

EXPORT TRADE CERTIFICATES OF REVIEW

JOINT EFFORTS REDUCE COSTS AND RISKS

by Jeffrey Anspacher

Office of Export Trading Company Affairs

When beginning to export, companies face many challenges, from arranging international transportation to bidding for overseas projects. Small companies in particular find shipping, marketing, overseas representation, and other export-related activities prohibitively expensive, or nearly so. And even if these obstacles are overcome, exporters may risk violating antitrust legislation if they pool their activities.

EASIER EXPORTING

There is a way to reduce some of the expense and risk of exporting. The U.S. Department of Commerce, in conjunction with the U.S. Department of Justice, offers a special certificate that exempts U.S. companies from some antitrust laws. An Export Trade

Certificate of Review (COR) provides an individual firm or a group of companies with immunity from antitrust suits regarding export activities specified in the document. A COR provides, with a few exceptions, immunity from federal and state civil and criminal antitrust legislation, as well as immunity from unfair competition suits.

By reducing the threat of antitrust litigation, a COR facilitates export activities. U.S. companies can work together more easily, combining efforts as varied as appointment of exclusive distributors and agents to limitations on pricing and the handling of competitive products. Small and medium-sized companies, the targets of the COR program, are thus able to spread costs and minimize risks in exporting, engaging in activities that normally

would set off all sorts of antitrust alarms. Companies may even cooperate with competitors in joint export activities, provided such activities are covered in a certificate. It should be noted, however, that a COR does not exempt a U.S. exporter from foreign laws. Exporters should therefore apprise themselves of the appropriate commercial legislation in new markets overseas.

SIMPLE APPLICATION

A COR is not difficult to obtain from the Department of Commerce, although application is not a guarantee of approval or unlimited antitrust exemption. The application is straightforward and free of charge. If an application meets certification standards and gains concurrence of the Department of Justice, the Commerce Department can issue a COR within 90 days of submission.

The Commerce Department's Office of Export Trading Company Affairs assists companies throughout the application process and offers no-cost counseling about the COR program. (The Export Trading Company Affairs staff recommends preparing a draft application for review prior to actual application submission.) The application form and supporting materials are treated with confidentiality and are also exempt from disclosure under the Freedom of Information Act.

BROAD USAGE

Certificates cover a wide range of business organizations, such as individual firms, shippers' associations, trade

PREREQUISITES FOR EXPORT TRADE CERTIFICATES OF REVIEW

Four basic conditions apply to certificates:

- The export activity in question results in neither a substantial lessening of competition nor restraint of trade within the United States. Concurrently, the activity does not result in substantial restraint of export trade of any U.S. competitor.
- The export activity does not unreasonably affect prices of the covered products or services in the United States.
- The export activity is not an unfair method of competition against competitors exporting similar products or services.
- There is no expectation that the products or services will be re-exported to the United States.

associations, producers' cooperatives, port authorities, and export management companies. Certification may include a variety of industries, such as agriculture, manufacturing, and services.

The COR program neither reduces all risks nor eliminates all challenges that arise in exporting. Nevertheless, small and medium-sized companies benefit

substantially from antitrust exemptions, and the COR program eases entry into the global marketplace.

For more information about Export Trade Certificates of Review, visit the Web site of the Office of Export Trading Company Affairs, www.ita.doc.gov/oetca, or call (202) 482-5131. ■

MANUFACTURING

The Association for Manufacturing Technology

"From the beginning, (on May 19, 1987) when AMT received the first Certificate of Review issued to a trade association, AMT has seen the certificate as a valuable means of enhancing the trade competitiveness of our members. As you know, the certificate has allowed our members to combine for overseas bids. In one notable case, our members were able to combine and cooperate to win the contract to supply a large Chinese aircraft plant with the machinery necessary to modernize and win Western aircraft parts contracts. Without the certificate, such cooperation could never have occurred."

Dr. Paul Freedenberg
Government Relations Director, AMT

UNUSUAL USE

American Film Export Association

Among the first trade associations to receive an Export Trade Certificate of Review, AFMA (formerly the American Film Marketing Association) has used its antitrust protection to implement several programs tailored to help its members expand export business. "With the Certificate in hand, we gained the needed flexibility to create meaningful export programs and encourage our members to participate," states Jean Prewitt, president and CEO of AFMA.

Operating with the antitrust protection of its Export Trade Certificate of Review, AFMA offers international model licensing agreements and financing documents that are the standard for the independent film and TV industry; established and administrates the AFMA Arbitration Tribunal, which resolves disputes regarding distribution; produces a membership sales survey to measure the licensing of motion picture and television products in 33 territories; and encourages, through the independently compiled Credit Watch, the sharing of vital credit data on more than 500 film and television buyers from 56 countries.

"The Export Trade Certificate of Review helps AFMA to foster the exchange of information among its exporting members on all aspects of foreign market conditions and customers," says Lawrence Garrett, chairman of AFMA.

Under the auspices of its Export Trade Certificate of Review, AFMA also offers its members a program that enables AFMA to officially authenticate the origin of a member's product destined for export markets. The program assists AFMA members in eliminating delays in product delivery to overseas distributors.

BENEFITS OF AN EXPORT TRADE CERTIFICATE OF REVIEW

Companies holding certificates may

- Avoid export rivalries with domestic competitors
- Offer full lines of complementary products
- Reduce transportation costs
- Cut warehousing costs
- Set common prices
- Divide markets and sales territories
- Bid on large contracts
- Make integrated bids on complex projects
- Conduct joint marketing
- Share market research costs
- Jointly buy space at overseas trade shows
- Combine to hire foreign representation.

Further, companies are immune from federal and state antitrust actions, and certificates create significant disincentives to private suits by

- Providing a presumption of legality, since the certificates are legal documents
- Reducing maximum liability from treble to single damages
- Allowing successful defendants to recover court costs, including attorney's fees.