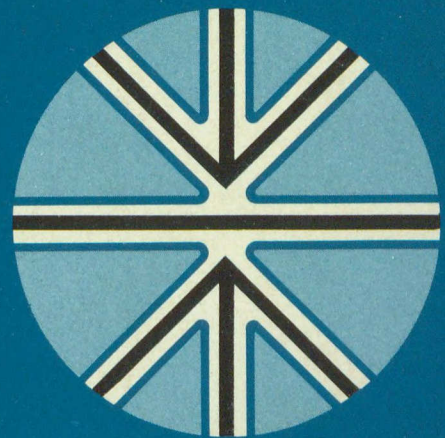


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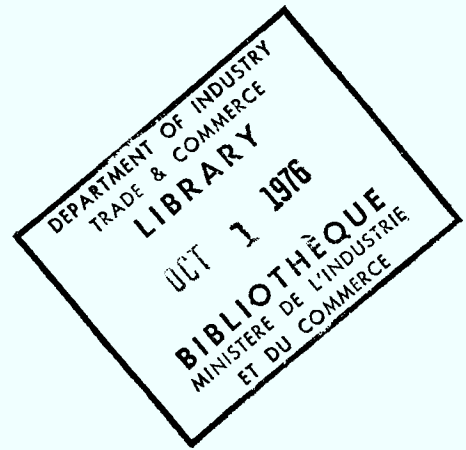
PRODUCTION SHARING GUIDEBOOK

CANADA - UNITED STATES
DEFENCE PRODUCTION
SHARING PROGRAM



*Canada Dept. of Industry Trade and
Commer. Defence Programmed Branch.
U.S. Division*

PRODUCTION SHARING GUIDEBOOK



PREFACE

Since the beginning of the Canada-United States Defence Production Sharing Program, the Government of Canada has provided industry with information about the program in a publication called the "Production Sharing Handbook". That volume went through several editions, the last one having been published in 1967. A new version is needed because of several recent changes in administrative procedures.

The need to provide more information to industry than ever before led to a decision to not print the book in one large volume. Instead, three smaller, more convenient, publications are being put out. This "Production Sharing Guidebook" is the first of these in terms of explaining the program. The second in the series, the "Defence Export Shippers' Guide" was published before this Guidebook to meet urgent demands for the information therein. The third book, "Production Sharing Duty-Free Products", to be published shortly, will contain the Duty-Free Entry lists maintained by each U.S. Military Department. It is expected that these publications will prove more useful to industry, in both countries, than did the Production Sharing Handbook.

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1.0 INTRODUCTION

This guidebook has been written to provide guidance to Canadian manufacturers participating or wishing to participate in the Canada-U.S. Defence Production Sharing Program. Without going into a lengthy discussion of the program's origins, it is sufficient to say that defence production sharing is an implementation of the principles of cooperation between Canada and the United States for their mutual benefit in defence matters.

The program provides Canadian manufacturers with the opportunity to supply to the United States Armed Forces a wide range of defence supplies and services in competition with U.S. industry. A Canadian firm offering competitive price, delivery, and quality can obtain substantial United States defence business and will not generally encounter discriminatory legislative or regulatory restrictions, except as noted in Chapter 5.

Because the United States defence market is so large it attracts a large number of suppliers, with consequent fierce competition. Not only must a Canadian company price its products competitively to be successful in bidding but it must maintain the highest standards in contract performance to meet the buyer's expectations.

To implement production sharing the United States government waives United States Customs duties on a wide range of Canadian supplies entering the United States for defence programs. This waiver extends both to prime contracts placed by the United States government with Canadian suppliers and to sub-contracts placed by defence contractors in the United States with Canadian suppliers for defence work. The Buy American Act has been waived for all defence supplies made in Canada. Balance-of-payments directives, which implement the policy of the United States Department of Defense of reducing defence expenditures abroad, do not apply to United States procurement of Canadian defence supplies and services for use in the United States or Canada.

The Canadian government does not require a Canadian firm to obtain an Export Permit for the export of defence goods to the United States under the Program. This applies to both prime contracts and sub-contracts.

Within the Canadian government the Defence Programs Branch (DPB) of the Department of Industry, Trade and Commerce is responsible for administering the Defence Production Sharing Program in Canada. DPB maintains representatives in the United States (page 31) to promote the Program and to provide on-the-spot assistance to Canadian defence industry. Canadian companies interested in the Program are urged to contact the U.S. Division of the Defence Programs Branch in Ottawa. The mailing address is:

**Chief, U.S. Division
Defence Programs Branch
Office of International Special Projects
Department of Industry, Trade and Commerce
112 Kent Street
Ottawa, Ontario, K1A 0H5**

Telephone: 613:995-7386

2.0 Selling to the United States Defence Market

As mentioned in the introduction a Canadian manufacturer may sell defence supplies to the United States either as a prime contractor or as a sub-contractor to American prime contractors (or to American or Canadian sub-contractors as a lower tier sub-contractor). Since the rules differ for each of those cases, the first part of this Chapter will focus on the Canadian firm as a prime contractor, and the second part on it as a sub-contractor.

2.1 Prime Contracting

2.1.1 United States Military Procurement Agencies

The United States military structure is headed by the Secretary of Defense whose Department of Defense (DOD) is the policy group. Each of the three Armed Services is organized into an operational Military Department, designated the Departments of the Army, Navy and Air Force. Procurement is carried out by agencies of these Military Departments, which are responsible for acquiring the required materiel.

In addition a Defense Supply Agency (DSA) has been established under DOD, to provide those requirements not peculiar to sophisticated weapon systems or to a single Military Department. The DSA has established several Defense Supply Centers, each responsible for procuring a number of different commodity areas.

NOTE: EACH MILITARY DEPARTMENT AND DSA MAINTAINS ITS OWN LIST OF ITEMS, IDENTIFIED BY FEDERAL SUPPLY CLASS, FOR WHICH IT PROVIDES DUTY-FREE ENTRY FROM CANADA. THESE LISTS WILL BE PUBLISHED SEPARATELY AS A SEPARATE BOOK, "PRODUCTION SHARING DUTY-FREE PRODUCTS".

The procurement policies and practices of the Department of Defense and of the Military Departments are codified in a publication known as the Armed Services Procurement Regulation (ASPR). Throughout this book reference will be made to various parts, sections, and paragraphs of the ASPR, but the sheer size of the document makes impracticable reproduction of all relevant excerpts. Canadian companies can consult the ASPR by contacting DPB at its Ottawa location.

The procurement regulations of the Military Departments and DSA require that they normally place prime contracts for Canadian products and services with the Canadian Commercial Corporation (CCC).

2.1.2 Canadian Commercial Corporation (CCC)

The Canadian Commercial Corporation is a Canadian Crown Corporation, managed, staffed and operated by the Department of Supply and Services (DSS). It was established by an Act of Parliament and it acts primarily as a contracting agency when other countries or international agencies wish to purchase Canadian supplies and services from the Canadian government. The CCC sub-contracts the foreign requirement completely to Canadian industry.

2.1.3 U.S. Military Solicitation and Bidding Procedure

The Export Contracts Branch of DSS, the officers of which act on behalf of CCC, is the agency which receives and distributes to Canadian suppliers, the solicitation documents, "Bid Sets", relating to U.S. Military requirements. These Bid Sets which originate with the U.S. Military procurement agencies, are mailed directly to both the CCC and the Canadian firms whose names appear on the agencies' Bidders Mailing Lists (see 2.1.5 below.) Attached to the Bid Set received by CCC is a list of the Canadian addressees to whom it was mailed directly.

The Bid Set may take the form of an INVITATION FOR BID, REQUEST FOR PROPOSAL, or a REQUEST FOR QUOTATION as follows:

2.1.3.1 Invitation for Bid (IFB)

The IFB is a formally advertised competitive procurement available on request to any person in any country. It is the procurement method used for the purchase of about 80% by number of all U.S. military procurements. Because considerable competition is expected for each IFB it is conducted in strict accordance with clearly defined procedures. Acceptance by the U.S. agency of a bid will result in an immediate award and thus the bid document must be considered as a binding contract at the time of submission. There are provisions and procedures for appeal by unsuccessful bidders, information on which can be provided by CCC.

The IFB will define, in its contractual clauses, any restrictions which would preclude the award of a contract to any particular bidder. (See Chapter 5—Limitations of the Program).

Because the accepted bid immediately becomes a legally binding contract care must be taken to avoid errors in prices and delivery commitments

and misinterpretations of packaging requirements, specifications, etc. Changes to a bid cannot be made after bid opening unless the otherwise successful bidder wishes to make his bid more attractive to the U.S. agency.

2.1.3.2 Request for Proposal (RFP)

The RFP is a competitive procurement, open only to firms which are specifically known by the procurement agency to possess the capability to respond. It is the procurement method used for the purchase of about 80% of the dollar value of all U.S. military procurements.

A proposal in response to an RFP is a firm offer for the period of time stated in the proposal. It may be withdrawn by the company by notice in writing to the U.S. procurement agency prior to acceptance of the proposal. Although the RFP is used for negotiated procurement, award may be made and a binding contract come into being on the basis of the initial proposal. Should the U.S. procurement agency initiate negotiations to vary the terms of the initial proposal, signature of both CCC and the U.S. agency is required for a contract to exist.

2.1.3.3 Request for Quotation (RFQ)

The RFQ is a solicitation of price and availability and consequently the response to an RFQ is not irrevocably binding. A response to an RFQ is considered by the U.S. agency to be information rather than a firm offer, and a time period may be stated for which the information in the quotation is valid. A contract awarded on the basis of a response to an RFQ requires execution by CCC and by the military agency.

NOTE: BIDS, PROPOSALS, AND QUOTATIONS ARE TO BE MADE IN UNITED STATES CURRENCY, AND THE RISK OF FLUCTUATION IN THE EXCHANGE RATE WILL BE TO THE ACCOUNT OF THE CANADIAN COMPANY, NOT TO CCC.

2.1.4 CCC's Solicitation Activity

When Bid Sets from military procurement agencies are received by the Canadian Commercial Corporation they are submitted to close scrutiny to determine whether they are suitable for solicitation of Canadian firms. Suitability depends upon the following:

- i) adequacy of time for bid preparation,
- ii) knowledge of one or more Canadian sources with a known capability of interest,
- iii) the absence of terms or conditions which would restrict or prohibit the possibility of an award to a Canadian supplier, etc.

Each Bid Set declared biddable is assigned to an Enquiries Officer. This officer is responsible for all administrative aspects of that requirement i.e.:

- i) the make-up and issuance of the solicitation to the identified Canadian sources,
- ii) provision of supplemental information, amendments, etc.,
- iii) assistance to the companies in the preparation of the bid, proposal or quotation,
- iv) receipt and examination of the company offer to the Corporation,
- v) preparation and submission of the CCC response to the U.S. bid set,
- vi) follow-up and all other activity up to the receipt of a contract by CCC, an award to other than a Canadian firm, or cancellation of the requirement.

Contracts received by CCC from Canadian bids are assigned to CCC purchasing branches for award to the Canadian bidder; the purchasing branch Engineering Procurement Officers are responsible for both the contract between CCC and the U.S. military procurement agency and the ensuing contract between CCC and the Canadian firm.

It should be noted that, regardless of the channel through which a Canadian firm receives a solicitation from a United States procurement agency, any response must be submitted to the Canadian Commercial Corporation, Ottawa. An exception to this procedure frequently occurs for small purchases of less than \$2500. (U.S.), in which case the U.S. military procurement agency may solicit Canadian firms, receive bids, and issue a contract directly to the successful bidder. The mailing address of CCC is:

Canadian Commercial Corporation
70 Lyon Street
Ottawa, Ontario, K1A 0S6

If a Canadian company receives a solicitation document from an agency other than the Canadian Commercial Corporation, and does not receive, within three days, instructions from CCC which include the closing date in Ottawa for the submission and the identity of the officer handling the enquiry, a telegraphic request for that information should be addressed to the U.S. Enquiries Section of CCC, or telephone: 613:992-7309.

2.1.5 Sources of Contract Opportunities

Many avenues are available to Canadian firms to keep informed of and explore contract opportunities offered by the U.S. Procurement Agencies.

2.1.5.1 Bidders Mailing Lists

A Bidders Mailing List is usually maintained by the Procurement Agencies for each commodity. Canadian firms wishing to be listed for the appropriate commodities must apply to the Canadian Commercial Corporation which will ask for detailed information on the company's engineering, manufacturing and financial capabilities before endorsing a company's request for listing.

By regulation, no U.S. military procurement agency may list a Canadian supplier unless CCC certifies and forwards the application for listing. Listed sources receive copies of relevant solicitations directly from the procurement agency.

For negotiated competitive procurements, RFPs, the procurement agency will solicit bids only from responsible qualified sources, and depends on CCC to certify which Canadian suppliers are qualified.

Retention of names on Bidders Mailing Lists at U.S. military procurement agencies is dependent upon a response to each IFB, RFP and RFQ, by a bid, proposal, or quotation or a brief note giving the reason for not otherwise responding. This notice should be sent directly to the U.S. agency concerned if the document is received directly from the agency, with a copy of the notice to CCC. When the IFB, RFP or RFQ is received from CCC, the Failure to Quote Notice enclosed with the solicitation should be completed and returned to CCC. The agency will then be advised by the Corporation on behalf of the Canadian company. U.S. military procurement agencies have made a practice of removing company names from Bidders Mailing Lists after two failures by a prospective bidder either to submit a bid, proposal or quotation or to otherwise respond.

2.1.5.2 Commerce Business Daily

The Commerce Business Daily, published five times a week by the U.S. Department of Commerce, provides valuable information to companies interested in bidding into the U.S. defence market. Information on contract awards, current requirements, Pre-Invitation Notices and Advance Planning Procurement Information (APPI) is published regularly. Interested Canadian companies should subscribe to the Commerce Business Daily by forwarding an application to:

Canadian Commercial Corporation
P.O. Box 4897
Cleveland Park Station
Washington, D.C. 20008.

A cheque in U.S. funds must be included with the application, payable to the order of CCC. The subscription rate is \$40.00 per year, a surcharge of \$30.25 is applicable for air mail delivery. It is strongly recommended that Canadian firms subscribe via air mail because requirements advertised in the CBD frequently close only a few days after the advertisement and the time left to prepare bids is often critically short.

2.1.5.3 Sales Representatives

Canadian firms producing technically sophisticated items cannot rely on listing with CCC to guarantee opportunities to bid on U.S. defence requirements. U.S. military procurement agencies generally invite proposals only from companies whose technical abilities are known to them. Therefore such companies find it essential to have knowledgeable representatives call on the cognizant officials in the procurement agencies and convince them of their companies' competence. To be effective, such visits must take place well before a solicitation document is issued.

A company decision may be required whether to employ its own personnel in such activities or to retain a locally appointed sales organization to make the necessary contact. There are various factors to consider and these are rather different from those influencing the selection of an agent to seek straightforward sub-contract work.

When contemplating appointment of a sales organization, the manufacturer has to satisfy himself that the representative is well acquainted with cognizant technical and buying offices of the U.S. military agencies, and has demonstrated an up-to-date knowledge of potential requirements. If the Canadian product is to be offered for a classified U.S. defence program, the security clearance situation of a U.S. citizen working for a Canadian company needs to be clarified. See Chapter 4.5 for additional information on this matter.

In making this decision, Canadian companies should realize also that bid sets for the more routine requirements are obtained easily from CCC, without the need of personal intervention at the U.S. agency. If a Canadian firm decides to appoint an agent, DPB officers in the United States, listed on page 31 can be helpful in locating suitable candidates.

Many IFBs, RFPs and RFQs responded to by the Canadian Commercial Corporation include a requirement for a statement as to whether an outside sales organization was used to solicit the

business. If so, and if the submission is successful, details of such representation may be required on DOD Form 119.

Furthermore, representatives seeking prime contracts should conform to DOD standards, set out in paragraph 1-500 of the U.S. Armed Services Procurement Regulation, concerning "Contingent or Other Fees". This requires representatives to be "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business". There should be a continuity of relationship between the company and the sales agency, temporary agents being ruled out, and commission rates should be fair and reasonable.

Amplification of this policy and of its application in specific cases may be obtained from:

Directorate for Procurement Policy
Office of the Assistant Secretary of Defense
(Installations & Logistics)
Washington, D.C. 20301.

2.1.5.4 Industrial Preparedness Production Planning Program

Under the Industrial Preparedness Production Planning Program the U.S. Department of Defense is continuously re-appraising the production capabilities of the U.S. industrial base to ensure that it is capable of producing adequate and timely quantities of material as may be required to support the U.S. Armed Forces in times of emergency. DOD policy allows selected Canadian firms to participate on an equal basis with U.S. firms as Planned Producers for a wide range of defence items under this Program. Through an agreement negotiated with the DOD, CCC is solely responsible for the management of Canadian industrial participation in the program, in particular, the establishing of Canadian firms with the U.S. Military Procurement Agencies as Planned Producers. A Planned Producer of a defence item at the prime contract level is guaranteed an opportunity to compete for current procurements of that item.

A non-participating Canadian firm may initiate action to become a Registered Planned Producer in the program by first evaluating its capabilities to determine whether participation as either a prime or sub-contract planned producer (or both) offers the more promising role. If Prime Contract Planning is indicated, the firm should indicate its desire to be a Planned Producer for a particular item by writing directly to the appropriate U.S. procurement agency. This letter should include an indication of production capabilities and a listing of current and past military production contracts of the proposed item. If Sub-contractor Planning is indicated, the

firm should write a similar letter directly to the selected prime contractors with whom the firm has held sub-contracts. In the latter case the correspondence should be to the attention of the Industry Planning Representative.

Participation in this program has resulted in substantial business for some Canadian producers. Canadian companies are urged to give it thorough consideration. Additional detailed information can be obtained from the Canadian Commercial Corporation (telephone: 613:996-3247).

2.1.6 U.S. Military Procurement Regulations (ASPR)

To end this section, ASPR paragraphs 6-504 and 6-505, dealing with purchases from Canada by U.S. military procurement agencies, agencies are reproduced for reference.

6-504 *Procedures for Canadian Purchases.*

for prime contracts (?)

6-504.1 *Bidding Procedures.*

a) *Solicitation of Canadian Firms.*

- (1) *Except as provided in (2) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having procurement responsibility for the supplies or services involved.*
- (2) *Canadian planned producers under the Industrial Preparedness Production Planning Program shall be included on bidders mailing lists for their planned items.*
- (3) *Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation, 70 Lyon Street, Ottawa, Ontario, Canada K1A 0S6.*
- (4) *Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.*
- (5) *Small purchases, as defined in Section III, Part 6*, (of the ASPR) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation.*

*MAINLY MEANS PURCHASES OF LESS THAN \$2500.00.

b) Submission of Bids and Proposals.

- (1) As indicated in 6-504.2 below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate its acceptance of bids or proposals by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian bid proposal with the following information contained therein: name of the Canadian bidder; confirmation and endorsement of the bid in the name of the Canadian Commercial Corporation; a statement that prices for listed items are exclusive of United States import duties (see 6-103.5); a statement as to whether the prices for unlisted items include or exclude United States import duties; and a statement that the Corporation shall sub-contract 100% with the bidder.*
- (2) When a Canadian bid or proposal cannot be processed through the Canadian Commercial Corporation in time to meet the bid opening requirement, the Corporation is authorized to permit Canadian firms to submit bids or proposals directly, provided the Canadian bid or proposal and the Canadian Commercial Corporation endorsement are both received by the purchasing office prior to bid opening.*
- (3) All formal competitive bids shall be submitted by the Canadian Commercial Corporation in terms of United States currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.*
- * (4) All proposals and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the proposal or quotation, elect to quote and receive payment in terms of United States currency; in which event contracts arising therefrom shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.*

**SEE SECTION 2.1.3.3. ON PAGE 7 FOR CCC POLICY ON THIS POINT.*

6-504.2 Contracting Procedures

- (a) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b) below, shall be made with the Canadian Commercial Corporation, which has offices located at 70 Lyon Street, Ottawa, Ontario, Canada, K1A 0S6; and 2450 Massachusetts*

Avenue, N.W., Washington, D.C. 20008. Contracts normally should be awarded to and administered through the Head Office of the Canadian Commercial Corporation in Ottawa, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to its Ottawa Office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided, however, that the approval of the Corporation shall be obtained on any matters involving changes to the contract.

- (b) The general policy in (a) above need not be followed for (i) purchases negotiated under 3-211 for experimental, developmental or research work, unless the contract is for a project under the Defense Development Sharing Program, as outlined in 6-507; (ii) purchases negotiated under 3-202 for public exigency; (iii) purchases negotiated under 3-203 for small purchases; or (iv) purchases made by Defense activities located in the Dominion of Canada.*

6-504.3 Termination Procedures

The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the United States contracting officer and settle all Canadian sub-contracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Supply and Services (Canada) contracts (See 8-216). The United States agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Commercial Corporation with respect to settlement of any sub-contracts placed in the United States, including disposal of inventory. The settlement of such United States sub-contracts shall be in accordance with this Regulation.

6-505 Contract Administration

- (a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:
Defense Supply Agency, DCASO, Ottawa,
Gillin Building,
141 Laurier Avenue,
Ottawa, Ontario, Canada, K1A 0S6*

(b) *When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DOD funds (DOD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-For all other DOD components) whether payment is in Canadian or United States dollars shall be:*

*Disbursing Officer, DCASR, Detroit,
1580 East Grand Boulevard,
Detroit, Michigan 48211.*

2.2 Sub-contracting

2.2.1 Nature of Sub-contracts

Contracting between Canadian and U.S. manufacturers for defence goods under the Production Sharing Program is strictly on a company to company basis. The Canadian company offered a defence sub-contract should operate in a normally prudent manner, just as in a non-defence commercial venture. The terms and conditions of the proposed sub-contract should be clearly understood, including all obligations to be assumed. The terms and conditions under which payment will be received, and under which special tooling, technical data and other assistance may be furnished by the customer, should be clearly understood at the outset. These may be partially dependent on the terms and conditions of the prime contract between the U.S. government and the U.S. firm. The Canadian sub-contractor has no claim on either the Canadian or the U.S. government.

There is an increasing tendency for the U.S. government to demand that its prospective defence contractors meet high standards of management practice as well as technical and production capability. This is reflected in the demands of large U.S. defence contractors that their prospective suppliers satisfy, in advance of orders, the same criteria. Therefore a Canadian company discussing defence orders with U.S. firms may well find itself being asked by the U.S. firms to permit surveys of its management control and quality control systems, its engineering and manufacturing capabilities, and an assessment of its financial competence.

2.2.2 Sources of Sub-contract Opportunities

2.2.2.1 Sales Representatives

Because defence contractors in the U.S. are very widely dispersed throughout the country many of those companies may choose to ignore lists of approved suppliers issued by the U.S. and Canadian governments and rely upon personal contact instead. The necessity of sales representatives to

maintain persistent contact with the U.S. companies cannot be over-emphasized. Such contact is essential in order that these companies become aware of Canadian suppliers and develop a willingness to consider them as suppliers in defence programs.

2.2.2.2 Defence Programs Branch (DPB) Liaison Officers

DPB Liaison Officers are located at a number of places throughout the U.S.A. (see page 31 for list of offices.) These officers are familiar with the defence industries located within their territory, and are prepared to assist Canadian industry in seeking out business opportunities. They can provide guidance as to the major areas of activity within each company in the territory. Additionally they can arrange appointments with buyers interested in specific capabilities. Canadian companies are urged to use the services of these officers.

2.2.2.3 Trade Fairs, Exhibitions and Other Contacts

Business Opportunity Exhibitions, sponsored by trade and industrial groups and the U.S. Department of Defense, together with local Chambers of Commerce, are held periodically across the United States. These provide a favourable atmosphere for contacts with U.S. defence contractors since their purpose is to generate business. Frequently Canadian companies are welcome to participate as well as attend.

The Department of Industry, Trade and Commerce sponsors exhibitions of Canadian industrial products in a number of trade fairs in the U.S., which attract U.S. and Canadian defence contractors. Canadian companies should discuss possible participation with this Department. Enquiries should be addressed to:

Director, Fairs and Missions Branch
Department of Industry, Trade and Commerce
Ottawa, Ontario, K1A 0H5.

Officials of DPB may, where appropriate, attend these fairs in order to discuss the Production Sharing Program with U.S. buyers visiting the exhibitions.

2.2.2.4 Lists and Trade Directories

The U.S. DOD often publishes lists of defence contractors for various weapons systems. Trade directories in the U.S. provide names and addresses of U.S. contractors by product category, and the DPB field liaison officers in the United States can be helpful in obtaining this information.

2.2.2.5 Incoming and Outgoing Missions

On occasion the U.S. Division of DPB sponsors organized incoming missions of U.S. defence industry procurement officials to permit them to see Canadian industrial facilities for potential sub-contract requirements.

Federal and Provincial agencies also sponsor outgoing missions of Canadian industrialists to other countries including the United States. Some of these are in industrial sectors of direct interest to U.S. defence contractors.

3.0 Contractual Requirements

3.1 Specifications and Standards

The need for defence material to withstand severe handling and operational environments dictates the need for components and materials to meet strict standards of quality. Military Specifications (MIL Specs) have been developed for most materials and components and the supplier must meet these specifications. The specific requirements to be met on any particular solicitation are listed, or "called up" in the Bid Set.

Military specifications and standards are available by mail from:

Naval Publications and Forms Center
(N.P.F.C.)
5801 Tabor Avenue
Philadelphia, Pa. 19120
Telephone: 215:697-3321

NPFC prints and distributes all the military series documents and distributes within DOD the industry specifications and standards adopted by the Military Services.

To fulfill a request for a specification the NPFC requires the number assigned to the specification and preferably also its title. When the document is positively identified, there is virtually no difficulty in obtaining a copy. DOD requires no justification for ordering copies of specifications or standards, and there is no charge for a single copy.

When a company urgently requires specifications in order to respond to a U.S. Bid Set, a telegraphic request, stating the solicitation number and the need for the document in order to bid, will receive a prompt response. Routine mail requests are answered with much less dispatch.

One available aid to identification is the DOD Index of Specifications and Standards (DODISS) which lists approximately 25,000 current specifications and 10,000 standards. It is available at an annual subscription rate of \$20 from:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402.

The U.S. National Bureau of Standards has a research service available to the public and publishes an index of U.S. Voluntary Engineering Standards which contain a listing of some 20,000 documents and the source from which they may be ordered. This publication can also be ordered from the Superintendent of Documents at a price of \$9 a copy. It is also available in micro-fiche at 75 cents per set.

3.1.1 Specifications by Subscription

Military and Federal Specifications and Standards including Qualified Products Lists (See 3.3 below) can be obtained on a subscription basis with automatic mailing.

Subscriptions will be accepted on the basis of the Federal Supply Classification for a single class or for as many individual classes as the subscriber chooses. Applicable classes may be determined by referring to the list of "Federal Supply Groups and Classes", Cataloging Handbook H2-1, which is available free of cost from The Director:

Navy Publications and Printing Service Office,
700 Robbins Avenue,
Philadelphia, Pennsylvania, 19111.

The Federal Supply Classification System is the basis for inventory and supply management systems of all U.S. government agencies; it is described in "Production Sharing Duty-Free Products" (published separately).

Subscriptions may be forwarded at any time to the above address in any form accompanied by a certified bank cheque or postal money order payable to the Treasurer of the United States. The subscriptions cost \$4.75 (U.S.) per class per year and include revisions issued during that year. The subscriber should provide the class title as given in Handbook H2-1 for each class listed in his subscription order.

3.1.2 Prime Contracts

Canadian companies receiving solicitations from U.S. military agencies, including those received through CCC, will normally find that MIL Specs for components, material, testing, packaging, packing, etc. and Federal (FED) standards are not provided with the bid package. The procedures outlined above should be followed to obtain all unclassified specifications and standards. To receive classified specifications and bid support documents, a request must be made to CCC. The request must include the solicitation number, the U.S. Agency issuing it, the closing date of the bid, and the name and telephone number of the U.S. contracting officer, if known.

It should be noted that statements of work to be performed, drawings, etc. can be obtained only from the agency originating the solicitation. Normally, the name, address, and telephone number of the person to contact at the soliciting agency office is in the bid package. If the information is not given in a bid set the Canadian company should immediately wire Canadian Commercial Corporation or phone 613:992-7309.

3.1.3 Sub-contracts

Drawings, specifications, and other unclassified technical data required to perform the work are normally furnished by the U.S. prime contractor. Standard specifications should be obtained as described in 3.1.

A Canadian firm wishing to obtain classified material from a U.S. defence contractor in connection with sub-contract work should seek assistance from CCC's Washington representative at the address on page 8 who will make the necessary arrangements.

3.2 Inspection and Reciprocal Government Quality Assurance Arrangements

The production of defence supplies in accordance with military Quality Assurance standards is an essential element of military procurement. An inter-governmental arrangement, whereby inspection (including testing) of such supplies and services (including, when appropriate, raw materials, components and intermediate assemblies) exists between Canada and the United States.

3.2.1 Method of Application

By virtue of this arrangement, the Canadian Department of National Defence (DND) will, upon request by U.S. military agencies, arrange for personnel of

the Department to conduct Quality Assurance on behalf of the U.S. government with respect to contracts placed by the Military departments and DSA with CCC, and with respect to sub-contracts placed in Canada by U.S. defence contractors. Such personnel and facilities are provided without cost to the U.S. military procurement agencies. In their turn, the U.S. Military Departments upon request provide, and make no charge for, quality assurance services and facilities in connection with contracts placed in the United States by the Canadian government, or with respect to sub-contracts placed in the United States by Canadian contractors who are performing Canadian defence contracts.

In addition, either DND or any U.S. military procurement agency may, in appropriate or exceptional cases, arrange for government Quality Assurance by its own organization in the other's country.

In Canada, the quality assurance function is carried out by the Director General, Quality Assurance, DND. Complete information or guidance on Military requirements for a system of Quality Control and/or inspection may be obtained by application to this Directorate.

It will be appreciated that only a government agency may request quality assurance to be carried out at source by the other government. No contractor, of his own volition, can request quality assurance action by a government, but he may suggest to his military customer that such arrangements be made. If he so wishes, a prime contractor may carry out source inspection himself at the plant of his sub-contractor, but it is then a matter of agreement between the two companies and neither government is involved.

3.2.2 Quality Control

The United States Department of Defense (DOD) policy regarding the responsibilities for the controls of quality is reflected in the terms, conditions or technical requirements (specifications) of military contracts.

The successful bidder must fully comply with these requirements: therefore, Canadian companies seeking U.S. defence orders should, for their own protection, be aware of DOD policy and what the provision of the required assurance will entail.

The contractor is held responsible for the control of product quality and for offering to the military procurement agencies, for acceptance, only those products determined by him to conform to contractual requirements. The contractor is required

to have available adequate test facilities for executing the prescribed examinations and tests itemized in part 4 (Quality Assurance Provisions) of Specifications, or make arrangements for the utilization of suitable test facilities.

3.2.3 Quality Assurance

Government Quality Assurance during the manufacturing process will be requested by the customer agency only when it is impractical or impossible to verify quality after receipt of the article. Adequate quality control of material and components will be maintained by both DND and DOD to preclude unnecessary Q.A. requirements at the final manufacturing plant.

Canadian Government Specifications DND 1015, DND 1016 and DND 1017, which describe Canadian government quality assurance requirements, are equivalent to U.S. Government Specifications MIL-Q-985A, MIL-1-45208A and U.S. Armed Services Procurement Regulation (ASPR) Section 14-302 respectively. Approval and acceptance of a contractor's quality assurance programs and systems are covered by comparable procedures in the two countries. Quality assurance functions in respect to these specifications will therefore be performed in accordance with the procedures of whichever country provides the quality assurance service.

3.3 U.S. Product Qualification and Qualified Products Lists

Qualification is defined as the testing of products for compliance with the requirements of a Specification, in advance of and independent of any procurement action. Only a small percentage of commodities are required to be qualified prior to award of a contract. Qualification is made a Specification requirement only when one or more of the following conditions exist:

- (i) Time required for testing the product after a contract award would unduly delay delivery of the supplies being purchased.
- (ii) The cost of repetitive testing would be excessive.
- (iii) Tests require expensive or complicated testing apparatus not commonly available.
- (iv) Assurance is required, prior to award of contract that the product is satisfactory for its intended use.
- (v) Determination of acceptability would require performance data to supplement technical requirements contained in the Specification.

In such cases, the specification provides for advance testing of products and listing the products which successfully pass these tests, on lists known as Qualified Products Lists (QPL). These lists are then used in connection with procurement by the Government, or for the Government by its contractors. The fact that awards may be made only for products which have, prior to bid opening, been tested and approved for inclusion on the QPL, makes it necessary for the prospective suppliers to arrange for testing of their products without delay. Waiting until a procurement has been initiated usually does not allow sufficient time for the testing to be completed prior to bid opening.

When it has been determined that a product must be subjected to qualification testing, relevant information will appear in the applicable Specification.

3.3.1 Obtaining Qualification Approval

The adoption by Canada of the United States MIL (Military) Specifications for many parts and materials, and production in Canada to these Specifications, has simplified production sharing of these products.

Where both countries adhere to MIL Specifications, they produce identical items evaluated and approved by the same methods. An agreement has been negotiated between Canada and the United States, entitled "U.S.-Canada Agreement for Qualification of Products of Non-Resident Manufacturers". The agreement allows one country's products to be listed by the other country in its Qualified Products List (QPL).

The scope of the agreement is indicated in the list of the Federal Supply Classes in Section 5. It should be noted that these classes cover a broad range of items, not all of which require qualification approval.

3.3.2 Procedure for Canadian Manufacturers

When a Canadian manufacturer wishes to supply a product covered by a Specification requiring qualification approval, he should first review the Specification and determine by actual test whether his product complies with the design and/or performance limits of the Specification.

If the product falls into one of the classes covered by the Reciprocal Agreement the manufacturer should request qualification action from:

Department of National Defence
Chief of Engineering and Maintenance
101 Colonel By Drive
Ottawa, Ontario K1A 0K2
Attn: DEMPS

Upon receipt of the request, DND will determine the eligibility of the parts for qualification and in most cases assess the manufacturer's in-plant test laboratory for ability to satisfy all the test requirements of the specification. Qualification tests will be connected in the manufacturer's approved in-plant laboratory or in an approved commercial laboratory at the expense of the manufacturer, under DND supervision. The manufacturer will be notified whether the product has met the qualification requirements of the Specification, in which case it will be listed on the appropriate Canadian QPL.

Having received qualification approval in Canada a Canadian company seeking a listing on a U.S. QPL must adhere to the following procedure to obtain listing on a U.S. QPL.

- i) The Canadian manufacturer requests DND to apply to the appropriate qualification authority in the United States for recognition of the Canadian Approval and listing on the U.S. QPL. DND, upon receipt of this request, will forward to the U.S. qualifying agency the necessary technical information including test reports and related engineering data for its consideration. If the tests upon which qualification were based were done in a facility located in the Canadian plant, then a report on the test facility will also be forwarded.
- ii) The qualifying agency has 60 days upon receipt of the application to advise the Canadian manufacturer if it is prepared to recognize the approval and subsequently place the name of the Canadian company on the U.S. QPL. If for some reason the U.S. qualifying agency does not regard the supporting data as adequate, DND will be so advised and requested to supply further information.

NOTE: THE CANADIAN MANUFACTURER MUST HAVE RECEIVED HIS CANADIAN QUALIFICATION APPROVAL TO THE SPECIFICATION OF THE ISSUE AND DATE CURRENTLY IN EFFECT IN THE U.S.

3.3.3 Remarks

The fact that a product has been tested and included on a Qualified Products List is evidence only that a manufacturer can make a product of a type and grade which meets the Specification requirements. The qualification procedure is intended to eliminate delay in delivery of products by providing assurance prior to award of contract that the prospective supplier can produce a product which will meet the requirements of the Specification. It is neither a supplement to nor a substitute for acceptance testing under contract. Inclusion on a list does not in any way relieve the manufacturer of his contractual obligation to furnish

products which meet all the Specification requirements. The listing does not guarantee acceptance of the product in any future purchase nor does it constitute a waiver of the requirements of the Specification as to acceptance, inspection, testing or other provisions of any contract.

When the Canadian manufacturer's name is on the U.S. QPL most technical barriers to acceptance of the product will have been removed with regard to U.S. contracts for parts to MIL Specifications.

QPLs are under continuous review to ensure currency at the time of revision or amendment of the Specification. The intent to establish a QPL for a new Specification or to expand the number of sources on an existing QPL is advertised in the "Commerce Business Daily" (See 2.1.5.2)

A copy of the complete Canada-U.S. Agreement now forms a portion of DND document SB-1 which defines the conditions and procedures for Qualification approval of Electronic Parts and materials by DND. A copy of the document can be obtained from DND on request.

3.3.4 Potential Problems for Canadian Manufacturers

Experience indicates that Canadian manufacturers should take certain precautions to receive and maintain listing on the QPL. The first of these is the need to maintain Qualification Approvals up-to-date in Canada. Manufacturers are urged to apply for Qualification Approval at the earliest possible date and to maintain this approval by immediate action as soon as the Specification is modified or reissued.

If the Specification is amended, the U.S. qualifying authority allows a manufacturer a period of grace to requalify his product.

The following further information may be helpful to Canadian manufacturers who have not yet participated in the Production Sharing Program. In case of a direct enquiry from the United States, information accompanying an Invitation for Bid often indicates that only vendors holding Qualification Approval may bid; on other occasions the instructions may indicate that capable parts manufacturers may bid, provided they can get product approval within a stipulated period.

DND is prepared to offer all possible assistance in resolving the problems of qualifications and early contact will establish whether the particular product is covered by the existing reciprocal agreement, or whether application should be made directly to the U.S. qualifying agency for examination in the United States. Such information should be requested from:

Department of National Defence
Chief of Engineering and Maintenance
101 Colonel By Drive
Ottawa, Ontario K1A 0K2
Attn: DEMPS

It should be noted that the Agreement in no way bars a Canadian manufacturer from making direct application to the appropriate U.S. qualifying agency for examination and listing of his products, whether covered by this Agreement or not. Nevertheless, it will be apparent that a submission made by DND on the manufacturer's behalf will expedite action. By invoking the terms of the Agreement, the case has to be considered and a decision reached within a 60-day period, whereas the U.S. Qualifying agency is not obligated to act on a direct request.

is this section see 3.3.1

3.3.5 Table of Scope of Reciprocity Agreement

This list indicates the current scope of reciprocity for qualification between the United States and Canada. The items are listed according to the Federal Supply Classification systems. That system is described in the "Production Sharing Duty-Free

Products" to this book. It should be noted that fewer classes are included under this Reciprocity Agreement than are included in the Duty-Free Entry lists.

F.S. CLASS	TITLE
1650	Aircraft Hydraulic, Vacuum and De-icing Components
1680	Miscellaneous Aircraft Accessories and Components
2920	Engine, Electrical Components, Non-Aircraft
2925	Engine, Electrical System Components, Aircraft
3120	Bearings, Plain, Unmounted
3439	Miscellaneous Welding, Soldering, and Brazing Supplies and Accessories
4020	Fiber Rope, Cordage and Twine
4450	Industrial Fan and Blower Equipment
5340	Miscellaneous Hardware
5835	Sound Recording and Reproducing Equipment
5905	Resistors
5910	Capacitors
5915	Filters and Networks
5920	Fuses and Lightning Arresters
5925	Circuit Breakers
5930	Switches
5935	Connectors, Electrical
5940	Lugs, Terminals and Terminal Strips
5945	Relays, Contactors, Solenoids
5950	Coils and Transformers
5955	Piezoelectric Crystals
5960	Electron Tubes, Transistors and Rectifying Crystals
5961	Semiconductor Devices and Associated Hardware
5962	Microelectronic Circuit Devices
5965	Headsets, Handsets, Microphones and Speakers
5970	Electrical Insulators and Insulating Materials
5975	Electrical Hardware and Supplies
5977	Electrical Contact Brushes and Electrodes
5985	Antennas, Waveguides and Related Equipment
5990	Synchros and Resolvers
5995	Cable, Cord, and Wire Assemblies: Communications Equipment
5999	Miscellaneous Electrical and Electronic Components
6105	Motors, Electrical
6125	Converters, Electrical, Rotating
6130	Converters, Electrical, Non-Rotating
6135	Batteries, Primary
6140	Batteries, Secondary
6145	Wire and Cable, Electrical
6240	Electric Lamps
6625	Electronic and Electrical Properties Measuring and Testing Instruments
6635	Physical Properties Testing Equipment
6640	Laboratory Equipment and Supplies
6850	Miscellaneous Chemical Specialties
9330	Plastic Fabricated Materials

3.4 Auditing and Cost Records

Under the terms of a reciprocal agreement with the U.S. Department of Defense, audits of U.S. defence contracts placed in Canada, when required, are performed by the Audit Services Bureau (ASB) of the Department of Supply and Services (DSS).

- 1) Audits of contracts placed by CCC with Canadian firms are performed as required by the procurement regulations of DSS with allowable costs being in accordance with Costing Memorandum DSS 1031. Such verifications or costs are in accordance with the practices, policies and procedures of DSS.
- 2) Audits of contracts placed directly with Canadian industry by U.S. firms holding DOD contracts are also usually performed by ASB on the same basis. With changes now occurring in the U.S. audit procedures as initiated by the Cost Accounting Standards Board (CASB) no definite statement can be made as to the future arrangement that might be reached between CASB and ASB. More up-to-date information will have to be obtained from ASB in Ottawa. In the event that a Canadian firm holding a DOD prime contract (or a sub-contract) places a sub-contract with a U.S. firm containing audit or price determination requirements, the Canadian firm should apply directly to ASB to arrange the audit with its U.S. counterpart.

3.5 Priorities and Allocation

In the U.S., the distribution of defence materials is controlled by formal systems of priority and controlled material allotments. It is mandatory that all defence orders carry priority or allotment designation. Canada's participation in the U.S. system is implemented by forms, instructions and regulations agreed upon by the Department of Commerce of the United States and the Canadian government through the Department of Supply and Services. The agreement ensures that Canadian purchase orders for material from the U.S. for use in Canadian or U.S. defence programs are given equal consideration with comparable U.S. orders. Canadian orders without U.S. priority or allotment identification can be treated only as regular commercial orders. All contracts issued by Canadian Commercial Corporation to Canadian suppliers for U.S. requirements will, when issued, include the necessary priority rating and allotment. All other Canadian importers of U.S. defence supplies will use the forms and applications prescribed by DSS, Materials Instruction (Priorities) No. 1.00 to obtain a priority rating.

When any assistance is required to secure an allotment of U.S. controlled materials or delivery on a purchase order placed with a Canadian distributor or with a U.S. supplier, or for changes in allotments or dollar limitations on purchases made under a priority rating, application shall be made to:

Materials Priorities Officer
Contract Services Branch
Dept. of Supply and Services
70 Lyon Street
Ottawa, Ontario K1A 0S5
Tel: 613-992-7495

Many current U.S. defence programs are urgent. Meeting shipping dates is most important, not only for immediate reasons, but to give Canadian industry a good reputation with the U.S. Armed Services and their contractors. Canadian companies will have to make full and proper use of U.S. priorities and allocation procedures in order to meet contractual obligations.

3.6 Instructions for Duty-Free Entry of Canadian Supplies

Most shipments of defence material to the U.S. are afforded duty-free entry, whether the Canadian manufacturer is acting as a prime or sub-contractor. Information on forms and procedures to be followed is given in the "Defence Export Shipper's Guide" which can be obtained free of charge, from Defence Programs Branch in Ottawa or any liaison officer in the U.S. Special cases in cross-border trade will be treated in the last chapter of this handbook.

4.0 Defence Industrial Security

If a project is "classified" in the United States, this implies that it is deemed to fall within the various categories or classifications pertinent to U.S. national security, i.e. CONFIDENTIAL, SECRET or TOP SECRET. (Canadian security classifications also include the category of RESTRICTED). When such a classification has been imposed on a project, or any portion thereof, the concurrence and approval of the cognizant U.S. Department of Defense (DOD) Agency is necessary prior to obtaining access to the project or to areas in which classified work is being done on the project.

To facilitate these procedures, agreements have been entered into between the United States and Canada whereby Canadian contractor personnel, with security clearance in Canada, can be sponsored by the Department of Supply and Services (DSS) for access to classified U.S. projects. Subject to the approval of the U.S. DOD, visits to U.S. contractors or military establishments can then be made.

4.1 Pre-Contract Requirements

4.1.1 Visits by Canadian Personnel to the United States

It should be determined, when making exploratory enquiries of U.S. Service personnel concerning visit arrangements, whether formal visit approvals are required to enter their facility. Due to changes in U.S. Service Regulations from time to time, it may be necessary to process a visit request even for access to unclassified U.S. information and/or to discuss purely Canadian industrial capabilities and products.

When Canadian government and/or industrial personnel wish to visit U.S. government and/or industrial establishments on classified matters, or unclassified matters where visitor controls are exercised, formal visit approvals are obtained as follows:

- (i) The request is submitted by the Canadian government department and/or Canadian company to the Industrial Security Division, DSS, Ottawa, giving the following details.
 - (a) Full name of agency or company submitting the request;
 - (b) Alphabetical listing of individuals concerned in the proposed visit, giving their full name, date and place of birth. The prerequisite here is that such personnel must have a Canadian security clearance granted by the Industrial Security Division (ISD);

- (c) Full address of place to be visited, including street address, and if applicable, the name, rank, title, etc. of the person to be visited;
 - (d) Specific purpose of the proposed visit, including the type of information or equipment to which access is required and the particular areas of interest and capability of the applicant's company;
 - (e) To obtain a renewal of a previous approval quote the previous DSS request number, U.S. Authority, expiry date of previous clearance and, when applicable, the number of visits made under this previous authority.
- (ii) Canadian government sponsorship is granted by ISD if the request is submitted in sufficient detail and if the purpose of the visit is within the known capabilities of the company.
 - (iii) DSS then submits the request through its Washington office to the appropriate U.S. DOD agency, according to the project involved, and to the U.S. Service which has security cognizance over the facility to be visited. It should be noted that these are not necessarily identical.
 - (iv) If, after processing, the U.S. DOD authorities approve the requested visit, they allot a visit clearance number for the particular request, and DSS is so advised. ISD, Ottawa, then notifies the company of the clearance number and duration of the clearance. The facility to be visited is also notified of this clearance number, which should be quoted by the visitor in making his arrangements for a specific visit. U.S. Army, U.S. Navy and U.S. Industrial facilities require 72 hours notice prior to a visit, while the U.S. Air Force requires 48 hours advance notice. Details will be included in the DSS notification of visit approval.

It should be noted that the U.S. Services normally require a 30 day period in which to conduct the required processing of a visit request. Due to this time factor and the complex routine involved in determining the acceptability of a proposed visit, it is essential to consider carefully the time element in any planning for participation in U.S. defence contracts.

Under extraordinary circumstances more rapid approvals can be obtained where invitations have been extended by U.S. Service Personnel to attend specific symposia, briefings, bid conferences, etc. In such cases it is essential that details of invitations, such as date, name, rank, and title of inviting officer, as well as other pertinent details be in writing so that a copy may be submitted with the visit request.

A visit clearance to a U.S. establishment permits access to classified information on an oral and visual basis only; see Section 4.4 of this Chapter regarding exchange of classified documents.

Visit clearances may be arranged on the basis of a single visit, or if recurring visits are contemplated, on the basis of intermittent or periodic visits over a six-month period. In addition, similar clearance routes are available for visit arrangements where Canadian classified information is involved.

4.1.2 Visits by U.S. Personnel to Canada

In the event that U.S. businessmen wish to visit Canadian companies involved in classified projects, the procedure is as follows:

- (i) Application is made by the U.S. Plant Security Officer to the local representative of the U.S. DOD which has plant cognizance, including such details as are required by normal U.S. visit procedure, i.e. names, purpose of visit, etc.
- (ii) The security clearance of the applicant is verified by the U.S. DOD representative and, if no release of U.S. military classified information is involved in the proposed visit, the request may then be transmitted through the Defense Industrial Security Office (DISCO), Columbus, Ohio, directly to ISD, Ottawa.
- (iii) Where release of classified U.S. military information is involved, the local DOD representative processes the request through his Headquarters and, if approved, the requests are then transmitted to the Armed Service Attaché of the U.S. Embassy in Ottawa, for direct transmission to ISD, Ottawa.
- (iv) When the visit request is approved by ISD a visit clearance number for the particular request is allotted and the requesting company is advised through the U.S. Embassy and the Canadian company to be visited is also notified by ISD.
- (v) Personnel who are thus cleared must advise the Canadian company at least 48 hours in advance of their arrival.

Visit requests by U.S. Service personnel, on either classified or unclassified matters, are handled as outlined in paragraphs iii, iv and v above.

4.2 Contractual Requirements

Award of a prime or sub-contracts to a Canadian firm by the U.S. Armed Service or their prime contractors is prima facie evidence that releasability and need-to-know have been established to the satisfaction of the U.S. Security Authorities. While

visit requests are still required, the handling of such requests can be expedited with the inclusion of all contract and/or sub-contract details in the formal visit submission.

4.3 Facilities Clearances for Canadian Firms

To enable a U.S. contractor or U.S. government procurement agency to determine the security status of a potential Canadian contractor, the following action is taken:

- (i) The U.S. DOD transmits a written request for facility clearance to ISD through the channels indicated above. If the Canadian company is already established as a cleared facility, immediate advice can be returned to the U.S. DOD. If no previous facility clearance has been recorded with ISD, it will be necessary to institute inspection and clearance procedures before the U.S. DOD can be advised of the company's status.
- (ii) ISD advises the cognizant U.S. DOD in writing of the facility clearance of the Canadian company.
- (iii) Should a classified contract or sub-contract subsequently be awarded to the Canadian company, ISD assumes responsibility for security of the information or work on behalf of the U.S. DOD. ISD security requirements must be adhered to for the duration of such contract or sub-contract.

4.4 Transmission of Documents and Materials

It should be noted that a visit clearance to a U.S. establishment permits access to classified information and/or material on an oral and visual basis only. If an exchange of classified documents (for example, plans, specifications, etc.) or material (hardware, etc.) is envisaged, the Canadian company should so notify ISD, Ottawa as soon as possible, preferably during the negotiation phase when a contract is being established. It is stressed that exchange of classified documents and/or material can be effected on a Government-to-Government basis only.

When negotiations with Canadian firms for defence work are conducted through the Canadian Commercial Corporation, classified Bid Sets and similar material are supplied to Canadian firms through that office after the facility security clearance and other industrial security requirements have been confirmed by ISD.

4.5 U.S. Representation

Canadian firms must often decide whether their own domestic sales force or locally appointed sales representatives can best penetrate the U.S. defence market. Where products or services are totally unclassified and there is no requirement to enter U.S. government or industrial facilities where classified equipment is located, a Canadian firm should encounter few problems in employing U.S. citizens to promote their products.

On the other hand, should U.S. classified information, equipment or areas within facilities require security clearances, problems can be expected. These include determining how the U.S. citizens can establish themselves as cleared representatives of a Canadian firm under U.S. industrial security regulations. Even where U.S. citizens have been previously cleared on their own requirements, such a clearance may be affected when representing non-USA firms.

Before finalizing such relationships, the U.S. representatives should be advised to consult with the local office of the Defense Contract Administration Services (Region, District or Office) nearest to his geographical location. Canadian firms should consult with ISD in Ottawa for further information. Where possible ISD will co-ordinate the matter with the DCAS.

4.6 Summary

The information in this Section does not cover all aspects of security, and it is suggested, therefore, that specific guidance in this regard be obtained from the Industrial Security Division of DSS in the initial phases of participation in the Canada-United States Production Sharing Program which might involve classified projects. There are three general rules to be adhered to when applying for clearances in connection with this Program:

- (i) It is essential that complete and explicit reasons for visits be given to ISD, outlining the exact subject matter to be discussed. The major source of delay in securing approvals is lack of adequate explanation of the "need-to-know".
- (ii) The request should be made as far in advance as possible to allow for the required processing.
- (iii) The focal point for all contact and follow-up on visit clearance and initial documentary exchange procedures is:

Chief,
Industrial Security Division,
Security Services Branch,
Department of Supply and Services,
Ottawa, Ontario, K1A 0S6

5.0 Limitations of the Program

Money required by the U.S. Military Departments for operations and procurement of materiel is voted for each fiscal year by the United States Congress. The money is provided by enactment of a law each year called the Defense Appropriations Act. At various times, special conditions have been introduced into the Defense Appropriations Act, which restrict the freedom of the Military Departments to spend the authorized funds in certain ways. These legislative restrictions tend to become perpetuated in subsequent annual Defense Appropriations Acts, and they permanently restrict the scope of Canadian participation in U.S. defence programs. These restrictions are outlined below, as well as those restrictions that arise from other U.S. laws or regulations.

5.1 The Berry Amendment

The Defense Appropriation Act customarily contains a restriction known as the "Berry Amendment" regarding the use of appropriated funds for the procurement of articles of food, clothing or certain textile materials.

This restriction prohibits the U.S. Armed Services from procuring supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric (and Specialty Metals, see 5.2) which have not been grown or produced in the U.S. or its possessions, but this does not restrict the procurement of cotton or wool reprocessed or reused in the U.S. or its possessions, or of foods manufactured or reprocessed in the U.S. or its possessions.

The above restrictions do not apply to the following:

- (i) *procurements outside the United States in support of combat operations;*
- (ii) *procurements by vessels in foreign waters;*
- (iii) *emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto;*
- (iv) *procurements of those supplies listed in 6-105 as to which the list does not make this part expressly applicable; (list of excepted products under the Buy American Act).*
- (v) *small purchases of items containing wool or cotton in amounts not exceeding \$5,000 (For the purposes of this exception, a small purchase in an amount not exceeding \$5,000 shall mean a procurement action involving a total dollar amount not in excess of \$5,000, as distinguished from a single line item);*

- (vi) *procurements of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 percent of the total price of the end item; provided, that the estimated value does not exceed \$10,000 or 3 percent of the total price of the end item, whichever is greater;*
- (vii) *any articles of food or clothing of any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be procured as and when needed at United States market prices; and*
- (viii) *supplies purchased specifically for commissary resale (see 6-103.7).*

5.2 Specialty Metals

Commencing with the Defense Appropriations Act for Fiscal Year 1973 (which ended on June 30, 1973) the United States Congress has added a "Specialty Metals" rider to the Berry Amendment (see 5.1) which directly affects Canadian defence industry.

Under this restriction, funds may not be used to procure articles containing "Specialty Metals" that were not melted in steel manufacturing facilities within the United States or its possessions. The term "Specialty Metal" includes:

- (a) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.
- (b) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.
- (c) titanium and titanium alloys.
- (d) zirconium and zirconium alloys.

The U.S. Defense Department has implemented this in the ASPR (6-305) so as to require compliance at all sub-contract levels in the following six major classes of procurement: aircraft; missile and space systems; ships; tank-automotive; weapons; ammunition. In other procurement classes, e.g. communications-electronics, DOD has decided not to extend the restriction below the prime contract level.

The ASPR provides for a waiver in cases where the Secretary of the Military Department (or authorized designee) determines that a satisfactory quality and sufficient quantity of U.S.-melted Specialty Metals cannot be procured "as and when needed" at United States market prices. No blanket waiver has been given for the use of Canadian Specialty Metals, and such an exemption will not be given. On an individual basis, Canadian defence sub-contractors that require Canadian metals to perform the work should ask their customers to seek waivers from the appropriate DOD contracting agency. Enquiries should be made to determine if the DSS Materials Priorities Officer (see Section 3.4 on page 18) can help obtain scarce U.S. specialty metal.

5.3 Byrnes and Tollefson Amendments

Two clauses of the Defense Appropriation Act prohibit purchase of any naval vessel from foreign sources as well as the sub-contracting of "major components" of naval ship hulls or superstructures to foreign yards. The term "major components" is not precisely defined; therefore Canadian companies interested in that type of work should consult with the U.S. Division of Defence Programs Branch, ITC, to ascertain the situation pertaining to particular U.S. programs.

5.4 Small Business Set-Asides

The U.S. Small Business Administration has developed programs with the U.S. Armed Services and DSA under which Government procurements are set aside, in whole or in part, for tendering by U.S. small business firms on a competitive basis.

- A U.S. small business concern is generally one that
- i) is independently owned and operated, and is not dominant in the field of operation in which it is bidding on Government contracts (ASPR 1-701.1(a)(1)).
 - ii) conforms to Industry Small Business Size Standards. (ASPR 1-701.1(a)(2)).

A U.S. Contracting Officer can agree with the Small Business Administration to set aside "the entire amount of an individual procurement or a class of procurements where there is a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices" (ASPR 1-706.5(a)).

A set-aside for U.S. small business can be a portion of a procurement where it is found that the procurement can be divided into two or more economic production runs or reasonable lots, and further,

where "one or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price" (ASPR 1-706.6(a)).

In instances of partial set-aside Canadian companies will find the following note in Invitations for Bid or Requests for Proposal:

Notice of Partial Small Business Set-Aside (1972 July)

(a) *General. Part of this procurement identified in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.*

(b) *Procedures.*

1. *Determining Eligibility.*

(a) *To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsible offer on the non-set-aside portion. (ASPR 1-706.6C).*

It is also U.S. Department of Defense policy to afford U.S. small business concerns "to be considered fairly as sub-contractors". (ASPR 1-701.1). It will be seen that such firms are not to be given special privileges at the subcontract level; they are merely to be given equal opportunity. Therefore, Canadian industry will have an opportunity to compete in the sub-contract field, regardless of the fact that the prime contract may be set-aside for small business.

5.5 Labour Surplus Areas Set-Aside

Following is an excerpt from the ASPR on this program:

"1-802 General Policy. Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas (LSA) and encourage increased hiring of disadvantaged individuals by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, to accommodate the small business policies of Section 1, Part 7, preference shall be given in the following order of priority to (i) certified-eligible concerns with a first preference which are also small business concerns, (ii) other certified-eligible concerns with a first preference, (iii) certified-

eligible concerns with a second preference which are also small business concerns, (iv) other certified-eligible concerns with a second preference, (v) persistent or substantial LSA concerns which are also small business concerns, (vi) other persistent or substantial LSA concerns, and (vii) small business concerns which are not LSA concerns. But in no case will price differentials be paid for the purpose of carrying out this policy."

Areas eligible under this program are determined by the Department of Labor.

A similar program exists at the sub-contracting level.

"1.805. Sub-contracting With Labor Surplus Area Concerns

1.805.1 General Policy

(a) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defence sub-contracts and to encourage placement of sub-contracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere."

5.6 Minority Groups Owned Business Set-Asides (1971) ASPR 1-332

This clause states that it is in the U.S. national interest that minority business enterprises should be involved increasingly in Federal procurement programs. In compliance with this policy, DOD has instructed that minority businesses are to be given every opportunity to be placed on source lists. This obligation is in addition to the Small Business sub-contracting program and the Labour Surplus Program. Minority groups are defined as Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American Aleuts. However, this clause is not included in the mandatory clauses in contracts.

5.7 Depressed Industries

Certain entire industry sectors in the United States may, under special circumstances, be considered to be "depressed industries", in which all U.S. government procurements of their products are restricted to U.S. sources. The ASPR reference is:

"1-806 Depressed Industries

1-806.1 General. When an entire industry is depressed, the Director of the Office of Emergency Preparedness may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the Office of Emergency Preparedness and such industries will be given special treatment as specified therein."

5.8 Military Assistance Program (MAP)

Foreign content in items procured by the United States in implementing its Military Assistance Program (MAP) cannot exceed 50% of the value of the end item. (See ASPR 6-700). Canadian contractors are therefore not eligible to bid on prime contracts for MAP procurement except as noted in ASPR 6-702.

However, as subcontractors, Canadian firms may supply up to 50% of the value of the end item. Such sub-contract quotes are eligible for duty-free entry if they meet other Defence Production Sharing standards for eligibility.

5.9 Construction Contracts

The waiver of the Buy American Act and exemption from United States customs duty are not applicable to materials purchased for United States military construction contracts to be performed in the United States, its possessions, or Puerto Rico.

In these cases Canadian materials are not treated as domestic materials; they are considered as foreign materials and their use must receive prior approval by the Secretary of Defense.

5.10 No Foreign

The U.S. government has a policy which defines those areas of technology and weaponry which it is considered to be not in the national interest of the U.S. to disclose to any other country.

This National Disclosure Policy, which itself is unavailable to Canada, is known from experience to prohibit disclosure to any country, including Canada, information in the following areas: military spacecraft and satellites, electronic warfare equipment, post-nuclear-explosion radiation effects on material and equipment, rockets, nuclear weapons, marine nuclear propulsion and doubtless others.

Many new major weapons systems being acquired by DOD require access to information in one or more of these areas and Canadian industry is usually unable to participate because of inability to obtain all the relevant specifications.

5.11 Balance of Payments (Gold Flow) Restrictions

Under an emergency program going back to 1963, the U.S. Military Departments will not buy goods from non-U.S. sources when destinations are overseas, unless the lowest U.S. bid is at least 50% higher than the low foreign bid.

It should be noted that this restriction applies only to United States military procurements clearly destined for use outside of the United States or Canada. The great majority of United States procurement goes into the military inventory, with the contract consignment point within the United States, and these procurements are not affected by the balance of payments restrictions.

Canadian manufacturers can participate as sub-contractors to United States prime contractors carrying out contracts for supplies for off-shore use. Canadian components can be incorporated into United States end products to the extent of not more than 50% of the end product cost. Duty-free entry is available.

6.0 Legislation Affecting Defence Trade

6.1 General

Order-in-Council PC 1970-1913, which was promulgated in November 1970, has simplified matters for Canadian manufacturers requiring imported materials for U.S. defence work. That Order-in-Council is implemented by Department of National Revenue (DNR) memorandum D53-11, which is reproduced in the companion to this book, the "Defence Export Shippers' Guide".

The United States laws which affect Canadian defence shipments are the Buy American Act and Customs Tariff. The following sections, together with the "Defence Export Shippers' Guide" and the "Production Sharing Duty-Free Products", which are being published separately, provide adequate guidance to Canadian defence exporters for all but the most unusual situations. The U.S. Division of Defence Programs Branch will provide advice if and when required.

6.2 Buy American Act

6.2.1 Supply and Service Contracts

The Buy American Act restrictions have effectively been eliminated in regard to Canadian supplies for U.S. military supply and service contracts. (ASPR 6-103.5).

The Buy American Act as passed in 1933 generally requires that U.S. Government Departments shall purchase only supplies which have been produced in the United States. However, the U.S. Armed Services have adopted a common basic procurement policy with regard to services and supplies of Canadian origin. This policy is outlined as follows:

6.2.1.1 Prime Contracting

For those items which have been listed as eligible for duty-free entry, Canadian materials and products are considered to be U.S. goods for the purposes of the Buy American Act. (ASPR 6-103.5(a) and 6-104.4(d)(1)). It is further provided that spare parts and ancillary or associated equipment for listed products, which are called up by the same prime contract as the listed products, shall be regarded as U.S. products if they are Canadian supplies. (ASPR 6-605.1(a).)

For those Canadian items which are not on the Military Departments' lists of items eligible for duty-free items, the Buy American Act is also waived, and Canadian competitive bids and proposals are evaluated by adding only the applicable U.S. duty to the Canadian bid. No other differential is added. (ASPR 6-103.5(b) and (c), and 6-104.4(d)(2).)

6.2.1.2 Sub-contracting

When a U.S. defence contractor is incorporating Canadian supplies, whether the supplies are listed or not, they are considered to be U.S. material for the purposes of the Buy American Act. Thus, the U.S. prime or sub-contractor at any level can buy the components of his product from a Canadian source (ASPR 6-103.5). This applies only to supply and service contracts; for the regulations governing construction contracts see Section 6.2.2.

U.S. contractors who are uninformed or who are reluctant to procure supplies of Canadian origin can be referred either to the Armed Services Procurement Regulation or to the Buy American clause in their contracts to confirm that Canadian components are considered to be domestic. If necessary, a U.S. prime contractor may obtain from the Service Contracting Officer a ruling in writing concerning the proposed use of Canadian or foreign supplies.

6.2.1.3 Research and Development

The Buy American Act relates only to physical materials and is not concerned with contracts in which the supplier delivers findings resulting from a research and development contract. If such a supplier also delivers prototypes or other hardware, the above regulations regarding Canadian supplies are applicable.

6.2.1.4 Excepted Products

In addition to the classes of products which are expected from Buy American Act restrictions if of Canadian origin, ASPR Section 6-105 lists a large number of products which are excepted from all restrictions of the Buy American Act provided they are not obtained from Communist-controlled areas.

6.2.2 Construction Contracts

U.S. military contracts for construction, including construction materials bought as part of construction contracts to be performed in the United States, its possessions or Puerto Rico, are not eligible for Buy American Act exemption or duty-free entry. Canadian materials included as part of a prime construction contract are classified as foreign materials and are therefore considered on the same basis as those offered by suppliers from other countries. In addition to Buy American Act penalties and the necessity of paying duty, bids proposing use of foreign construction materials including items of Canadian origin are subject to Secretary of Defense approval prior to the award of contract.

In view of these restrictions, Canadian firms wishing to bid on such contracts should obtain full details of applicable regulations and directives from both the general contractor concerned and the responsible U.S. Military Agency well before contracts are awarded.

6.3 U.S. Tariffs and Duty-Free Entry

6.3.1 General

The Department of Defense of the United States has special statutory authorization to arrange duty-free entry for procurement of goods from other countries. This arrangement also extends to the importation of Canadian defence supplies by American companies carrying out defence contracts. The "Defence Export Shippers' Guide" provides necessary guidance on the subject.

6.3.2 Spare Parts

The duty-free entry privilege is extended to concurrent spare parts and associated equipment for the end product (ASPR 6-605.1). Concurrent spare parts are those called up in the same prime contract as the end product. This provision need be exercised only for parts or equipment which are not, themselves included in the duty-free lists.

Follow-on spares are themselves the end item of a later prime contract. The inclusion of a duty-free entry clause in such a contract depends upon the follow-on spares appearing on the relevant U.S. Service duty-free list. Virtually every component part which might be procured in Canada has been included in the duty-free lists. Therefore, there should be automatic duty-free entry for follow-on spares, provided the relevant prime contract exceeds \$2,500 (U.S.) In the case of a prime contract of \$2,500 or less for follow-on spares, which is placed directly by the U.S. agency on a Canadian supplier rather than with CCC, the agency usually avoids paying duty to U.S. Customs by providing duty-free entry in accordance with ASPR 6-603.

6.3.3 Special Cases

There are two possible instances, which are rarely encountered, where Canadian sub-contractor shipments are not automatically accorded the Canadian duty-free entry privilege. These are:

- (i) Where the Canadian supplies are included in the duty-free entry list, but the end product being made in the U.S., for which the Canadian supplies are required, is not so listed, and the prime contract was awarded after formal competitive bidding.

- (ii) Where neither the Canadian items nor the U.S. end product is listed for duty-free entry. In these cases the discretionary duty-free entry provisions of ASPR 6-603 are available rather than the more usual 6-605 for Canadian suppliers. The only disadvantage is that the granting of duty-free entry under 6-603 is a matter of judgment for the Military Contracting Officer, whose decision will depend on balancing the financial saving in duty against the administrative cost of administering the duty-free entry documentation.

Because of the judgment factor, it is recommended that quotations relating to these types of shipment be submitted both with and without duty added to the price.

6.4 Drawback on Goods Manufactured or Produced in Canada and Exported

Canadian Customs regulations permit the payment of Drawback of duty when Canadian duty has been levied on imported goods that are used in the manufacture of goods subsequently exported from Canada in a new and unused condition. Upon export, the importer may apply for recovery of a portion of the duty and taxes paid on the imported goods incorporated into the exported article.

Although most instances of Canadian firms importing material and/or parts from the U.S. for defence production sharing work will be eligible for duty remission under DNR Memorandum D53-11, cases exist where payment of Canadian duty is required before the goods may be imported. These cases include:

- i) Imports needed to carry out Canadian Government defence contracts, which are not covered by that remission, and
- ii) Importations of small amounts of dutiable material and/or parts, where the D.N.R. decide the administrative costs of monitoring the duty-free entry do not warrant remission of the duty.

In the event of (ii) the Canadian firm is entitled to claim Drawback of duty on the imported materials and/or parts when the finished product is exported. Procedural details can be obtained from any Canadian Customs office.

6.5 Defective Goods Returned to Canada

Procedures to be followed for the return to Canada of articles needing rework are outlined in paragraph 3.4.1 of the "Defence Export Shippers' Guide". If the goods originally entered the United States free of duty, nothing further is required, but

if, for some reason, duty had been paid upon original entry, the U.S. firm may receive a refund of the duty when the goods are returned.

The U.S. Tariff Act of 1930, Section 313(c), as amended, covers this case as follows:

“Merchandise not Conforming to Sample Specification”

Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from Customs custody, unless the Secretary authorizes in writing a longer time, returned to Customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.”

The rejected merchandise may be returned to U.S. Customs custody at any port of entry and claims for refund filed there. This U.S. Customs Office in turn will contact the original port of entry concerning details of the importation.

Application for an extension of time within which to return the merchandise to Customs custody should be filed with the Collector at the port where the merchandise is to be returned and drawback entry filed.

The Canadian Customs Tariff permits the duty-free re-entry of defective goods into Canada as follows:

- i) The provisions of Order-in-Council, P.C. 1970-1913, (DNR Memorandum 53-11) provide for remission authority in connection with the re-importation of faulty or rejected equipment. Remissions should be claimed in all cases where the rejected equipment contains material or components that had previously entered Canada under the remission provisions of the Order.
- ii) Contractors, who have exported defence equipment manufactured exclusively from Canadian supplies or from imported supplies where no previous remission benefits have been claimed, can claim the release of re-imported faulty or rejected equipment under Tariff Item 70905-1 or Tariff Item 70910-1.

When re-importing under the 709 tariff items, the goods would not be eligible for entry under the items unless the amount of duty allowed under any previous refund, drawback, or remission is repaid to the Crown.

Each case should be decided according to its individual circumstances by referring it to the Headquarters Operations Directorate of the Customs and Excise Division of the Department of National Revenue.

6.6 Defective Goods Returned to the United States

Any further clarification of Canadian Custom regulations outlined in this Section may be obtained, if needed from:

Director,
Headquarters Operations Directorate,
Operations Division,
Customs and Excise,
Department of National Revenue,
Ottawa, Ontario. K1A 0K2

In the case of a Canadian firm having to return defective goods to its American supplier, regulations provide for a refund of customs duty and taxes paid on the original importation of the goods, and duty-free entry of such goods to the United States.

Canadian Department of National Revenue Memorandum D16-2, entitled “Remission of Duty and Taxes on Goods that are Not the Goods Ordered”, makes provision in Section 3 for remission of duty paid as follows:

“(3) Remission is hereby granted on the duty and taxes paid on goods that are unsatisfactory, (a) through an error on the part of the manufacturer, exporter or shipper; or (b) through damage received during the course of transportation and before arrival at the port of entry in Canada.”

Where damaged or broken goods are received they must be reported within thirty (30) days from the date of entry to the Collector of Customs at the port where clearance was effected. (Section 61 Customs Act.)

Where goods are short received, they must be reported within ninety days from date of entry to the Collector of Customs at the port where clearance was effected. (Section 112 Customs Act.)

Applications for refund of duty and taxes must be made within two years of the date of entry. The goods to be returned or destroyed shall be delivered to a Collector within 24 months from the date on which duty and taxes were paid.

Memorandum D16-2 provides full procedural details for claiming refunds in such cases. Claims should be made on Canadian Customs Form B2 and filed with the Collector of Customs at the original port of entry.

Having received a refund from the Canadian Government of duty previously paid, the goods being returned to the United States may then enter the United States duty-free under the provisions of para. 1615(a) of the U.S. Tariff Act of 1930, as amended.

Para. 1615(a) states that:

“Articles the growth, produce or manufacture of the United States, when returned after having been exported without having been advanced in value or improved in condition by any process of manufacture or other means” will enter duty-free.

If, however, some components of the goods in question were imported into the U.S. originally, and at the export of the final goods, duty draw-back was received, a duty may be levied on the defective goods returned to the U.S. up to but not greater than the amount of the U.S. drawback originally received.

Complete procedural details are outlined in the U.S. Customs Regulations dealing with “Domestic Products Exported and Returned”.

The procedure requires:

- (i) A statement by the Canadian firm that the goods being returned have not been advanced in value.
- (ii) Completion by the U.S. consignee of U.S. Customs Form 3311.
- (iii) Presentation of completed U.S. Form 4467 which will indicate the amount of drawback which was allowed at the time of the original exportation.

An alternative to this method of obtaining duty-free re-entry of defective U.S. material to the U.S. is provided by Public Law 85-414. This law amends the Tariff Act of 1930 sub-division (1) section 308, to permit:

“Temporary free importation under bond, for exportation, of articles to be repaired, altered or otherwise processed under certain conditions and for other purposes.”

This duty-free provision does not include importation of alcohol, ethyl alcohol or wheat, in any of their various forms.

All waste by-products and irrecoverable losses which result from repair, alteration or further processing will be reported to U.S. Customs officials. Any such articles or waste products of value must be exported or destroyed under U.S. Customs supervision within the period of the bond.

Procedures for posting bond and obtaining temporary entry are outlined in sections of U.S. Customs Regulations dealing with “Temporary Importations Under Bond”.

If on re-exporting the repaired commodity or its replacement to Canada, it can be determined that some of its components are eligible for duty draw-back by being of Canadian manufacture, claims for such drawback will be allowed.

6.7 Temporary Importation of Goods

6.7.1 United States to Canada

Materials or equipment owned by the U.S. Government qualifies for a general duty exemption under Customs Tariff Item 70800-1. The Department of National Revenue will provide details regarding the procedures for claiming exemption in such cases.

There is no general statement of exemption from duty for privately-owned equipment entering Canada from the United States on loan for production, research or test purposes except that of 6.7.1.1 below. Each request for exemption is handled individually. Further information on procedures and regulations may be obtained from the Deputy Minister, Department of National Revenue, Customs and Excise, Ottawa. The Canadian contractor who is borrowing the equipment should write to the Deputy Minister, well in advance of the shipping date, stating the purpose and circumstances under which the proposed loan is to be made. If an urgent situation arises, the Headquarters Operations Directorate of the Department of National Revenue should be asked for assistance.

6.7.1.1 Temporary Importing for Manufacturing Purposes

Canadian firms awarded contracts to manufacture products under the Defence Production Sharing Program may import temporarily fixtures or other articles required for manufacturing or testing the product that is the subject of the contract. (Refer to paragraphs 2 and 3 of DNR Memorandum D53-11).

6.7.2 Canada to the United States

Schedule 8, Part 5, of the Tariff Schedule of the United States includes a number of Tariff Items under which articles may be admitted free of duty, under bond. Attention is invited especially to Items 864.30 and 864.55 which may be relevant for Canadian companies wishing to bring product samples into the United States. Canadian companies contemplating such activity are urged to obtain specific guidance in advance concerning each individual case from U.S. Customs at the proposed port of entry.

6.8 Canadian Federal Sales Tax

Federal Sales Tax does not apply to goods exported from Canada to the United States provided the goods have not been used in Canada. This applies to goods for both civilian and military use, and is provided for in the Excise Tax Act, which statute imposes the sales tax.

Canadian firms are entitled to a refund of the sales tax previously paid on unused goods sold to the U.S. Government.

Department of National Revenue Memorandum D-17-17, dated 10 January 1961 provides for the remission of Sales Taxes (in addition to Customs Duties and Excise Taxes) in cases where Canadian manufactured goods are shipped to U.S. Military Services at sites in Canada, even though the goods remain temporarily in Canada as long as the title to the goods is vested in the U.S. Government.

stating that the goods in question are or will become the property of the U.S. Government, and are to be used solely and exclusively in joint Canada-United projects or U.S. establishments in Canada, and signed by an authorized representative are required.

If the sale of the goods is by a Canadian manufacturer, licensed as such, or by a wholesaler holding a federal sales tax licence, it will not be necessary to pay the tax and then claim a refund. The sale may be effected without the application of sales tax provided the conditions outlined in the above paragraph are observed. If during the completion of a prime or sub-contract for the U.S. Services, inventory is used on which sales tax has already been paid, refund may be claimed provided it can be proved that the goods were used under exempt conditions as outlined above, and provided further that the claim is submitted within two years of the time the claimant sold the goods to the U.S. Government.

6.9 Canadian Provincial Sales Taxes

Nine of the ten provinces, namely, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan levy sales taxes established by statute and regulations. It is there-
a general ruling on the
ial sales taxes on Canadian
by sub-contracting to the
cies.

APPENDIX

Defence Production Liaison Offices in the United States

<p>WASHINGTON, D.C. Director & Counsellor (Defence Production) 2450 Massachusetts Avenue N.W. P.O. Box 4897 Cleveland Park Station Washington, D.C. 20008</p>	<p>202: 483-5505 Ext. 316</p>	<p>CHICAGO, Ill. Consul & Trade Commissioner Canadian Consulate General 310 South Michigan Avenue, Suite 2000 Chicago, Illinois 60604</p>	<p>312: 427-1031</p>
<p>NEW YORK, N.Y. Consul & Trade Commissioner Canadian Consulate General 1251 Avenue of the Americas New York, N.Y. 10020</p>	<p>212: 586-2400 Ext. 228</p>	<p>MINNEAPOLIS, Minn. Consul & Trade Commissioner Canadian Consulate 15 South Fifth Street Minneapolis, Minnesota 55402</p>	<p>612: 336-4641</p>
<p>BOSTON, Mass. Canadian Liaison Officer (Defence Production) ESD/ESKZ/Building 1606/Stop #27 c/o L. G. Hanscom Field Bedford, Massachusetts 01730</p>	<p>617: 274-9096</p>	<p>DAYTON, Ohio Canadian Liaison Officer (Defence Production) MCLDDP, Area "B" Wright Patterson Air Force Base Ohio 45433</p>	<p>513: 255-4382 -4537 -4492</p>
<p>DETROIT, Mich. Canadian Liaison Officer (Defence Production) CDDPL/DT c/o Michigan Army Missile Plant 38111 Van Dyke Warren, Michigan 48090</p>	<p>313: 264-1100 Ext. 2527/2528</p>	<p>DALLAS, Texas Consul & Trade Commissioner (Defence Production) Canadian Consulate 2100 Adolphus Tower 1412 Main Street Dallas, Texas 75202</p>	<p>214: 742-8031</p>
<p>PHILADELPHIA, Pa. Canadian Liaison Officer (Defence Production) Canadian Consulate 3 Parkway Building, Suite 1310 Philadelphia, Pennsylvania 19102</p>	<p>215: 561-1750</p>	<p>SEATTLE, Wash. Consul & Trade Commissioner Canadian Consulate 412 Plaza 600 Sixth and Stewart Seattle, Washington 98101</p>	<p>206: 447-3809</p>
<p>ATLANTA, Ga. Consul & Trade Commissioner Canadian Consulate General 900 Coastal States Building 260 Peachtree Street Atlanta, Georgia 30303</p>	<p>404: 577-6810</p>	<p>LOS ANGELES, Cal. Canadian Liaison Officer (Defence Production) Defense Contract Administration Services District 125 South Grand Avenue Pasadena, California 91105</p>	<p>213: 796-0471 Ext. 361/362</p>

The addresses for Washington, Dallas and Los Angeles are now as follows:

<p>WASHINGTON, D.C. Director & Counsellor (Defence Production) 2450 Massachusetts Avenue N.W. Washington, D.C. 20008 202:483-5505 Ext. 316</p>	<p>DALLAS, TEXAS Consul & Trade Commissioner (Defence Production) Canadian Consulate 2001 Bryan Tower, Suite 1600 Dallas, Texas 75201 214:742-8031</p>	<p>LOS ANGELES, CAL. Canadian Liaison Officer (Defence Production) Defense Contract Administration Services District 3452 East Foothill Blvd Pasadena, California 91107 213:796-0471 Ext. 203/204</p>
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