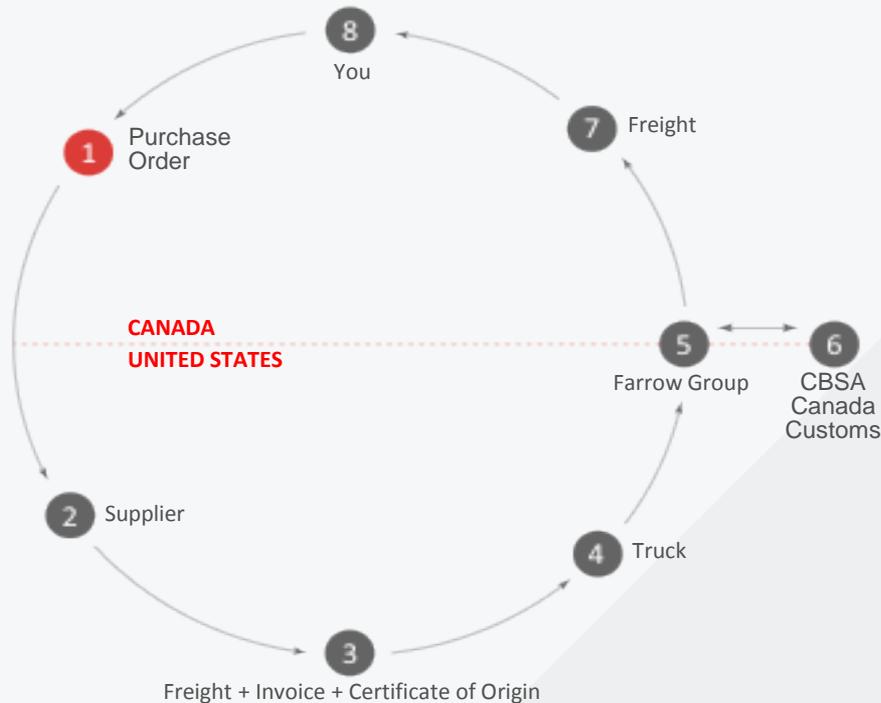


**MICHIGAN'S  
FOOD & AGRICULTURE  
BORDER GATEWAY SUMMIT III**





## Step 1 – Purchase Order

You issue a Purchase Order to your supplier in the United States.

## Step 2 – Supplier

Your supplier readsies the order for shipping. They also prepare the Bill of Lading and the customs documents: a Canada Customs Invoice and NAFTA Certificate of Origin (if eligible).

## Step 3 – Freight + Invoice + Certificate of Origin

Your supplier gives the Customs Invoice and NAFTA Certificate to the carrier when the shipment is picked up. Many U.S. shippers will also transmit the shipment information directly to Farrow Group.

## Step 4 – Truck

If the shipment information wasn't previously transmitted electronically to Farrow Group, the carrier must fax the customs documents to us well in advance of the driver reaching the border.

## Step 5 – Farrow Group

Before arrival, Farrow Group will prepare your B3 Customs Entry on your behalf and transmit it electronically to Canada Border Services Agency (CBSA).

## Step 6 – CBSA Canada Customs

When your shipment arrives at the border, CBSA determines whether to release or inspect the goods.

## Step 7 – Freight

Once released by Customs, your shipment is delivered to you by the carrier.

## Step 8 – You

Upon receipt, you verify that the quantities and products were accurately reflected on both your supplier's invoice and on your Customs Entry.

# Prior to Importing

- Obtain your import/export business number from the Canada Revenue Agency.
- Identify what type of goods you want to import.
- Identify the country of origin, manufacture and export of the goods.
- Determine whether the goods are controlled, regulated or prohibited by the Canada Border Services Agency (CBSA) or any other government department or agency.
- Determine the 10-digit tariff classification number and the applicable rate of duty for your goods from the *Customs Tariff*.
- Determine the value for duty.
- Determine whether the goods are subject to any other duties or taxes.
- Verify whether the goods and services tax is applicable.
- Select the method of shipping and communicate with the transportation company on cross-border requirements.

# Documentation Required

A declaration for Customs purposes

- Commercial Invoice / Canada Customs Invoice.

## Trade Agreement Certificate

(such as, but not limited to...)

NAFTA

Form A

CIFTA

(when ordering a product It is wise to investigate if a Trade Agreement exists and what, if applicable, duty rate's apply).

Manifest or PARS label (usually provided by the carrier)

**BOL (Bill of Lading)** = Not necessary. Then why?

OGD required document, certificate and/or permit

# The Current CBSA Specific Target Audit Priorities for Origin:

## **Tariff Classification HS Number(s):**

Fresh Cut Flowers 0603.19.00

Pickles 2001.90.90.91

Palm Oil 1511.90.10 and 1511.90.20

Seaweed (Round 2) 1212.21.00 and 1212.29.00

Dextrins and Other Modified Starches (Round 2) 3505.10.90

## **Valuation HS Number(s):**

Fresh Cut Flowers 0603.19.00

Preparations and Pastrycooks' Products Various goods of Chapter 19

## **Origin:**

Frozen Crab 0306.14.90



# Canadian Food Inspection Agency (CFIA) Inspection Modernization Program

CFIA has developed a more comprehensive inspection approach across all food commodities. Changes include: regulated companies needing to obtain an Imported Food Sector License, more inspections and enforcement for non-compliance. In addition, the types of commodities are expanding to include coffee, baked goods, spices, snack foods, meal replacements among others. While currently only importers of meat, fish, dairy and eggs are regulated, so this will be a significant impact to our clients.

## CFIA 's proposed single food inspection model

The new model has five key components:

- **Licensing/registration** – A licensing and registration requirement for regulated parties that import or export food or that manufacture or process food for trade between provinces;
- **CFIA oversight** – Varying levels of CFIA oversight that would be based on the level of risk;
- **Inspection** – A systems approach to inspection that would assess the preventative control plans and procedures of regulated parties to ensure that food is prepared safely and complies with regulations;
- **Compliance and enforcement** – One common compliance and enforcement strategy for food; and
- **System performance** – Mechanisms to evaluate the CFIA's inspection program for consistency, effectiveness and performance.

# Safe Food for Canadians Act: Implementation of New Food Act

Vision:

Integration across regulations, programs and inspections.

What we know:

This Act consolidates 4 separate Acts –

- Meat Inspection Act & Regulations;
- Fish Inspection Act & Regulations;
- Canada Agriculture Products Act (CAPA)
- Regulations and food provision of Consumer Packaging & Labeling Act and Regulations.

## Single Window Initiative (SWI)

CBSA is working with other government departments (OGD) to modernize how and when regulatory requirements are applied such as:

- Eliminating paper processes and convert to electronic release processes
- Centralize import data collection and share with departments and agencies
- Improve data by using goods identifiers such as Global Trade Item Numbers (GTIN) or Taxonomical Serial Numbers (TSN). Supplying the Harmonized Code (HS) is not good enough

## Implications to your company:

- These initiatives will have, potentially, profound impacts on agricultural producers and food processors. Food safety risk management is increasingly being downloaded to the plant and producer level.
- Inspection procedures can range from review and audit of traceability documentation at the processor level; to risk based strategies for inspection of products at the border or at the processors sites;
- food processors will have to self-monitor, and ensure they are maintaining an auditable paper trail.

## Questions to ask:

Does your company have a recall/traceability plan in place?

For food producers and processors, this means a renewed focus on accountability and traceability of inputs and subsequent distribution of products. The ability to maintain accurate records, often computerized for data sharing, will require investment in more sophisticated IT solutions. Even companies that aren't the licensed importer must have procedures in place to track and trace any food product.

Does your company have a Food Safety Control Plan?

Any company that deals with food and food products will be required to have a detailed Preventative Food Safety Control Plan (PFSCP). Your written plan must document all aspects of your food handling operation, including your facilities, equipment, employee training, sanitation and pest control, and transportation.

## Issue into Opportunity

### What does this mean for you?

What opportunities exist for your company or organization to take advantage of the harmonization of food safety approaches? Understanding the new regime can position producers to take advantage of the new market opportunities and prepare themselves to expand their market horizons.

# Maximum Compliance

=

# Maximum Facilitation



# Questions?

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Vice President Government Relations

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# The End of an Era? Agriculture / Agri-food Trade in the Canada-US Relationship

[dujczod@dickinsonwright.com](mailto:dujczod@dickinsonwright.com)

**With offices in:**

Arizona | Michigan | Nevada | Ohio | Tennessee  
Washington, DC | Ontario

# Emerging Issues for Canada-US Companies Companies and Practitioners 2014

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- Country of Origin Labelling (COOL) and Potential Retaliation
- Continued Infrastructure Challenges (NITC to Lake Erie Ferry)
- Budgetary Challenges / Impact of USER FEES
- All Against the Backdrop of BtB, RCC, CETA, TPP, TTIP, and many more

# Regulatory Alignment?

## WELCOME!

This play structure is designed for  
**2-5 Year olds - United States**  
**1.5 - 5 Year olds - Canada**

Although this equipment meets requirements of ASTM F1487 - 98 for ages 2 - 5 and CAN/CSA - Z814 for ages 1.5 - 5, some equipment may not be appropriate for all children in this age group.

- Attentive Adult supervision is strongly recommended for children using this equipment.
- Loose clothing, clothing with draw strings and items worn around the neck must be avoided to prevent string entanglement.
- Dangers, especially sharp items, ropes and cords must be removed from play area immediately.
- Extra care must be taken when conditions are damp, snowy, icy or hot.
- Regular inspection of play equipment is vital. Report missing, worn or damaged parts to the owner.
- Care must be taken near swings and other moving equipment to avoid impact.

**MOST IMPORTANT:** The U.S. Consumer Product Safety Commission (CPSIA) and Canadian Standards Association (CSA) state that the safety of play equipment is the responsibility of the manufacturer.

# Homeland security.



Buy local. It matters.



34,000 member families standing behind the production of food, ornamentals, and environmental quality.  
[www.nyfb.org](http://www.nyfb.org)

# The Cross Border Life Cycle

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To have a successful program, do I need a cross-border, physical presence?

The answer usually is “No, not for most companies.”

Exporting is often the first step in a process that may someday lead to an cross-border, physical presence.

# Checklist item #1

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## Trademarks and Intellectual Property:

- Be aware of ‘trademark pirates’
- Outside the USA, most countries follow a “first to file” trademark rule.  
The USA does now too.
- Patents and copyrights need attention too

# Emerging IP Issues

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- Bill C-56 “Combating Counterfeit Products Act” / US Enforcement
  - Empowers Canada Border Services Agency (“CBSA”) officials to proactively target, detain and examine counterfeit goods at the Canadian border (whether imported into Canada or exported from Canada).
  - IP Rights Holder may issue a “request for assistance” for CBSA to detain goods that are believed to be counterfeit.
  - Overall impact at the border?
  - Watch if in the business of shipping heavy / used machinery across border.

## Labelling / Packaging

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The *Food and Drug Regulations* set out the manner in which energy and nutrient values must be declared, as well as the presentation and requirements for nutrient content claims and health claims. Subsection 5(2) of the *Food and Drugs Act* prohibits labelling that is contrary to the Regulations. Since the nutrition information requirements of other countries do not match the Canadian requirements, labels and advertisements with nutrition information other than that permitted by the *Food and Drug Regulations* are considered to be labelled or advertised contrary to Canadian legislation.

# Temporary Marketing Authorization Letters

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TMALS

Unclear procedure as to marketing food products with health claims.

## Checklist item #2

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### Sales Representatives and Distributors:

- Sales representatives solicit orders for a commission; distributors buy and sell for their own account
  - This is different than passage of title / liability issues
    - “Golden handshakes” at termination
    - Territorial restrictions and “parallel imports”

# Legal Issues in Distributor / Sales Agreements

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- These individuals are representing your company.
- Again, watch taxable presence.
- Employee under Canadian law? Fact specific inquiry into control focussed on compensation, hours, place of employment, restrictions.
- Watch health and safety standards; termination provisions.
- “I have a friend” scenario. Watch for FCPA violations.

# CASL

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- Canada's long awaited anti-spam law (CASL) comes into force as of July 1, 2014.
- Takes the approach of forbidding almost all unsolicited commercial electronic messages (CEMs) and generally speaking, requires intended recipients of CEMs to provide express consent to the receipt of those messages.
- A CEM is broadly defined to include any message that has as its purpose, or one of its purposes, to encourage commercial activity. It has been suggested that the mere presence of a link to a company website can make an email a commercial electronic message that is subject to CASL.
- If you send commercial messages electronically to Canadians, you need to comply. Compliance may require updating your communication and marketing practices, as well as implementing potentially costly changes to your IT capabilities.
- If your organization is found to have sent non-compliant electronic messages, it can mean up to \$1 million fine for individuals and \$10 million for corporations. Receivers of the messages can also sue for \$200 for each individual communication.

## Checklist item #3

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### Export Contract:

- Custom agreement or standard forms?
- Domestic forms need review for international use (e.g., UN Convention on Contracts for the International Sale of Goods)
  - Terms requiring special attention

## Checklist item #4

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### Taxes:

- Generally, independent sales representatives do not create a taxable “permanent establishment” abroad under US tax treaties
- If selling through affiliated foreign companies, pay attention to transfer pricing

## Checklist item #5

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### Shipping and Customs:

- Delivery at your place or mine?
- Clearly define responsibility for arranging shipping, clearing customs, paying duties and so on
- ICC Incoterms are very useful in clearly allocating responsibility between buyer and seller

## Checklist item #6

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### Government Regulations and Product Standards:

- Do US export controls apply?
- US law also prohibits bribery abroad and support for the Arab boycott of Israel. CUBA. Humanitarian aid.
- Look into import restrictions and product standards in the destination country

## Checklist item #7

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### Getting Paid:

- So how do I assure that I will get paid?
- There are various structures that will protect buyer and seller (e.g., letters of credit)

# Non-Resident Importer to Canada

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- A Non-Resident Importer (NRI) is a company who, in most cases, does not have a physical presence in Canada, yet for purposes of customs and GST, acts as the importer of record for goods sold/consigned into Canada.
- As an NRI, you will relieve your Canadian customers of the responsibilities of importation, making it easier for them to buy from you.
- For example, a U.S. supplier may be required, by its Canadian customer, to ship its goods "delivery/duty paid" and therefore must become an NRI.

## Does NRI Still Exist?

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- As discussed throughout today, licensing Requirements in US and Canada. US appears to be somewhat more flexible (voluntary).
- From a policy level, is this consist with other programs (BtB and RCC)

# Forms of business organization

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## Incorporated subsidiary vs branch office

### Corporations

- Federal vs provincial incorporation (Unlimited Liability Companies)
- Private vs public
- Residency requirements
- Articles, bylaws, unanimous shareholders agreements

### Branch office

- Registration
- Name issues
- Tax and liability

# Your People - Immigration

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- Business persons who seek to enter Canada for an activity anywhere in the business cycle – from visiting a client for one day to establishing a brick-and-mortar subsidiary for their employer – may apply either for temporary admission or for status as a permanent resident
- Typically, individuals coming to Canada will initially make an application for temporary admission and may or may not follow this process with an application for permanent residence

# Immigration Issues

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- NAFTA VISA REGIME (TN)
- Highly Skilled Workers
- US Regime
- After Sales Technicians
- Closure of CDN offices for processing in Buffalo and Detroit

## Other Options

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- Permanent Residents
- Investor / Entrepreneur Opportunities

# RCC PROGRESS

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- Plant Protection
- Meat Cut Nomenclature
- Crop Protection
- Mutual Reliance on Food Safety Testing (But FSMA?)
- Financial Protection for Sellers
- Zoning for Foreign Animals Disease

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**Bon Voyage!**