

Reprint from DEFENDER, November/December 2020.



Importing U.S. Domestic Autos Sold in Canada Into the U.S.: Yes, That's a Thing!

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Among the many reasons I enjoy representing motor vehicle and equipment dealers is the broad range of issues that dealers face in a constantly evolving and highly competitive business. On a (semi) regular basis, I still find myself discussing a new issue with a client or reading an email to the NADC listserv and thinking: “Huh, that’s a thing?!” Such was the case, recently, when I reached out to listserv-land about the impact of a domestic manufacturer’s proposed dealer agreement on the post-sale importation of its vehicles into the United States and subsequent sales of those units by the manufacturer’s U.S. dealers.¹

Having never addressed any legal issues with sales of imported used vehicle, I had never given such sales any thought. The minor flurry of responses on the topic demonstrated that this concern was not isolated to my client nor to Canadian-border States (Canada being the leading exporter of used vehicles to the U.S.). Ironically, an unrelated call the same week about a consumer dispute involving a used vehicle imported from Canada cemented my conclusion that this is, in fact, “a thing.”

Ebb and Flow of Used Vehicle Importing

There has been a distinct ebb and flow of used vehicle importing into the U.S. since at least the late-1990s. According to a 1999 Automotive News article, sales of vehicles imported into the U.S.—by a dealer or broker outside of a manufacturer distribution system—were 24,000 units in 1997 and increased to 78,000 units in 1998.² By 2002, such sales increased to 211,797.³ Used-vehicle import sales reportedly fell off dramatically after 2002,⁴ with analysts reporting that by 2011 such sales were well below 50,000 units, annually.⁵

Surges in used vehicle importing are attributed primarily to currency-value disparities, with the used vehicles following the relatively stronger currency. Activity is often heightened in higher-end truck and luxury segments, where profit margins more readily

justify the expense and effort associated with cross-border sales. Tight used car inventories in the U.S. also spur activity.⁶ Thus, starting in 2014 and into 2015, when the Canadian dollar dramatically weakened relative to the U.S. dollar, used car imports from Canada into the U.S. again surged to over 200,000 units.⁷ Used car importing has stayed relatively strong, with some fluctuation, tracking U.S.-Canadian exchange rates. In October 2020 a Canadian analyst reported that “[b]etween 5,000 and 6,000 vehicle per week cross the border [from Canada] into the United States.”⁸

Used Vehicle Import Regulation: Avoiding Pitfalls with Post-Sale Imports

Several federal agencies regulate used vehicle importation. The National Highway Traffic Safety Administration (“NHTSA”) governs the minimum performance requirements for the safety systems and components on motor vehicles, and for certain items of motor vehicle equipment. The U.S. Customs and Border Protection (“Customs”) governs actual importation clearance. In addition, the U.S. Environmental Protection Agency (“EPA”) establishes emissions requirements for imported vehicles. Given the multiple regulatory hurdles that are required for importing vehicles into the U.S., most vehicles imported into the U.S. for resale are reconditioned by and processed through a registered importer, as explained below. Note, however, that individuals can import certain nonconforming vehicles into the U.S. for personal use, but not for sale without required reconditioning. Dealers purchasing or accepting a used vehicle import in trade should make sure they are provided the appropriate paperwork, including documenting proper importation for resale through a registered importer.⁹

A vehicle can be imported free of restriction if it is at least twenty-five years old. If less than twenty-five years old, the vehicle can be imported free of restrictions if the vehicle complies with all federal

motor vehicle safety standards (“FMVSS”) established by NHTSA and bears a label certifying such compliance that is permanently affixed by the manufacturer.¹⁰ Because vehicles distributed in Canada generally have metric-based (kilometers/liters) gauges and instrument panels instead of imperial-based (miles/gallons), used vehicles imported into the U.S. will likely need to be reconditioned in order to meet FMVSS certification.

A vehicle that has been properly reconditioned and imported by a registered importer should have the following documentation:

1. A sticker affixed to the driver’s side door or pillar that indicates that the vehicle was modified to conform to U.S. safety standards;
2. A copy of the “service insurance policy” relating to potential recall issues; and
3. A copy of the bond release letter documenting that all modifications have been made so that the vehicle meets FMVSS certification.¹¹

49 CFR § 592.6. If any of this documentation is missing, the registered importer (identified on the certification label that should be affixed to the vehicle) can be contacted to confirm the status of the vehicle and obtain copies of documentation.

Finally, note that state law governs titling and registration of vehicles after they are imported into the U.S. Some States (including Wisconsin) have restrictions on titling certain vehicles directly imported from Canada directly through a registered importer to a dealer. State law may also restrict a dealer’s ability to offer certain vehicles for sale, such as sales by non-franchised of vehicles that are considered “new” vehicles under applicable state law.

Reconditioning and importation of used vehicles through a registered importer, as outlined above, addresses the routine circumstances when dealers will encounter imported used vehicles. In addition, the NHTSA Vehicle Importation Guidelines and form Declaration for Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards (DOT HS-7)¹² cover numerous other circumstances permitting entry of vehicles into the U.S., and these resources should be consulted if there are any questions relating to the status of a specific vehicle. In the event a dealer acquires a used import that has not been processed for resale by a registered importer, it will likely be difficult and time consuming to certify the vehicle for resale in the U.S. Dealers would be well-advised to follow their own mantra in considering a used import trade-in: “Buyer beware!” ■

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References

1. At least some vehicle-import activity outside of a manufacturer distribution system involves sales of vehicles with no intention for use as transportation prior to being imported into the U.S. The definition of such vehicles as “new” or “used” would vary based on specific circumstances, including the jurisdiction at issue. For ease of reference, this article will refer to all vehicles imported into the U.S. outside of a manufacturer distribution system as “used.”
2. <https://www.autonews.com/article/19990712/ANA/907120721/adesa-unit-offers-import-assistance-from-canada>.
3. <https://www.autonews.com/article/20040830/SUB/408300748/once-sizzling-canadian-import-market-loses-steam>.
4. *Id.*
5. <https://www.canadianbusiness.com/economy/the-low-loonie-is-driving-a-boom-in-canadas-used-car-exports/>.
6. *Id.*; see also <https://www.trucks.com/2017/02/24/canadian-pickup-trucks-currency-arbitrage/>.
7. <https://www.canadianbusiness.com/economy/the-low-loonie-is-driving-a-boom-in-canadas-used-car-exports/>.
8. <https://canada.autonews.com/retail/pandemic-gives-new-life-used-car-market>.
9. An individual who imports a vehicle for personal use, and not for resale, may still be able to sell or trade the vehicle if they meet certain requirements, including providing a letter from the manufacturer confirming that the vehicle complies with applicable safety, bumper, and theft prevention standards. A manufacturer’s statement may demonstrate only partial compliance with applicable standards, requiring documentation that required parts have been marked or installed. Such documentation should be carefully reviewed when the vehicle has not been imported through a registered importer. See NHTSA Vehicle Implementation Guidelines (https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/vig_canada09122017.pdf).
10. NHTSA Vehicle Importation Guidelines at 1.
11. Federal regulations provide that a registered importer may release custody of the subject vehicle if a bond release letter is not issued to the registered importer within thirty days. 49 CFR § 592.6(e).
12. https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/hs7_r.v.7.pdf.