and gas) dedicated to helping Canadian businesses. Figure 4 lists the locations of all the Canadian consulates in t'he U.S. and links to information on their trade teams.

FIGURE 4: CANADIAN CONSULATES IN THE UNITED STATES

CITY, STATE	WEB DIRECTORY OF TRADE TEAM
Atlanta, GA	Atlanta trade support team
Boston, MA	Boston trade support team
Chicago, IL	Chicago trade support team
Dallas, TX	Dallas trade support team
Denver, CO	Denver trade support team
Detroit, MI	Detroit trade support team
Houston, TX	Houston trade support team
Los Angeles, CA	Los Angeles trade support team
Miami, FL	Miami trade support team
Minneapolis, MN	Minneapolis trade support team
New York, NY	New York trade support team
Palo Alto, CA	Palo Alto trade support team
San Diego, CA	San Diego trade support team
San Francisco, CA	San Francisco trade support team
Seattle, WA	Seattle trade support team
Washington, D.C.	Washington trade support team

Source: The Canadian Trade Commissioner Service in the United States of America