A BASIC GUIDE TO EXPORTING

1998 EDITION

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A publication of the U.S. Department of Commerce in Cooperation with Unz & Co., Inc.

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Preface

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Acknowledgments

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In addition to the numerous trade-related offices of the Department of Commerce, a wide range of other U.S. Government agencies provide information to U.S. companies in their efforts to export both products and services. They include:

Department of State
Department of the Treasury
Department of Defense
Department of Agriculture
Department of Labor
Department of Transportation
Department of Energy
Office of Management and Budget
Office of the U.S. Trade Representative
Council of Economic Advisors
Environmental Protection Agency
Small Business Administration
Agency for International Development
Export-Import Bank of the United States
Overseas Private Investment Corporation
U.S. Trade and Development Program
U.S. Information Agency

Developing an Export Strategy

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Determining Your Products' Export Potential

There are several ways to evaluate the export potential of your products and services in overseas markets. The most common approach is to examine the success of your products domestically. If your company succeeds at selling in the U.S. market, there is a good chance that it will also be successful in markets abroad, at least those where similar needs and conditions exist.

Another means to assess your company's potential in exporting is by examining the unique or important features of your product. If those features are hard to duplicate abroad, then it is likely that you will be successful overseas. A unique product may have little competition and demand for it might be quite high.

Finally, your product may have export potential even if there are declining sales in the U.S. market. Sizeable export markets may still exist, especially if the product once did well in the United States but is now losing market share to more technically advanced products. Other countries may not need state-of-the-art technology and/or may be unable to afford the most sophisticated and expensive products. Such markets may have a surprisingly healthy demand for U.S. products that are older or considered obsolete by U.S. market standards.

Assessing Your Company's Export Readiness

Answering these general questions about how exporting will enhance into your company's short, medium and long-term goals will help determine your company's readiness to export:

- What does the company want to gain from exporting?
- Is exporting consistent with other company goals?
- What demands will exporting place on the company's key resources,

management and personnel, production capacity, and finance and how will these demands be met?
- Are the expected benefits worth the costs, or would company resources be better used for developing new domestic business?

The next step is to more closely examine the impact of exporting on your company. The questions in ***Table 1*** will help you analyze the decision to export.

Developing an Export Plan

Once you have decided to sell your products abroad, it is time to develop an export plan. A crucial first step in planning is to develop broad consensus among key management on the company's goals, objectives, capabilities, and constraints. (Answering the questions listed in ***Table 1*** is one way to start.) In addition, all aspects of an export plan should be agreed upon by the personnel involved in the exporting process, as they will ultimately execute the export plan.

The purposes of the export plan are (a) to assemble facts, constraints, and goals and (b) to create an action statement that takes all of these into account. The statement includes specific objectives, it sets forth time schedules for implementation, and it marks milestones so that the degree of success can be measured and help motivate personnel.

At least the following ten questions should ultimately be addressed:

1. Which products are selected for export development? What modifications, if any, must be made to adapt them for overseas markets?

2. Which countries are targeted for sales development?

3. In each country, what is the basic customer profile? What marketing and distribution channels should be used to reach customers?

4. What special challenges pertain to each market (competition, cultural differences, import controls, etc.), and what strategy will be used to address them?

5. How will the product's export sale price be determined?

6. What specific operational steps must be taken and when?

7. What will be the time frame for implementing each element of the plan?

8. What personnel and company resources will be dedicated to exporting?

9. What will be the cost in time and money for each element?

10. How will results be evaluated and used to modify the plan?

The first time an export plan is developed, it should be kept simple. It need be only a few pages long, since important market data and planning elements may not yet be available. The initial planning effort itself gradually generates more information and insight. As the planners learn more about exporting and your company's competitive position, the export plan will become more detailed and complete. An outline of an export plan is presented in ***Table 2***. (See also ***Chapter 2*** for information about market research).

From the start, the plan should be viewed and written as a management tool, not as a static document. Objectives in the plan should be compared with actual results to measure the success of different strategies. The company should not hesitate to modify the plan and make it more specific as new information and experience are gained.

A detailed plan is recommended for companies that intend to export directly. Companies choosing indirect export methods may require much simpler plans. For more information on different approaches to exporting and their advantages and disadvantages, see ***Chapter 4***.

NOTE: Many companies begin export activities hap-hazardly, without carefully screening markets or options for market entry. While these companies may or may not have a measure of success, they may overlook better export opportunities. If early export efforts are unsuccessful because of poor planning, your company may be misled into abandoning exporting altogether. Formulating an export strategy based on good information and proper assessment increases the chances that the best options will be chosen, that resources will be used effectively, and that efforts will consequently be carried through to success.

Table 1 - Management Issues Involved in the Export Decision

Table 2 - Sample Outline for an Export Plan

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Developing a Marketing Plan

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As you can imagine, many foreign markets differ greatly from the United States. Some differences include climatic and environmental factors, social and cultural factors, local availability of raw materials or product alternatives, lower wage costs, varying amounts of purchasing power, the availability of foreign exchange, and government import controls. Once you have decided that your company is able and committed to exporting, the next step is to develop a marketing plan.

A clearly written marketing strategy offers six immediate benefits:

1. Because written plans display strengths and weaknesses more readily, they are a great help in formulating and polishing an export strategy.
2. Written plans are not easily forgotten, overlooked, or ignored by those charged with executing them. If deviation from the original plan occurs, it is likely to be due to a deliberate and thoughtful choice.
3. Written plans are easier to communicate to others and are less likely to be misunderstood.
4. Written plans allocate responsibilities and provide for an evaluation of results.
5. Written plans are helpful when seeking financial assistance. They indicate to lenders that you have a serious approach to the export venture.
6. Written plans give management a clear understanding of what will be required of them and thus help to ensure a commitment to exporting. Actually, a written plan signals that the decision to export has already been made.

This last advantage is especially noteworthy. Building an international business takes time. It usually takes months, sometimes even several years, before an exporting company begins to see a return on its investment of time and money. By committing to the specifics of a written plan, top management can make sure that the firm will finish what it begins and that the hopes that prompted its export efforts will be fulfilled.

Market Research

To successfully export your product, you should examine foreign markets through research. The purpose is to identify marketing opportunities and constraints abroad, as well as to identify prospective buyers and customers.

Market research encompasses all methods that a company can use to determine which foreign markets have the best potential for its products. Results of this research inform the firm of: the largest markets for its product, the fastest growing markets, market trends and outlook, market conditions and practices, and competitive firms and products.

Your firm may begin to export without conducting any market research if it receives unsolicited orders from abroad. Although this type of selling is valuable, the company may discover even more promising markets by conducting a systematic search. If your firm opts to export indirectly (see ***Chapter 4***) by using an intermediary such as an Export Management Company (EMC) or Export Trading Company (ETC), you may wish to select markets to enter before selecting the intermediary. Because many intermediaries such as EMCs and ETCs have strengths in certain markets, it is valuable to select the intermediary after deciding on markets to enter. You may also want to do market research if you export indirectly.

A firm may research a market by using either primary or secondary data resources. In conducting primary market research, a company collects data directly from the foreign marketplace through interviews, surveys, and other direct contact with representatives and potential buyers. Primary market research has the advantage of being tailored to the company's needs and provides answers to specific questions, but the collection of such data is time-consuming and expensive.

When conducting secondary market research, a company collects data from various sources, such as trade statistics for a country or a product. Working with secondary sources is less expensive and helps the company focus its marketing efforts. Although secondary data sources are critical to market research, they do have limitations. The most recent statistics for some countries may be more than two years old. Moreover, the data may be too broad to be of much value to a company. Statistics may also be distorted by incomplete data-gathering techniques. Finally, statistics for services are often unavailable. Yet, even with these limitations, secondary research is a valuable and relatively easy first step for a company to take. It may be the only step needed if the company decides to export indirectly, since the intermediary firm may have advanced research capabilities.

Methods of Market Research

Because of the expense of primary market research, most firms rely on secondary data sources. The three following recommendations will help you obtain useful secondary information:

1. Keep abreast of world events that influence the international marketplace, watch for announcements of specific projects, or simply visiting likely markets. For example, a thawing of political hostilities often leads to the opening of economic channels between countries.

2. Analyze trade and economic statistics. Trade statistics are generally compiled by product category and by country. These statistics provide the U.S. firm with information concerning shipments of products over specified periods of time. Demographic and general economic statistics, such as population size and makeup, per capita income, and production levels by industry can be important indicators of the market potential for a company's products.

3. Obtain advice from experts. There are several ways of obtaining this advice:

    - Contact experts at the U.S. Department of Commerce and other government agencies.
    - Attend seminars, workshops, and international trade shows.
    - Hire an international trade and marketing consultant.
    - Talk with successful exporters of similar products.
    - Contact trade and industry association staff.

Gathering and evaluating secondary market research can be complex and tedious. However, several publications are available that can help simplify the process. The following approach to market research refers to these publications and resources that are described later in this chapter.

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A Step-by-Step Approach to Market Research

Your company may find the following approach useful. It involves screening potential markets, assessing the targeted markets, and drawing conclusions.

A. Screen Potential Markets

- ***Step 1.*** Obtain export statistics that indicate product exports to various countries. Published export statistics provide a reliable indicator of where U.S. exports are currently being shipped. The U.S. Census Bureau provides these statistics in a published format. Trade statistics also can be obtained using the National Trade Data Bank (NTDB).

- ***Step 2.*** Identify five to ten large and fast-growing markets for the firm's product. Look at them over the past three to five years. Has market growth been consistent year to year? Did import growth occur even during periods of economic recession? If not, did growth resume with economic recovery?

- ***Step 3.*** Identify some smaller but fast-emerging markets that may provide ground-floor opportunities. If the market is just beginning to open up, there may be fewer competitors than in established markets. Growth rates should be substantially higher in these countries to qualify as up-and-coming markets, given the lower starting point.

- ***Step 4.*** Target three to five of the most statistically promising markets for further assessment. Consult with a Department of Commerce Export Assistance Center (see http://www.doc.gov), business associates, freight forwarders, and others to further evaluate targeted markets.

B. Assess Targeted Markets

- ***Step 1.*** Examine trends for company products as well as related products, that could influence demand. Calculate overall consumption of the product and the amount accounted for by imports. The National Trade Data Bank (NTDB)and the National Technical Information Service (NTIS) offer Industry Sector Analyses (ISAs), Country Commercial Guides (CCGs), and other reports that give economic backgrounds and market trends for each country. Demographic information (such as population and age) can be obtained from World Population (Census) and Statistical Yearbook (United Nations).

- ***Step 2.*** Ascertain the sources of competition, including the extent of domestic industry production and the major foreign countries the firm is competing against in each targeted market by using ISAs and competitive assessments. This information is available from the NTDB and the NTIS. Look at each competitor's U.S. market share.

- ***Step 3.*** Analyze factors affecting marketing and use of the product in each market, such as end-user sectors, channels of distribution, cultural idiosyncrasies, and business practices. Again, the ISAs and Customized Market Analyses (CMAs) offered by the Department of Commerce are useful.

- ***Step 4.*** Identify any foreign barriers (tariff or nontariff) for the product being imported into the country (see ***Chapter 8*** for an analysis of tariff and nontariff barriers). Identify any U.S. barriers (such as export controls) that affect exports to the country.

- ***Step 5.*** Identify any U.S. or foreign government incentives that promote exporting of your particular product or service(see ***Chapter 8***).

C. Draw Conclusions

After analyzing the data, the company may conclude that its marketing resources would be applied more effectively to a few countries. In general, if the company is new to exporting, then efforts should be directed to fewer than ten markets. Exporting to one or two countries will allow the company to focus its resources without jeopardizing its domestic sales efforts. The company's internal resources should determine its level of effort.

The next section describes the publications that have been mentioned as well as additional sources. Because there are many research sources, the firm may wish to seek advice from their local Export Assistance Center (see ***Chapter 3*** and http://www.doc.gov).

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Sources of Market Research

There are many domestic, foreign, and international sources of information concerning foreign markets. Several of these sources are given here and others may be found in the bibliography to this publication. This information ranges from simple trade statistics to in-depth market surveys.

Trade statistics indicate total exports or imports by country and by product. They allow an exporter to compare the size of the market for a product in various countries. Some statistics also reflect the U.S. share of the total country market in order to gauge the overall competitiveness of U.S. producers. By looking at statistics over several years, an exporter can determine which markets are growing and those that are shrinking.

Market surveys provide a narrative description and assessment of particular markets along with relevant statistics. The reports are often based on original research conducted in the countries studied and may include specific information on both buyers and competitors.

The following sources fall into two broad categories: 1) general information resources, and 2) industry and country specific resources. Each category is also divided into several subgroups.

One of the best sources of information is personal interviews with private and government officials and experts. A surprisingly large number of people in both the public and private sectors are available to assist exporters in any aspect of international market research. Either in face-to-face interviews or by telephone, these individuals can provide a wealth of market research information.

In the private sector, sources of market research expertise include local chambers of commerce, world trade centers or clubs, and trade associations. Most state governments maintain active export promotion offices. In the federal government, industry and commodity experts are available through the Departments of Commerce, State and Agriculture, and the Small Business Administration (SBA).

General Information

- ***Business America.*** This monthly publication of the Department of Commerce contains country-by-country marketing reports, incisive economic analyses, worldwide trade leads, advance notice of planned exhibitions of U.S. products worldwide, and success stories of export marketing. (GPO:703-011-00000-4). Contact Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800.

- ***Commerce Business Daily (CBD).*** CBD is published daily, Monday through Friday (except holidays), by the Department of Commerce. It lists government procurement invitations over $25,000, contract awards, subcontracting leads, sales of surplus property, and foreign business opportunities, as well as certain foreign government procurements. It is available by subscription and on-line (electronically). Contact the U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800. For on-line subscriptions contact STAT-USA at 1-800-STAT-USA (1-800-782-8872). This information center was established as a comprehensive source for U.S. companies seeking information on federal programs and activities that support U.S. exports, including information on overseas markets and industry trends. The center maintains a computerized calendar of U.S. government-sponsored domestic and overseas trade events. Telephone 1-800-USA-TRADE; e-mail: tic@ita.doc.gov; Internet home page: http://www.ita.doc.gov/td/tic.

- ***Trade Information Center.*** This information centerwas established as a comprehensive source for U.S. companies seeking information on federal programs and activities that support U.S. exports, including information on overseas markets and industy trends. This center maintains a computerized calendar of U.S. Government-sponsored domestic and overseas trade events. Telephone 1-800-USA-TRADE; e-mail: tic@ita.doc.gov; Internet home page: http://www.ita.doc.gov.

- ***Economic Bulletin Board (EBB).*** EBB is a great resource for business, economic, and trade information on a daily basis in a traditional dial-up platform. You can connect to this vast collection of information and download trade leads, market research reports, and the Commerce Business Daily via your computer. Subscription costs are low and vary, depending on which information you choose to access. For more information, call 1-800-STAT-USA (800-782-8872).

- ***The National Trade Data Bank (NTDB).*** The NTDB is one of the primary sources of export information from the federal government. The NTDB is a must-have resource, gathering trade information from over 20 different government agencies into one place. The NTDB is a low-cost business service run by the Department of Commerce, which provides market research reports, Country Commercial Guides, contacts overseas, trade statistics, policy and trade practices, legal ramifications of exporting, an export promotion calendar, and publications (for example, A Basic Guide to Exporting and SBA's Breaking into the Trade Game). The NTDB is updated daily on the Internet (http://www.stat-usa.gov) and updated monthly on CD-ROM. The CD-ROM version is avail-able to use for at over 1,000 federal depository libraries throughout the country. To find the library closest to you, purchase access for your desktop, or learn more, call 1-800-STAT-USA.

- ***STATUSA/Internet (http://www.stat-usa.gov).*** A comprehensive collection of business, economic and trade information available on the Web. Through this address you can access the NTDB, daily trade leads and economic news, the Commerce Business Daily and the latest economic press releases and statistical series from the federal government. For more information on this low cost service, call 1-800-STAT-USA (800-782-8872).

- ***STAT-USA/Fax.*** This fax on demand service providing instant hard copy of business and economic information from the federal government. All releases are available 24 hours a day, seven days a week. The most popular fax documents include the daily trade leads and numerous U.S. government economic press releases. For more information, call 1-800-STAT-USA (800-782-8872).

- ***TRADESTATS.*** A comprehensive source for U.S. export and import data, both current and historical. Maintained by the Commerce Department's Office of Trade and Economic Analysis, this web site contains total and disaggregated U.S. trade statistics by country and commodity classifications, state and metropolitan area export data, and trade and industry statistics. Much of this data is downloadable. The Web site address is http://www.ita.doc.gov/td/industry/otea.

- ***Selected SBA market research-related general resources.*** The Small Business Administration publishes many helpful guides to assist small and medium-sized companies, including: Marketing for Small Business: An Overview, Researching Your Market, Breaking into the Trade Game, or the videos Marketing: Winning Customers with a Workable Plan, The Basics of Exporting. Contact the Small Business Answer Desk, 1-800-U-ASK-SBA (1-800-827-5722).

International Information

- ***UN Statistical Yearbook.*** Published by the United Nations (UN), this yearbook is one of the most complete statistical reference books available. It provides international trade information on products, including information on importing countries useful in assessing import competition. The yearbook contains data for 220 countries and territories on economic and social subjects, including population, agriculture, manufacturing, commodity, export-import trade, and many other areas. The most current addition is from 1993; it is available in hard copy and CD-ROM. Contact United Nations Publications, Room DC2-0853, New York, NY 10017; telephone 212-963-8302.

- ***World Bank Atlas.*** The World Bank Atlas provides demographics, gross domestic product, and average growth rates for every country. The latest edition, 1997, covers data through 1996. Contact World Bank Publications, P.O. Box 7247-8169, Philadelphia, PA 19170-8169; telephone 202-473-1155, fax 703-661-1501.

- ***World Factbook.*** Produced annually by the CIA, this publication provides country-by-country data on demographics, economy, communications, and defense. The data is available through a subscription to the NTDB (to subscribe call 1-800-STAT-USA). To order a hard copy, contact the U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800.

- ***International Financial Statistics (IFS).*** Published by the International Monetary Fund, IFS presents statistics on exchange rates, money and banking, production, government finance, interest rates, and other subjects. It is available in hard copy as a monthly subscription or on CD-ROM. Contact the International Monetary Fund, Publication Services, 700 19th Street, N.W., Washington, DC 20431; telephone 202-623-7430.

- ***World Population Profile.*** This valuable resource is produced by the Bureau of the Census of the U.S. Department of Commerce. Census collects and analyzes worldwide demographic data that can help exporters identify potential markets for their products. Information on each country - total population, fertility, mortality, urban population, growth rate, and life expectancy - is updated every two years. The document also contains detailed demographic profiles of individual countries, including analysis of labor force structure, and infant mortality. For the latest edition, contact the U.S. Government Printing Office, Washington, DC 20402; telephone 202-512-1800.

General Industry and Agriculture Information

Industry Information

- ***U.S. Industry and Trade Outlook '98.*** Successor to the U.S. Industrial Outlook, published from 1957 to 1994, this expanded-coverage 600-page edition includes economic forecasts for 350 manufacturing and service sectors, including telecommunications, financial services, aerospace, and utilities. Issued by the International Trade Commission in conjunction with the McGraw-Hill Companies. Available at bookstores ($69.95) or through the National Technical Information Service, 5835 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-8847.

- ***Export Information System Data Reports (XIS).*** Produced by the Small Business Administration (SBA), each data report covers approximately 2,700 product categories. XIS helps small businesses determine which export markets to pursue. Upon request, SBA provides a small business with a list of the 25 largest importing markets for its product, the ten best markets for U.S. exporters of that product, the trends in those markets, and the major sources of foreign and UN data. This service is available free to small businesses. Telephone the Small Business Answer Desk at 1-800-U-ASK-SBA, or access the SBA home page at: http://www.sbaonline.sba.gov.

- ***U.S. Department of Agriculture: U.S. Trade Assistance and Promotion Office (TAPO).*** The Trade Assistance and Promotion office of the Foreign Agriculture Service serves as the first point of contact for persons who need information on foreign markets for agricultural products. The TAPO staff can provide basic export counseling and direct you to appropriate Department of Agriculture offices to answer specific questions on exporting. In addition, the staff can provide country and commodity specific Foreign Market Information Reports, which focus on best market prospects and contain contact information on distributors and importers. Extensive information on the Foreign Agricultural Service is also available through the Foreign Agricultural Service home page on Internet. Contact: Trade Assistance and Promotion Office, (202) 720-7420, fax (202) 690-4374; Internet: http://www.fas.usda.gov/.

Country and Area Information

- ***Trade Information Center (TIC).*** TIC trade specialists can answer questions on (1) import tariffs/taxes and customs procedures; (2) standards, intellectual property rights, government procurement, and other commercial laws, regulations, and practices; (3) distribution channels, business travel, and other market information; and (4) opportunities and best prospects for U.S. companies in individual markets. In addition, callers can access the TIC's 24-hour automated fax retrieval system to access regional- and country-specific market information. Both services are available by calling 1-800-USA-TRADE; e-mail: tic@ita.doc.gov; Internet homepage: http://www.ita.doc.gov/td/tic.

- ***Country Commercial Guides (CCG).*** CCGs are prepared annually by U.S. embassies covering 115 countries. Each CCG is a planning tool that analyzes an individual country's business and economic climate emphasizing marketing and trade statistics, development, and other issues. CCGs are available through the NTDB or through the NTIS. The National Technical Information Service may be contacted at 1-800-553-NTIS or 703-487-40530 for TDD (hearing impaired).

- ***U.S. Department of State, Bureau of Consular Affairs Automated Fax System.*** The Consular Affairs automated fax system is available to anyone with a fax machine equipped with a telephone jack. This system offers all of the bureau's Consular Information Sheets, Travel Warnings, Public Announcements, Tips for Travelers brochures, and Visa Bulletins. The telephone number is: (202) 647-3000. Callers must use the receiver on their fax machines to dial into the automated fax service.

- ***Congressional Presentations of the U.S. Agency for International Development (AID).*** Published by AID's Office of Small and Disadvantaged Business Utilization, this document provides country-by-country data on nations to which AID will provide funds in the coming year, as well as detailed information on past funding activities in each country. They also list projects the agency desires to fund in the upcoming year. Since these projects require U.S. goods and services, these presentations give U.S. exporters an early look at potential projects and therefore are an opportunity to plan ahead. (See **Chapter 7** for more details on AID's programs). They are available through the National Technical Information Service (NTIS) by the set or as separate volumes. Contact National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-NTIS. The information is also available through USAID's home page @ http://www.usaid.gov.

- ***Organization for Economic Cooperation and Development (OECD) Surveys.*** These economic development surveys cover each of the 29-member OECD countries individually. Each survey presents a detailed analysis of recent developments in market demand, production, employment, and prices and wages. Short-term forecasts and analyses of medium-term problems relevant to economic policies are provided. The surveys are shipped from France. Contact the Organization for Economic Cooperation and Development, Publications and Information Center, 2001 L Street, Suite 700, Washington, DC 20036; telephone 202-785-6323. The OECD home page address is http://www.oecd.org.

- ***OECD Publications.*** The chartered mission of OECD is to promote its member countries' policies designed to support high economic growth, employment, and standard of living, and to contribute to sound economic expansion in development and in trade. OECD publications focus on a broad range of social and economic issues, concerns, and developments, including reports on international market information country by country, such as import data useful in assessing import competition. For information on and prices for these publications, contact Organization of Economic Cooperation and Development, Publications and Information Center, 2001 L Street, Suite 700, Washington, DC 20036; telephone 202- 785-6323.

Industry and Country-Specific Information Resources

U.S. Government Product and Industry Resources

- ***Industry Sector Analyses (ISAs).*** Prepared by the commercial sections of the U.S. embassies, ISAs provide a basis for quickly evaluating a particular commercial or industrial market in a particular country. ISAs present market demand, market size, competitive analysis, end-user analysis, and market access criteria, as well as industry contacts and marketing opportunities. Available through the NTDB or the NTIS, which may be contacted at 1-800-553-NTIS or 703-487-4053 for TDD (hearing impaired).

- ***International Market Insights (IMIs).*** IMIs are prepared on an ad hoc basis by the economic and commercial sections of U.S. embassies and consulates for the Commercial Service. They help to identify unique market situations and marketing opportunities for U.S. business. Available through the NTDB or the NTIS, which may be contacted at 1-800-553-NTIS or 703-487-4053 for TDD (hearing impaired).

- ***Customized Market Analyses (CMAs).*** CMAs are produced by the Commercial Service on request. CMAs provide a U.S. firm with detailed market information on a selected single product in a selected market. They answer basic questions about the marketability of the product, key competitors, comparative prices, customary distribution and promotion practices, trade barriers, and other factors. Contact your local Export Assistance Center (see ***Chapter 3*** and http://www.doc.gov) for more information.

- ***Textile and Apparel Database.*** Prepared by the Department of Commerce's Office of Textiles and Apparel (OTEXA), this database provides information on overseas markets and rules and regulations affecting U.S. exports. The database includes specific "country profiles" which include information on marketing and distribution, market entry requirements, shipment and entry procedures, and trade policy. More general information, such as how to export, potential buyers and suppliers, current trade issues, and background on textile and apparel trade policy agreements, is also available. The Web site is located at http://otexa.ita.doc.gov.

- ***Private Sector Product and Industry Resources.*** The U.S. and foreign private sectors publish numerous guides and directories that can provide invaluable help to the exporter. For specific references, consult your local Commerce Export Assistance Center or the Trade Information Center (1-800-872-8723).

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Export Advice

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Making the Government Work for You

Now that you have had an opportunity to examine some of the complex factors involved in an exporting and marketing plan, you may choose to look for advice or assistance. Advice and assistance are available to your company at little or no cost. This chapter gives a brief overview of assistance available through federal, state, and local government agencies, as well as in the private sector. Other chapters in this guide will provide more information on the specialized services of these organizations and how to use them.

You may feel overwhelmed at first by the number of sources of advice available. Although it is not necessary to use all of these resources, it is valuable to know at least a little about each of them. Each organization contacted can contribute different perspectives based on different experience and skills.

Assistance Sources

The Trade Information Center,
U.S. Department of Commerce

The Trade Information Center (TIC) is an excellent source for export assistance. The TIC operates the toll free 1-800-USA-TRADE (1-800-872-8723) number for the Department of Commerce and is a comprehensive resource for information on federal export assistance programs. TIC staff can provide your company with information on 1) locating and using government programs, 2) the export process, 3) sources of general market information, and 4) basic export counseling. TIC trade specialists also answer technical questions on how to access reports and statistics from the computerized National Trade Data Bank (NTDB). You may also request a free copy of the Export Programs Guide: A Business Guide to Federal Export Assistance, which describes the programs of the 20 federal agencies involved in exporting. A special line is available for those who are deaf or hearing impaired using a TDD machine, 1-800-TDD-TRADE (1-800-833-8723). The TIC also has an e-mail address: tic@ita.doc.gov and an internet homepage:http://www.ita.doc.gov/td/tic.

Export Assistance Centers,
U.S. Department of Commerce

The U.S. and Commercial Service (the Commercial Service) of the Department of Commerce has developed and maintains a network of international trade specialists in the United States to help American companies export their products and conduct business abroad. Trade specialists operate offices known as Export Assistance Centers (EACs) located in almost 100 cities in the U.S. and Puerto Rico that assist small and medium-sized companies. EACs are known as "one-stop shops" because they combine the trade and marketing expertise and resources of the Commercial Service along with the finance expertise and resources of the Small Business Administration (SBA) and the Export-Import Bank (Ex-Im Bank). Thus they provide companies with a wide array of services in one location (for a detailed list of these offices, please see http://www.doc.gov). EACs also maximize resources by working closely with state and local government as well as private partners to offer companies a full range of expertise in international trade, marketing and finance.

Trade specialists will counsel your company on the steps involved in exporting, help you assess the export potential of your products, identify markets, and locate potential overseas partners.

Each EAC can offer information about:

- Services to locate and evaluate overseas buyers and representatives;
- International trade opportunities abroad;;
- Foreign markets for U.S. products and services;
- Foreign economic statistics;
- Export documentation requirements;
- U.S. export licensing and foreign nation import requirements;
- Export trade financing options;
- International trade exhibitions, and;
- Export seminars and conferences.

Overseas Posts,
U.S. Department of Commerce

Much of the information about trends and actual trade leads in foreign countries is gathered on site by the commercial officers of the Commercial Service. Commercial Service officers are working in 67 countries (with 127 offices) and have a personal understanding of local market conditions and business practices. The Commercial

Service officers overseas provide a range of services to help companies sell abroad: background information on foreign companies, agency-finding services, market research, business counseling, assistance in making appointments with key buyers and government officials, and representations on behalf of companies adversely affected by trade barriers. (Some of the more important services are described fully in ***Chapter 8***).

You can access these services by contacting your nearest EAC. EACs can also provide assistance with business travel before departure by arranging advance appointments with embassy personnel, market briefings, and other assistance in cities to be visited.

The Commercial Service overseas posts also cooperate with the trade and economic development agencies of all 50 states. Your state probably has its own representatives overseas, who can help coordinate export promotion efforts with the Department of Commerce.

Trade Development,
U.S. Department of Commerce

Trade Development's industry and international trade specialists work directly with individual firms and manufacturing and service associations to identify trade opportunities and obstacles by product or service, industry sector, and market. Trade Development analysts participate in trade policy development and negotiations, identify market barriers, and provide advocacy on behalf of U.S. companies. Trade Development's statistical data and analyses are useful in export development. TD staff also develop export marketing programs and obtain industry advice on trade matters. To assist U.S. businesses in their export efforts, TD's industry and international experts conduct executive trade missions, trade fairs, product literature centers, marketing seminars, and business counseling. Experts are organized into six major industry sectors:

- Technology and Aerospace Industries
- Basic Industries
- Textiles, Apparel, and Consumer Goods Industries
- Service Industries and Finance
- Environmental Technologies Exports
- Tourism Industries

For further information, contact Trade Development, Room 3832, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

The Advocacy Center,
U.S. Department of Commerce

For a U.S. company bidding for a foreign government procurement contract, exporting today can mean more than just selling a good product at a competitive price. It can also mean dealing with foreign governments and complex rules. If you feel the bidding process is not open and transparent, or may be tilted in favor of your foreign competition, then you need to contact the Advocacy Center. The Advocacy Center coordinates the actions of 19 U.S. Government agencies involved in international trade, to level the playing field overseas for U.S. exporters and ensure that sales of U.S. products and services have the best possible chance abroad. Advocacy assistance can include a visit to a key foreign official by a high-ranking U.S. Government official, direct support from U.S. officials stationed overseas, letters to foreign decision makers, and coordinated action by the U.S. Government agencies to businesses of all types and sizes. For more information, call 202-482-3896, fax 202-482-3508; Internet home page: http://www.ita.doc.gov/td/advocacy.

Trade Compliance Center,
U.S. Department of Commerce

The U.S. Department of Commerce's Trade Compliance Center (TCC) is an integral part of the U.S. Government's efforts to ensure foreign compliance with trade agreements. Located with the Market Access and Compliance (MAC) unit, the TCC systematically monitors, investigates, and evaluates foreign compliance with multilateral, bilateral, and other international trade agreements and standards of conduct to ensure that U.S. firms and workers receive all the benefits to which they are entitled and are of the opportunities created by market opening initiatives.

The TCC has created the "TCC On-Line," an interactive Internet database service. TCC On-Line provides a "one-stop shop" for American exporters facing market access and agreements-compliance problems. The fully-searchable database contains the texts of over 200 bilateral, regional, and multilateral trade and related agreements, along with detailed market access information for over 90 major U.S. markets. The TCC On-Line service enables U.S. ex-porters to file market access and agreements complaints on-line. Once received, complaints will be addressed by the combined resources of the TCC and the International Trade Administration's country and industry specialists, officers of the Foreign Commercial Service, and the Office of the U.S. Trade Representative.

The TCC supports U.S. businesses by investigating allegations of noncompliance with trade agreements. Once a country is determined to be in noncompliance with an agreement or standard of conduct, the economic impact to the economy of the U.S. is assessed and strategies for ensuring foreign compliance are developed. On-line access to the full text of trade agreements as well as timely economic and commercial information on market access barriers, is provided by the Trade Compliance Center at http://www.trade.gov/.The TCC can be reached by phone at 202-482-1191 or by mail at the U.S. Department of Commerce, Room 3415, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Bureau of Export Administration,
U.S.Department of Commerce

The Bureau of Export Administration (BXA) is responsible for control of exports for reasons of national security, foreign policy, and short supply (see ***Chapter 8***). Assistance in complying with export controls can be obtained directly from your local BXA district office or from the Exporter Counseling Division within the Bureau of Export Administration's Office of Export Licensing in Washington, DC; telephone: 202-482-4811. BXA also has two field offices that specialize in counseling on export controls and regulations: the Western Regional Office (714-660-0144) and the Santa Clara Office (408-998-7402). BXA maintains an Internet home page at http://www.bxa.doc.gov.

Trade Adjustment Assistance,
U.S. Department of Commerce

Trade Adjustment Assistance, part of Commerce's Economic Development Administration, helps firms that have been adversely affected by imported products to adjust to international competition. Companies eligible for trade adjustment assistance may receive technical consulting to upgrade operations such as product engineering, marketing, information systems, export promotion, and energy management. The federal government may assume up to 75 percent of the cost of these services. For more information call 202-482-3373.

Minority Business Development Agency,
U.S. Department of Commerce

The Minority Business Development Agency (MBDA) identifies minority business enterprises (MBEs) in selected industries. MBDA then seeks to increase their awareness of their relative size and product advantages and aggressively takes them through the advanced stages of market development.

Through an interagency agreement with the International Trade Administration, MBDA provides information on market and product needs worldwide. MBDA and ITA coordinate MBE participation in trade event.

MBDA provides counseling through the Minority Business Development Center network to help MBEs prepare international marketing plans and promotional materials and to identify financial resources.

For general export information, the field organizations of both MBDA and ITA provide information kits and information on local seminars. Contact the Minority Business Development Agency, Office of Program Development, U.S. Department of Commerce, Washington, DC 20230; telephone 202-482-3261.

Cooperation between the Departments of Commerce and State

There are some countries that do not have posts maintained by the Commercial Service. In these cases, the U.S. Department of State will assist your company with any of the services provided by the Commercial Service overseas. Your nearest EAC will provide you with all of the necessary information to make your efforts overseas a success.

Small Business Administration

In addition to representation in many of the Export Assistance Centers located around the country, the U.S. Small Business Administration (SBA) will provide your company with finance and trade counseling through its 107 field offices in cities throughout the United States. Several its no-fee services are:

- ***Small Business Development Centers (SBDCs).*** SBDCs provide a full range of export assistance services to small businesses, particularly those new to export. They also offer counseling, training, managerial, and trade finance assistance. Counseling services are provided at no cost to the small business exporter, but fees are generally charged for export training seminars and other SBDC-sponsored export events.

- ***Service Corps of Retired Executives (SCORE).*** Members of the SCORE have practical experience in international trade. They can offer your firm assistance by evaluating your company's export potential and can strengthen your domestic operations by identifying financial, managerial, or technical problems. These advisers can also assist you in developing and implementing basic export marketing plans that show where and how to sell your goods abroad.

- ***Export Legal Assistance Network (ELAN).*** ELAN is a nationwide group of attorneys with experience in international trade which provides free initial consultations to new-to-export businesses on export related matters.

  For information on any of the programs funded by SBA, contact the nearest EAC or SBA field office by calling 1-800-U-ASK-SBA (1-800-827-5722) or access the SBA home page at http://www.sbaonline.sba.gov.

Department of Agriculture

The Department of Agriculture offers exporter assistance through the Trade Assistance and Promotion Office (TAPO). A part of the Foreign Agricultural Service (FAS), TAPO serves as the first point of contact for persons who need information on foreign markets for agricultural products or assistance in accessing government programs. TAPO provides country and commodity specific *Foreign Market Information Reports*, which focus on best market prospects, and contain contact information on distributors and importers. The Department also offers several low-cost services that help U.S. exporters make direct contact with foreign buyers such as the *Trade Leads, Foreign Buyer Lists*, and *Buyer Alert* programs. TAPO will provide basic export counseling and connect exporters to the appropriate export program such as the *Export Enhancement Program*, the *Market Promotion Program* and *credit guarantee* programs. Questions regarding any of these programs offered by the Department of Agriculture should be directed to TAPO, telephone: 202- 720-7420, TDD: 202- 690-4837, fax: 202- 690-4374, or Internet: http://www.fas.usda.gov.

Foreign Requirements for U.S. Products and Services

For information about foreign standards and certification systems, write the National Center for Standards and Certificates Information, National Institute for Standards and Technology (NIST), Administration Building, A629, Gaithersburg, MD 20899; telephone 301-975-4040.

NIST maintains a World Trade Organization (WTO) hotline (301-975-4041) with a recording that reports on the latest notifications of proposed foreign regulations that may affect trade.

District Export Councils

Besides the immediate services of its Export Assistance Centers, the Department of Commerce has direct contact with seasoned exporters experienced in all phases of export trade. The EACs work closely with 51 District Export Councils (DECs) comprised of nearly 1,600 business and trade experts who volunteer to help U.S. firms develop solid export strategies.

DECs assist in many of the workshops and seminars on exporting arranged by the EACs and sponsor their own. DEC members may also provide direct, personal counseling to less experienced exporters by suggesting marketing strategies, trade contacts, and ways to maximize success in overseas markets.

Assistance from DECs may be obtained through the EACs with which they are affiliated.

State Governments

State economic development agencies, departments of commerce, and other departments of state governments often provide valuable assistance to exporters. State export development programs are growing rapidly. In many areas, county and city economic development agencies also have their own export assistance programs. The aid offered by these groups typically includes the following:

- ***Export education*** Helping exporters analyze export potential and orienting them to export techniques and strategies. This help may take the form of group seminars or individual counseling sessions.

- ***Trade missions*** Organizing trips abroad enabling exporters to call on potential foreign customers. (For more information on trade missions, see ***Chapter 13***).

- ***Trade shows*** Organizing and sponsoring exhibitions of state-produced goods and services in overseas markets.

Readers interested in the role played by state development agencies in promoting and supporting exports may also wish to contact the National Association of State Development Agencies, 750 First Street, N.E., Suite 710, Washington, DC 20002; telephone 202-898-1302. To determine if a particular county or city has local export assistance programs, contact the appropriate economic development agency.

Commercial Banks

Many U.S. banks have international banking departments with specialists who are familiar with specific foreign countries and various types of commodities and transactions. These large banks, located in major U.S. cities, maintain correspondent relationships with smaller banks throughout the country. Larger banks also maintain correspondent relationships with banks in many foreign countries or operate their own overseas branches, thus providing a direct channel to foreign customers. International banking specialists are generally well informed about export matters, even in areas that fall outside the usual limits of international banking. If they are unable to provide direct guidance or assistance, they may be able to refer inquirers to other specialists who can do so. Banks frequently provide consultation and guidance free of charge to their clients since they derive income primarily from loans to the exporter and from fees for special services. Many banks also have publications available to help exporters. These materials often cover particular countries and their business practices and can be a valuable tool for familiarization with a foreign industry. Finally, large banks frequently conduct seminars and workshops on letters of credit, documentary collections, and other banking subjects of concern to exporters.

Among the many services a commercial bank may perform for its clients are the following:

- Exchange of currencies;
- Assistance in financing exports;
- Collection of foreign invoices, drafts, letters of credit, and other foreign receivables;
- Transfer of funds to other countries;
- Letters of introduction and letters of credit for travelers;
- Credit information on potential representatives or buyers over-seas;
- Credit assistance to the exporter's foreign buyers.

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Export Intermediaries

Export intermediaries are of many different types, ranging from giant international companies to highly specialized, small operations. They provide a multitude of services, such as performing market research, appointing overseas distributors or commission representatives, exhibiting a client's products at international trade shows, advertising, shipping, and arranging documentation. In short, the intermediary can often take full responsibility for the export end of the business, relieving the manufacturer of all the details except filling orders.

Intermediaries may work simultaneously for a number of exporters on the basis of commissions, salary, or retainer plus commission. Some take title to the goods they handle, buying and selling in their own right. Products of a trading company's clients are often related, although the items usually are noncompetitive. One advantage of using an intermediary is that it can immediately make available marketing resources that a smaller firm would need years to develop on its own. Many export intermediaries also finance sales and extend credit, facilitating prompt payment to the exporter. For more information on using export intermediaries see ***Chapter 4***.

World Trade Centers and International Trade Clubs

Local or regional world trade centers and international trade clubs are composed of area business people who represent firms engaged in international trade and shipping, banks, forwarders, customs brokers, government agencies, and other service organizations involved in world trade. These organizations conduct educational programs on international business and organize promotional events to stimulate interest in world trade. There are 320 world trade centers or affiliated associations located in major trading cities throughout the world. By participating in a local association, a company can receive valuable and timely advice on world markets and opportunities from business people who are already knowledgeable on virtually any facet of international business. Another important advantage of membership in a local world trade club is the availability of benefits - such as services, discounts, and contacts - from affiliated clubs in foreign countries.

Chambers of Commerce and Trade Associations

Many local chambers of commerce and major trade associations in the United States provide sophisticated and extensive services for members interested in exporting. Among these services are the following:

- Conducting export seminars, workshops, and roundtables;
- Providing certificates of origin;
- Developing trade promotion programs, including overseas missions, mailings, and event planning;
- Organizing U.S. pavilions in foreign trade shows;
- Providing contacts with foreign companies and distributors;
- Relaying export sales leads and other opportunities to members;
- Organizing transportation routings and shipment consolidations;
- Hosting visiting trade missions from other countries;
- Conducting international activities at domestic trade shows;

In addition, some industry associations can supply detailed information on market demand for products in selected countries or refer members to export management companies. Industry trade associations typically collect and maintain files on international trade news and trends affecting manufacturers. They often publish articles and newsletters that include government research.

American Chambers of Commerce Abroad

A valuable and reliable source of market information in any foreign country is the local chapter of the American Chamber of Commerce. These local chapters are knowledgeable about local trade opportunities, actual and potential competition, periods of maximum trade activity, and similar considerations.

American Chambers of Commerce abroad usually handle inquiries from any U.S. business. However, detailed service is ordinarily provided free of charge for members of affiliated organizations. Some chambers have a set schedule of charges for services rendered to non-members. For contact information on American chambers in major foreign markets, call 1-800-USA-TRADE.

International Trade Consultants and Other Advisers

International trade consultants can advise and assist a manufacturer on all aspects of foreign marketing. Trade consultants do not normally deal specifically with one product, although they may advise on product adaptation to a foreign market. They research domestic and foreign regulations and also assess commercial and political risk. They conduct foreign market research and establish contacts with foreign government agencies and other necessary resources, such as advertising companies, product service facilities, and local attorneys.

These consultants can locate and qualify foreign joint venture partners, as well as conduct feasibility studies for the sale of manufacturing rights, the location and construction of manufacturing facilities, and the establishment of foreign branches. After sales agreements are completed, trade consultants can also ensure that implementation is smooth and that any problems that arise are dealt with effectively.

Trade consultants usually specialize by subject matter and by global area or country. Their consultants can advise on which agents or distributors are likely to be successful, what kinds of promotion are needed, who the competitors are, and how to conduct business with them. They are also knowledgeable about foreign government regulations, contract laws, and taxation. Some firms may also be more specialized than others. For example, some may be thoroughly knowledgeable on legal aspects and taxation and less knowledgeable on marketing strategies.

Many large accounting firms, law firms, and specialized marketing firms provide international trade consulting services. When selecting a consulting firm, the exporter should pay particular attention to the experience and knowledge of the consultant who is in charge of its project. To find an appropriate firm, advice should be sought from other exporters and some of the other resources listed in this chapter, such as the Export Assistance Centers and local chambers of commerce.

Consultants are of greatest value to a firm that has specific requirements. For this reason, and because private consultants are expensive, it pays to take full advantage of publicly funded sources of advice before hiring a consultant.

Export Seminars

In addition to individual counseling sessions, an effective method of informing local business communities of the various aspects of international trade is through the conference and seminar program. Each year, EACs participate in approximately 5,000 conferences, seminars, and workshops on topics such as export documentation and licensing procedures, country-specific market opportunities, export trading companies, and U.S. trade promotion and trade policy initiatives. The seminars are usually held in conjunction with DECs, local chambers of commerce, state agencies, and other trade organizations. SBA field offices also co-sponsor export training programs with the Department of Commerce, other federal agencies, and various private sector international trade organizations. For information on scheduled seminars contact the nearest EAC. To locate the EAC nearest you, call the Trade Information Center at 1-800-USA-TRADE, or access the ITA home page on the Internet at http://www.ita.doc.gov.

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Developing an Export Strategy

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The most common methods of exporting are indirect selling and direct selling (see ***Chapter 1***). In indirect selling, an export intermediary such as an export management company (EMC) or an export trading company (ETC) normally assumes responsibility for finding overseas buyers, shipping products, and getting paid. In direct selling, the U.S. producer deals directly with a foreign buyer. The paramount consideration in determining whether to market indirectly or directly is the level of resources a company is willing to devote to its international marketing effort. Other factors to consider when deciding whether to market indirectly or directly include:

- The size of your firm;
- The nature of your products;
- Previous export experience and expertise;
- Business conditions in the selected overseas markets.

Approaches to Exporting

The way your company chooses to export its products can have a significant effect on its export plan and specific marketing strategies. The basic distinction among approaches to exporting relates to the company's level of involvement in the export process. There are at least four approaches, which may be used alone or in combination:

1. ***Passively filling orders from domestic buyers who then export the product.*** These sales are indistinguishable from other domestic sales as far as the original seller is concerned. Someone else has decided that the product in question meets foreign demand. That party takes all the risk and handles all of the exporting details, in some cases without even the awareness of the original seller. (Many companies take a stronger interest in exporting when they discover that their product is already being sold over-seas.)

2. ***Seeking out domestic buyers who repre-sent foreign end users or customers.*** Many U.S. and foreign corporations, general contractors, foreign trading companies, foreign government agencies, foreign distributors and retailers, and others in the United States purchase for export. These buyers are a

large market for a wide variety of goods and services. In this case a company may know its product is being exported, but it is still the buyer who assumes the risk and handles the details of exporting.

3. ***Exporting indirectly through intermediaries.*** With this approach, a company engages the services of an intermediary firm capable of finding foreign markets and buyers for its products. EMCs, ETCs, international trade consultants, and other intermediaries can give the exporter access to well-established expertise and trade contacts. Yet, the exporter can still retain considerable control over the process and can realize some of the other benefits of exporting, such as learning more about foreign competitors, new technologies, and other market opportunities.

4. ***Exporting directly.*** This approach is the most ambitious and difficult, since the exporter personally handles every aspect of the exporting process from market research and planning to foreign distribution and collections. Consequently, a significant commitment of management time and attention is required to achieve good results. However, this approach may also be the best way to achieve maximum profits and long-term growth. With appropriate help and guidance from the Department of Commerce, state trade offices, freight forwarders, international banks, and other service groups, even small or medium-sized firms can export directly if they are able to commit enough staff time to the effort. For those who cannot make that commitment, the services of an EMC, ETC, trade consultant, or other qualified intermediary are indispensable.

Approaches 1 and 2 represent a substantial proportion of total U.S. sales, perhaps as much as 30 per-cent of U.S. exports. They do not, however, involve the firm in the export process. Consequently, this guide concentrates on approaches 3 and 4. (There is no single source or special channel for identifying domestic buyers for overseas markets. In general, they may be found through the same means that U.S. buyers are found, for example through trade shows, mailing lists, industry directories, and trade associations.)

If the nature of the company's goals and resources makes an indirect method of exporting the best choice, little further planning may be needed. In such a case, the main task is to find a suitable intermediary firm that can then handle most export details. Firms that are new to exporting or are unable to commit staff and funds to more complex export activities may find indirect methods of exporting more appropriate.

However, using an EMC or other intermediary does not exclude all possibility of direct exporting for your firm. For example, your company may try exporting directly to such "easy" nearby markets as Canada, Mexico, or the Bahamas while letting an EMC handle more ambitious sales to Egypt or Japan. You may also choose to gradually increase the level of direct exporting later, after experience has been gained and sales volume appears to justify added investment.

Consulting advisers before making these decisions can be helpful. The next chapter presents information on a variety of organizations that can provide this type of help - in many cases, at no cost.

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Distribution Considerations

- Which channels of distribution should the firm use to market its products abroad?
- Where should the firm produce its products and how should it distribute them in the foreign market?
- What types of representatives, brokers, wholesalers, dealers, distributors, or end-use customers, and so forth should the firm use?
- What are the characteristics and capabilities of the available intermediaries?
- Should the assistance of an EMC or ETC be obtained?

Your answers from ***Table 1*** in ***Chapter 1*** can help you determine if indirect or direct exporting methods are best for your company.

Indirect Exporting

The principal advantage of indirect marketing for a smaller U.S. company is that it provides a way to penetrate foreign markets without the complexities and risks of direct exporting. Several kinds of intermediary firms provide a range of export services. Each type of firm offers distinct advantages for your company.

Confirming Houses

Confirming houses or buying agents are finders for foreign firms that want to purchase U.S. products. They seek to obtain the desired items at the lowest possible price and are paid a commission by their foreign clients. In some cases, they may be foreign government agencies or quasi-governmental firms empowered to locate and purchase desired goods. An example is foreign government purchasing missions.

Export Management Companies

An EMC acts as the export department for one or several producers of goods or services. It solicits and transacts business in the names of the producers it represents or in its own name for a commission, salary, or retainer plus commission. Some EMCs provide immediate payment for the producer's products by either arranging financing or directly purchasing products for resale. Typically, only larger EMCs can afford to purchase or finance exports.

EMCs usually specialize either by product or by foreign market, or sometimes even both. Because of their specialization, the best EMCs know their prod-ucts and the markets they serve very well and usually have well-established networks of foreign distributors already in place. This immediate access to foreign markets is one of the principal reasons for using an EMC, since establishing a productive relationship with a foreign representative may be a costly and lengthy process.

One disadvantage of using an EMC is that a manufacturer may lose control over foreign sales. Most manufacturers are properly concerned that their product and company image be well maintained in foreign markets. An important way for a company to retain sufficient control in such an arrangement is to carefully select an EMC that can meet the company's needs and maintain close communication with it. For example, a company may ask for regular reports on efforts to market its products and may require approval of certain types of efforts, such as advertising programs or service arrangements. If a company wants to maintain this type of relationship with an EMC, it should negotiate points of concern before entering an agreement, since not all EMCs are willing to comply with the company's concerns.

Export Trading Companies

An ETC facilitates the export of U.S. goods and services. Like an EMC, an ETC can either act as the export department for producers or take title to the product and export for its own account. Therefore, the terms ETC and EMC are often used interchangeably. A special kind of ETC is a group organized and operated by producers. These ETCs can be organized along multiple or single-industry lines and can also represent producers of competing products.

Export Trading Company Act of 1982
and The Office of Export Trading Company Affairs

The Export Trading Company Act of 1982 allows banks to make equity investments in commercial ventures that qualify as ETCs. In addition, the Export- Import Bank (Ex-Im Bank) of the United States is allowed to make working capital guarantees to U.S. exporters. Through the Office of Export Trading Company Affairs (OETCA) within the International Trade Administration, the U.S. Department of Commerce promotes the formation and use of U.S. export intermediaries and issues export trade certificates of review providing limited immunity from U.S. antitrust laws.

OETCA informs the business community of the benefits of export intermediaries through conferences, presentations before trade associations and civic organizations, and publications. The major pub-lication on this subject is the *Export Trading Company Guidebook,* available for purchase through the U.S. Government Printing Office. OETCA provides counseling to businesses seeking to take advantage of the act.

OETCA also maintains the Contact Facilitation Service (CFS) database, a listing of U.S. producers of goods and services and of organizations that provide trade facilitation services. Under a public-private sector arrangement, the CFS database is published annually in a directory entitled The *Export Yellow Pages.* The directory provides users with the names and addresses of banks, EMCs, ETCs, freight forwarders, manufacturers, and service organizations and names the export products or export-related services that these firms supply. By obtaining CFS registration forms from Commerce EACs, firms can register in the database free of charge and be listed in subsequent editions of The *Export Yellow Pages.*

The certificate of review program provides ex-porters with an antitrust "insurance policy" intended to foster joint activities where economies of scale and risk diversification can be achieved. The act also amends the Sherman Antitrust Act and the Federal Trade Commission Act to clarify the jurisdictional reach of these statutes to export trade. Both acts now apply to export trade only if there is a "direct substantial and reasonably foreseeable" effect on domestic or import commerce of the United States or the export commerce of a U.S. competitor.

Certificates of review are issued by the Secretary of Commerce with the concurrence of the U.S. Department of Justice. Any U.S. corporation or partnership, any resident individual, or any state or local en-tity may apply for a certificate of review. A certificate can be issued to an applicant if it is determined that the proposed "export trade activities and methods of operation" will not result in a substantial lessening of domestic competition or restraint of trade within the United States. For the conduct covered by the certificate, its holder and any other individuals or firms named as members are given immunity from government suits under U.S. federal and state antitrust laws. In private party actions, liability is reduced from treble to single damages, greatly reducing the probability of nuisance suits. Moreover, in the event of private litigation involving conduct covered by the certificate of review, a prevailing certificate holder re-covers the costs of defending the suit, including rea-sonable attorney's fees.

If you are interested in additional information, contact the Office of Export Trading Company Affairs, U.S. Department of Commerce, International Trade Administration, Washington, DC 20230; telephone 202-482-5131.

Export Agents, Merchants, or Remarketers

Export agents, merchants, or remarketers purchase products directly from the manufacturer, packing and marking the products according to their own specifications. They then sell these products overseas through their contacts in their own names and assume all risks for accounts.

In transactions with export agents, merchants, or remarketers, a U.S. firm relinquishes control over the marketing and promotion of its product. This situation could have an adverse effect on future sales efforts abroad if the product is underpriced or incorrectly positioned in the market, or if after-sales services are neglected. On the other hand, the effort required by the manufacturer to market the product overseas is very small and may lead to sales that otherwise would take a great deal of effort to obtain.

Piggyback Marketing

Piggyback marketing is an arrangement in which one manufacturer or service firm distributes a second firm's product or service. The most common piggy-backing situation is when a U.S. company has a contract with an overseas buyer to provide a wide range of products or services.

Often, this first company does not produce all of the products it is under contract to provide, and it turns to other U.S. companies to provide the remaining products. The second U.S. company thus piggybacks its products to the international market, generally without incurring the marketing and distribution costs associated with exporting. Successful arrangements usually require that the product lines be complementary and appeal to the same customers.

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Direct Exporting

The advantages of direct exporting for a U.S. company include more control over the export process, potentially higher profits, and a closer relationship to the overseas buyer and marketplace. However, these advantages do not come easily since the U.S. company needs to devote more time, personnel, and corporate resources than indirect exporting requires.

When a company chooses to export directly to foreign markets, it usually makes internal organizational changes to support more complex functions. A direct exporter normally selects the markets it wishes to penetrate, chooses the best channels of distribution for each market, and then makes specific foreign business connections in order to sell its product.

Organizing for Exporting

A company new to exporting generally treats its export sales no differently than its domestic sales, using existing personnel and organizational structures. As international sales and inquiries increase, the company may separate the management of its exports from that of its domestic sales.

The advantages of separating international from domestic business include the centralization of specialized skills needed to deal with international markets and the benefits of a focused marketing effort that is more likely to increase export sales. A possible disadvantage is that segmentation might be a less efficient use of corporate resources.

When a company separates international from domestic business, it may do so at different levels in the organization. For example, when a company first begins to export, it may create an export department with a full or part-time manager who reports to the head of domestic sales and marketing. At later stages, a company may choose to increase the au tonomy of the export department to the point of creating an international division that reports directly to the president.

Larger companies at advanced stages of exporting may choose to retain the international division or to organize along product or geographic lines. A company with distinct product lines may create an inter-national department in each product division. A company with products that have common end users may organize geographically. For example, it may form a division for Europe and another for the Pacific Rim. A small company's initial needs may be satisfied by a single export manager who has responsibility for the full range of international activities. Regardless of how a company organizes its exporting efforts, the key is to facilitate the marketer's job. Good marketing skills can help the firm operate in an unfamiliar market. Experience has shown that a company's success in foreign markets depends less on the unique attributes of its products than on its marketing methods.

Once your company is organized to handle exporting, a proper channel of distribution needs to be carefully chosen for each market. These channels include sales representatives, agents, distributors, retailers, and end users.

Sales Representatives

Overseas, a sales representative is the equivalent of a manufacturer's representative in the United States. The representative uses the company's product literature and samples to present the product to potential buyers. A representative usually handles many complementary lines that do not conflict. The sales representative usually works on a commission basis, assumes no risk or responsibility, and is under contract for a definite period of time (renewable by mutual agreement). The contract defines territory, terms of sale, method of compensation, reasons and procedures for terminating the agreement, and other details. The sales representative may operate on either an exclusive or a nonexclusive basis.

Agents

The widely misunderstood term "agent" means a representative who normally has authority, perhaps even a power of attorney, to make commitments on behalf of the firm he or she represents. Firms in the United States and other developed countries have stopped using the term and instead rely on the term "representative," since agent can imply more than intended. It is important that any contract state whether the representative or agent does or does not have legal authority to obligate the firm.

Distributors

The foreign distributor is a merchant who purchases goods from a U.S. exporter (often at a substantial discount) and resells it for a profit. The foreign distributor generally provides support and service for the product, thus relieving the U.S. company of these responsibilities. The distributor usually carries an inventory of products and a sufficient supply of spare parts and also maintains adequate facilities and personnel for normal servicing operations. Distributors typically handle a range of non-conflicting but complementary products. End users do not usually buy from a distributor; they buy from retailers or dealers.

The terms and length of association between the U.S. company and the foreign distributor are established by contract. Some U.S. companies prefer to begin with a relatively short trial period and then extend the contract if the relationship proves satisfactory to both parties.

Foreign Retailers

A company may also sell directly to foreign retailers, although in such transactions, products are generally limited to consumer lines. The growth of major retail chains in markets such as Canada and Japan has created new opportunities for this type of direct sale. This method relies mainly on traveling sales representatives who directly contact foreign retailers, although results might also be achieved by mailing catalogs, brochures, or other literature. The direct mail approach has the benefits of eliminating commissions, reducing traveling expenses, and reaching a broader audience. For optimal results, a firm that uses direct mail to reach foreign retailers should support it with other marketing activities.

American manufacturers with ties to major domestic retailers may also be able to use them to sell abroad. Many large American retailers maintain overseas buying offices and use these offices to sell abroad when practical.

Direct Sales to End Users

A U.S. business may sell its products or services directly to end users in foreign countries. These buyers can be foreign governments; institutions such as hospitals, banks, and schools; or businesses. Buyers can be identified at trade shows, through international publications, or through Commerce's Export Contact List Service. (Contact your local EAC for more details).

The U.S. company should be aware that if a product is sold in such a direct fashion, the company is responsible for shipping, payment collection, and product servicing unless other arrangements are made. Unless the cost of providing these services is built into the export price, a company could have a narrower profit than originally intended.

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Locating Foreign Representatives and Buyers

A company that chooses to use foreign representatives may meet them during overseas business trips or at domestic or international trade shows. There are other effective methods that can be employed without leaving the United States. Ultimately, the exporter may need to travel abroad to identify, evaluate, and sign overseas representatives; however, a company can save time by first conducting background research in the United States. The Commercial Service contact programs, banks and service organizations, and publications are available to help in this manner. (For more information on these methods, see ***Chapter 13***).

Contacting and Evaluating Foreign Representatives

Once your company has identified a number of potential representatives or distributors in the selected market, it should write and/or fax directly to each. Just as the U.S. firm is seeking information on the foreign representative, the representative is interested in corporate and product information on the U.S. firm. The prospective representative may want more information than the company normally provides to a casual buyer. Therefore, the firm should provide full information on its history, resources, personnel, product line, previous export activity, and all other pertinent matters. The firm may wish to include a photograph or two of plant facilities and products, and even product samples when practical. You may also want to consider inviting the foreign representative to visit its operations. Whenever the danger of piracy is significant, the exporter should guard against sending product samples that could be easily copied. (For more information on correspondence with foreign firms see ***Chapter 15***).

A U.S. firm should investigate potential representatives or distributors carefully before entering into an agreement. (See ***Table 3*** for an extensive checklist of factors to consider in such evaluations). The U.S. firm also needs to know the following points about the representative or distributor's firm:

- Current status and history, including background on principal officers;
- Methods of introducing new products into the sales territory;
- Trade and bank references;
- Data on whether the U.S. firm's special requirements can be met; and

- A view of the in-country market potential for the U.S. firm's products. This information is not only useful in gauging how much the representative knows about the exporter's industry, it is valuable market research in its own right.

A U.S. company may obtain much of this information from business associates who currently work with foreign representatives. However, U.S. exporters should not hesitate to ask potential representatives or distributors detailed and specific questions. Suppliers have the right to explore the qualifications of those who propose to represent them overseas. Well-qualified representatives will gladly answer questions that help distinguish them from less-qualified competitors. Your company should also consider other private-sector sources for credit checks of potential business partners.

In addition, the U.S. company may wish to obtain at least two supporting business and credit reports to ensure that the distributor or representative is reputable. By using a second credit report from a different source, the U.S. firm may gain new or more complete information. Reports from a number of companies are available from commercial firms and from the Department of Commerce's International Company Profiles (see ***Chapter 12***). Commercial firms and banks are also sources of credit information on overseas representatives. They can provide information directly or from their correspondent banks or branches overseas. Directories of international companies may also provide credit information on foreign firms.

If the U.S. company has the necessary information, it may wish to contact a few of the foreign firm's existing U.S. clients to obtain an evaluation of the representative's character, reliability, efficiency, and past performance. To protect itself against possible conflicts of interest, it is also important for the U.S. firm to learn about other product lines that the foreign firm represents.

Once the company has prequalified some foreign representatives, it may wish to travel to the foreign country to observe the size, condition, and location of offices and warehouses. In addition, the U.S. company should meet the sales force and try to assess its strength in the marketplace. If traveling to each distributor or representative is difficult, the company may decide to each of them at U.S. or at worldwide trade shows.

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Negotiating an Agreement with a Foreign Representative

When the U.S. company has found a prospective representative that meets its requirements, the next step is to negotiate a foreign sales agreement. EACs can provide counseling to firms planning to negotiate foreign sales agreements with representatives and distributors. The International Chamber of Commerce also provides useful guidelines and can be reached at 212-206-1150.

Most representatives are interested in the company's pricing structure and profit potential. Representatives are also concerned with the terms of payment, product regulation, competitors and their market shares, the amount of support provided by the U.S. firm (sales aids, promotional material, advertising, etc.), training for sales and service staff, and the company's ability to deliver on schedule.

The agreement may contain provisions that the foreign representative:

- **Not** have business dealings with competing firms (because of anti-trust laws, this provision may cause problems in some European countries);
- **Not** reveal any confidential information in a way that would prove injurious, detrimental, or competitive to the U.S. firm;
- **Not** enter into agreements binding to the U.S. firm; and,
- **Refer** all inquiries received from outside the designated sales territory to the U.S. firm for ac-tion.

To ensure a conscientious sales effort from the foreign representative, the agreement should include a requirement that it apply the utmost skill and ability to the sale of the product for the compensation named in the contract. It may be appropriate to include performance requirements such as a minimum sales volume and an expected rate of increase.

In the drafting of the agreement, special attention must be paid to safeguarding the supplier's interests in cases where the representative proves less than satisfactory. (See ***Chapter 8*** for recommendations on specifying terms of law and arbitration). It is vital to include an escape clause in the agreement, allowing the supplier to end the relationship safely and cleanly if the representative does not fulfill the firm's expectations. Some contracts specify that either party may terminate the agreement with written notice 30, 60, or 90 days in advance. The contract may also spell out exactly what constitutes just cause for ending the agreement (i.e., failure to meet specified performance levels). Other contracts specify a certain term for the agreement (usually one year), but arrange for automatic annual renewal unless either party gives written notice of its intention not to renew.

In all cases, escape clauses and other provisions to safeguard the supplier may be limited by the laws of the country in which the representative is located. For this reason, the supplier should learn as much as it can about the legal requirements of the representative's country and obtain qualified legal counsel in preparing the contract. These are some of the legal questions to consider:

- How far in advance must the representative be notified of the supplier's intention to terminate the agreement? Three months satisfy the requirements of many countries, but a verifiable means of conveyance (i.e., registered mail) may be needed to establish when the notice was served.

- What is just cause for terminating a representative? Specifying causes for termination in the written contract usually strengthens the supplier's position.

- Which country's laws (or which international conventions) govern a contract dispute? Laws in the representative's country may forbid the representative from waiving its nation's legal jurisdiction.

- What compensation is due to the representative on dismissal? Depending on the length of the relationship, the added value of the market the representative created for the supplier, and whether termination is for just cause as defined by the foreign country, the supplier may be required to compensate the representative for losses.

- What must the representative give up if dismissed? The contract should specify the return of property such as: patents, trademarks, name registrations, and customer records.

- Should the representative be referred to as an agent? In some countries, the word agent implies power of attorney. The contract needs to specify if the representative is or is not a legal agent with power of attorney.

- In what language should the contract be drafted? In most cases, the contract should be in both English and the official language(s) of the foreign country.

The supplier should also be aware of U.S. laws that govern such contracts. For instance, the supplier should seek to avoid provisions that could be contrary to U.S. anti-trust laws. The Export Trading Company Act of 1982 provides a means to obtain anti-trust protection when two or more companies combine for exporting (see the section of OETCA, earlier in this chapter). In any case, the supplier should obtain legal advice when preparing and entering into any foreign agreement.

Foreign representatives often request exclusivity for marketing in a country or region. It is recommended that suppliers not grant exclusivity until the foreign representative has proven his or her capabilities or that it be granted for a limited, defined period of time, such as one year, with renewal possible. The territory covered by exclusivity may also need to be defined, though some countries' laws may prohibit that type of limitation.

The agreement with the foreign representative should define what laws apply to the agreement. Even if a supplier chooses a U.S. law or that of a third country, the laws of the representative's country may define which law applies. Many suppliers define the U.N. Convention on Contracts for International Sale of Goods (CISG) as the source of resolution to contract disputes or defer to a ruling by the International Court of Arbitration of the International Chamber of Commerce.

Table 3 - Factors to Consider When Choosing a Foreign Representative or Distributor

Making Contacts

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By now, your company has identified its most promising markets (using ***Chapters 2*** *&* ***3***) and devised a strategy to enter those markets(***Chapter 4***). As discussed earlier, a company may sell directly to a customer or use the assistance of an in-country representative (agents or distributors) to eventually reach the end user. This chapter describes some possible sources of assistance in locating buyers, evaluating trade shows and missions, and conducting other programs designed to make contacts.

Department of Commerce Business Contact Programs

The U.S. Department of Commerce can help exporters identify and qualify leads for potential buyers, distributors, joint venture partners, and licensees from both private and public sources. Along with its various product, country, and program experts, the Department of Commerce has an extensive network of commercial officers posted in countries that represent 95 percent of the market for U.S. products. State department economic officers provide many of these services at U.S. embassies and consulates that are not staffed by commercial officers.

Programs available through the Department of Commerce are listed in this section. Exporters should contact the nearest Commerce Export Assistance Center for more information or contact the Trade Information Center at 1-800-USA-TRADE. Information on these programs is also available at the Commercial Service Web site: http://www.usatrade.gov/.

Agent/Distributor Service (ADS)

The Agent/Distributor Service (ADS) is used to locate foreign agents and distributors abroad. It provides a custom search overseas for interested and qualified foreign representatives on behalf of a U.S. exporter. Commercial officers abroad conduct the search and prepare a report identifying up to six foreign prospects that have examined the U.S. firm's product literature and have expressed interest in representing the U.S. firm's products. The U.S. company is given the names and addresses of the foreign firms, names and titles of persons to contact, telephone numbers, cable addresses and fax numbers, and brief comments about the agent or distributor and its stated interest in the proposal.

ADS application forms may be obtained from Export Assistance Centers. Trade specialists at these offices can help prepare applications and provide further guidance.

Commercial News USA

Commercial News USA (CNUSA) provides worldwide exposure for U.S. products and services through an illustrated catalog-magazine and electronic bulletin boards. The catalog-magazine is distributed through U.S. embassies and consulates to business readers in 139 countries. Copies are also made available to international visitors at trade events around the world. Current hard-copy distribution averages 145,000 copies, with ten issues per year. Information in CNUSA is further disseminated by Commercial Service posts or local organizations that reprint all or part of the publication. CNUSA's electronic distribution reaches private sector and government electronic business bulletin boards with over 2 million business subscribers in key overseas markets.

Listings in CNUSA describe the major features of an export product or service. The name, address, and telephone and fax numbers of the U.S. manufacturer or distributor are included along with a photo or illustration. A variety of advertising formats are available. The electronic versions of CNUSA transmit the complete text of the magazine listings, without illustrations, to Economic Bulletin Board subscribers (See ***Chapter 7***).

CNUSA covers more than 30 industry categories. Companies may also market services and trade and technical literature through CNUSA. Pharmaceuticals and medicines for human use, raw materials, agricultural commodities, sexually oriented products, alcoholic beverages, and items on the U.S. munitions List are excluded from CNUSA. All products in the publication must be at least 51 percent U.S. product.

Trade leads generated by CNUSA help U.S. firms identify potential export markets and make contacts that lead to direct sales, representation, distributorships, or joint venture or licensing agreements. Overseas inquiries come directly to participating U.S. firms and are address-coded to allow for tracking and evaluation.

Commercial Service International Contacts and Country Directories of International Contacts

Commercial Service International Contacts (CSIC) provides contact and product information on more than 30,000 firms abroad interested in U.S. products. The Country Directories of International Contacts (CDIC)is a listing of in-country directories of importers, agents, trade associations, and government agencies on a country-by-country basis that can be helpful to U.S. exporters. Both are available on the NTDB (see ***Chapter 2***).

Customized Market Analysis

The Customized Market Analysis Program (CMA) is a custom-tailored research service which provides U.S. firms with specific information on marketing and foreign representation for their individual products in one market abroad. Interviews or surveys are conducted to determine overall marketability of the product, key competitors, price of comparable products, customary distribution and promotion practices, trade barriers, possible business partners, and applicable trade events. Fees for CMA surveys vary from $1000 to $5100 per report, per country.

Gold Key Service

The Gold Key Service is a custom-tailored business matching service. It is offered by the Commercial Service in key export markets around the world. The service includes orientation briefings, market research, appointments with potential partners, interpreter services for meetings, and assistance in developing follow-up strategies.

International Company Profiles

An International Company Profile (ICP) is a background report on a specific foreign firm prepared by commercial officers overseas. These reports include information on the type of organization, year established, relative size, number of employees, general reputation, territory covered, language preferred, product lines handled, principal owners, financial references, and trade references. Each ICP also contains a general narrative report by the U.S. commercial officer who conducted the investigation concerning the reliability of the foreign firm.

Note: The ICP service is offered in countries that lack adequate private sector providers of credit and background information on local companies. Credit reports on foreign companies are available from many private sector sources including, (in the United States) Dun and Bradstreet and Graydon International. For help in identifying private sector sources of credit reports, contact the nearest Export Assistance Center.

Trade Opportunities Program

The Trade Opportunities Program (TOP) provides timely leads from overseas firms seeking to buy or represent U.S. products and services. U.S. commercial officers worldwide gather leads through local channels. Lead details such as specifications, quantities, end use, and delivery and bid deadlines are transmitted daily to the computer center in Washington, D.C., reviewed, and then immediately posted on the Commerce Department's Electronic Bulletin Board (see ***Chapter 2***). Users can retrieve the TOP files (and all other files) from the EBB each day through a personal computer and modem. Subscribers may use, edit, or redistribute the leads in any way they wish.

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Department of Commerce Trade Event Programs

Some products, because of their nature, are difficult to sell unless the potential buyer has an opportunity to examine them in person. Sales letters and brochures can be helpful, but an actual presentation of products in the export market may prove more beneficial. One way for a company to actually present its products to an overseas market is by participating in trade events such as trade shows, fairs, trade missions, matchmaker delegations, and catalog exhibitions.

Trade fairs are "shop windows" where thousands of firms from many countries display their goods and services. They serve as a marketplace where buyers and sellers can meet with mutual convenience. Some fairs, especially in Europe, have a history that goes back centuries.

Attending trade fairs involves a great deal of planning. The potential exhibitor must take into account the following logistic considerations:

- Choosing the proper fair out of the hundreds that are held every year;
- Obtaining space at the fair, along with designing and constructing the exhibit;
- Shipping products to the show, along with unpacking and setup;
- Providing proper hospitality such as refreshments, along with maintaining the exhibit;
- Being able to separate serious business prospects from those just browsing; and;
- Breaking down and packing the exhibit, and return shipping.

A trade magazine or association can generally provide information on major shows. They can be privately run or government sponsored. Many trade shows have a "U.S. Pavilon" which is dedicated to U.S. businesses participating in the trade show. For additional guidance, contact the local Export Assistance Center, or visit the Commercial Service Internet Web site at http://www.usatrade.gov/.

International Buyer Program

The International Buyer Program (IBP) supports major domestic trade shows featuring products and services of U.S. industries with high export potential. Commercial Services officers worldwide recruit qualified foreign buyers to attend selected trade shows. The shows are extensively publicized through embassy and regional commercial newsletters, catalog-magazines, foreign trade associations, chambers of commerce, travel agents, government agencies, corporations, import agents, and equipment distributors in targeted markets. The International Business Center at each International Buyer Program event provides interpreters, multilingual brochures, export counseling, and private meeting rooms.

For more information, contact the International Buyer Program office at the U.S. Department of Commerce: telephone 202-482-0481; fax 202-482-0115; contact your local Export Assistance Center, or visit the Commercial Service Internet Web site at http://www.ita.doc.gov/uscs.

Trade Fair Certification Program

The Department of Commerce Trade Fair Certification Program is a partnership arrangement between private sector show organizers and the International Trade Association to assist and encourage U.S. firms to promote their products at appropriate trade fairs abroad. Certification of a U.S. organizer signals to exhibitors, visitors, and the host country government that the event is an excellent marketing opportunity and that participants will receive the support of the U.S. Government.

Certified organizers are authorized to recruit and manage a .S. pavilon at the show. They are especially focused on attracting new-to-market small and medium-sized U.S. firms, and can help with all aspects of freight forwarding, customs clearance, exhibit design, and on-site services.

Certified organizers receive government assistance such as:

- Designation as the official U.S. pavilon;
- Authorized use of an official Commercial Service certification logo;
- On-site support/counseling for U.S. exhibitors from U.S. embassy commercial staff;
- Local market information and contact lists;
- Press releases and other promotion actions;
- Advertising and marketing assistance from Commerce Department Export Assistance Centers;
- Secretarial/Presidential support letters where appropriate;
- Exhibitor briefings; and
- Opening ceremonies/ribbon-cutting/dignitary liaison.

For more information on the Trade Fair Certification Program, contact the Trade Fair Certification Program office at 202-482-2525; fax 202-482-0872; or visit the Commercial Service Internet Web site at http://www.ita.doc.gov/uscs.

Certified Trade Missions

The U.S. Department of Commerce supports or "certifies," appropriate missions organized by state and private-sector trade promotion agencies. Participants in Certified Trade Missions benefit from a range of on-site services, including market briefings, business appointments, and opportunities to meet high-level government and industry officials. Organizers seeking to certify congressional or governor-led missions are invited to send their requests to the Department's Certified Trade Missions Program in Washington, D.C. Requests to certify other types of missions may be sent directly to the Commercial Service office at the U.S. embassy or consulate in the chosen overseas market. For more information, contact the Certified Trade Missions Program office, telephone 202-482-0111; fax 202-482-0115, or visit the Commercial Service Internet Web site at http://www.ita.doc.gov/uscs.

Matchmaker Trade Delegations

Matchmaker trade delegations are Commerce Department recruited and planned trade missions designed to introduce new-to-export and new-to-market businesses to prospective representatives and distributors overseas. Matchmaker delegations usually target major markets in two to three countries with strong sales potential for U.S. goods and services. Commercial specialists at the U.S. embassies and consulates in the targeted countries evaluate U.S. participant companies' product or service potential, prescreen business contacts, arrange one-on-one business meetings, and handle all event logistics, including interpreter services.

For more information, contact the Matchmaker Trade Delegations office at telephone202-482-3119; fax 202-482-0178; your local Export Assistance Center, or visit the Commercial Service Internet Web site at http://www.ita.doc.gov/uscs.

Multi-State/Catalog Exhibition Program

This Multi-State/Catalog Exhibition Program showcases U.S. company product literature in fast-growing markets within a geographic region. The U.S. Department of Commerce and representatives from state economic development agencies present product literature to hundreds of interested business prospects abroad and send the trade leads directly to U.S. participants.

This program is particularly well suited for use in developing markets because it requires the exporter to make a much smaller investment than a trade mission or other personal visit.

For more information, contact the Multi-State Catalog Exhibition Program at: telephone 202-482-3973; fax 202-482-2718;your local Export Assistance Center, or visit the Commercial Service Internet Web site at http://www.ita.doc.gov/uscs.

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Other Department of Commerce Programs

American Business Centers

American Business Centers (ABCs) provide professional office and support services in 12 important commercial cities across Russia and the Newly Independent States (NIS) exclusively to U.S. companies. Authorized by Congress and the 1992 Freedom Support Act, the ABC program emphasizes helping small and medium-sized U.S. firms to identify opportunities in Russia and the NIS. Each ABC is a vital, on-site link in an information service network that offers American-style business facilities to U.S. firms.

ABCs are a cost-effective way to conduct business in Russia and the Newly Independent States. There are nine ABCs in Russia, as well as on located in each of the following countries: Ukraine, Kazakhstan, and Uzbekistan. ABCs offer the following broad range of business development and facilitation services:

- Business counseling;
- Market research;
- Locating, screening, and assessing partners;
- Trade mission and event planning;
- Business appointment scheduling;
- Office and conference room rental;
- International telephone, fax, and e-mail;
- Secretarial assistance; and
- Interpretation and translation services.

The ABCs offer educational outreach and training programs to local firms, and provide access to commercial libraries and business information covering a wide variety of timely commercial, legal, and technical issues.

Additional information about American Business Centers is available by calling 202-482-4655 and selecting option #21 or ordering a flashfax by dialing 202-482-3145 and ordering document #7022; or visiting the ABC home page at http://www.bisnis.doc.gov/ .

Infrastructure Division

The Infrastructure Division helps U.S. firms compete for contracts for planning, engineering, constructing, and systems installation for large foreign projects in the areas of transportation, power generation, water/environmental installations, buildings and commercial infrastructure, and manufacturing/process plant and other industrial infrastructure. Information on foreign opportunities in these areas and assistance to U.S. firms competing for such projects is provided upon request. As circumstances warrant, the Infrastructure Division mobilizes and coordinates appropriate support from other U.S. Government agencies, including foreign service posts abroad. For further information, contact the Infrastructure Division, Room 4314, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone 202-482-4436; or our Web site: http://www.ita.doc.gov/td/infrastructure/.

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Department of Agriculture, Foreign Agricultural Service

Through a network of counselors, attaches, trade officers, commodity analysts, and marketing specialists, the Department of Agriculture's Foreign Agricultural Service (FAS) can help arrange contacts overseas and provide marketing assistance for companies that export agricultural commodities. Extensive information on the FAS is also available on the Internet. Contact: Trade Assistance and Promotion Office, 202-720-7420; fax 202-690-4374; Internet: http://www.fas.usda.gov/.

Agency for International Development

The Agency for International Development (AID) administers most of the U.S. foreign economic assistance programs. These programs offer export opportunities for U.S. suppliers of professional technical assistance services and commodities (goods, products, equipment, and material). Professional technical assistance services generally offer opportunities for consultant and expert capabilities in agriculture, nutrition, and rural development; education and human resources; health and population; and energy and environmental assessment. Opportunities to export commodities are available through the commodity import programs that AID operates in select AID-recipient countries, and through AID's direct procurement of commodities. In addition, AID funds may be available to finance developmentally sound projects in certain recipient countries involving U.S. capital goods and services. U.S. exporters are best positioned to obtain orders by making the local purchasing agencies aware of their products at an early stage. For information on available funds, projects under consideration, and contacts, exporters traveling to developing countries where an AID program is in place, should contact their nearest Export Assistance Center or call 800-USAID4U.

AID, in partnership with the Department of Commerce, offers opportunities for U.S. exporters of environmental products and services. In Asia, AID assistance is spearheaded through the U.S.-Asia Environmental Partnership (US-AEP) and in Latin America through its Environmental Technologies Network for the Americas (ETNA).

These programs represent a public-private partnership in environmental protection and remediation. This ten-year initiative, began in 1992 and is currently operating in most Asian and Latin American countries. This is a partnership with U.S. government agencies, state and local groups, environmental organizations, and businesses and non-governmental organizations. The efforts of US-AEP and ETNA are focused on stemming biodiversity loss, controlling and eliminating industrial pollution, improving energy efficiency, and assisting in the development of urban environmental infrastructure.

U.S. Trade and Development Agency

The U.S. Trade and Development Agency (TDA) assists in the creation of jobs for Americans by helping U.S. companies pursue overseas business opportunities. Through the funding of feasibility studies, orientation visits, specialized training grants, business workshops, and various forms of technical assistance, TDA helps American businesses compete for infrastructure and industrial projects in emerging markets.

TDA's mission is to help companies get in on the "ground floor" of export opportunities and level the playing field with heavily subsidizeded foreign competitors.

Because of its focused mission, TDA only considers infrastructure and industrial projects that have the potential to mature into significant export opportunities for American companies and create jobs in the United States. Projects are typically in agriculture, energy and power, health care, manufacturing, mining and minerals development, telecommunications, transportation and environmental services.

To be considered for funding, projects must:

- Face strong competition from foreign companies that receive subsidies and other support from their governments;

- Be a development priority of the country where the project is located and have the endorsement of the U.S. embassy in that nation;
- Represent an opportunity for sales of U.S. goods and services that is many times greater than the cost of TDA assistance; and
- Be likely to receive implementation financing and have a procurement process open to U.S. firms.

Contact TDA at 703-875-4357 or vist its Web site at http://www.tda.gov for more information.

State and Local Government Assistance

Most states can provide an array of services to exporters. Many states maintain international offices in major markets; the most common locations are in Western Europe and Japan. Working closely with the commercial sections of U.S. embassies in these countries, state foreign offices can provide assistance in making contacts in foreign markets, providing such services as the following:

- Specific trade leads with foreign buyers,
- Assistance for trade missions, such as itinerary planning, appointment scheduling, travel, and accommodations,
- Promotional service for goods or services, including representing the state at trade shows, and
- Help in qualifying potential buyers, agents, or distributors.
- In addition, some international offices of state development organizations help organize and promote foreign-buyer missions to the United States, which can be effective avenues of exporting with little effort. Attracting foreign investment and developing tourism are also very important activities of state foreign offices. Increasingly, many cities and counties are providing these same services.

Business and Service Organization

Contacts

Contacts made through business colleagues and associations can often prove invaluable to U.S. exporters. A colleague with firsthand experience in an international market may give a personal recommendation for an agent, distributor, or potential buyer. Conversely, the recommendation against the use of a representative for credit or reliability reasons may save the firm a number of problems. Attending export seminars and industry trade shows is an excellent method of networking with business people who have international experience. In addition, trade associations can provide a valuable source of contacts with individuals who may wish to share their experience of identifying and selling to buyers and representatives in foreign markets.

Banks can be another source of assistance in locating overseas representation. The international departments, branches, or correspondent banks of U.S. banks may help locate reputable firms that are qualified and willing to represent U.S. exporters. In addition, freight forwarders, freight carriers, airlines, port authorities, and American chambers of commerce maintain offices throughout the world. These service firms often have contacts with qualified representatives and can make recommendations to the U.S. firm. Foreign embassy and consulate commercial offices may also be able to provide directories and assistance.

Promotion in Publications and Other Media

A large and varied assortment of magazines covering international markets is available to exporters through U.S. publishers. They range from specialized international magazines relating to individual industries such as construction, beverages, and textiles, to worldwide industrial magazines covering many industries. Many consumer publications produced by U.S.-based publishers are also available. Several are produced in national-language editions (for example, Spanish for Latin America and so on) and also offer "regional buys" for specific export markets of the world. In addition, several business directories published in the United States list foreign representatives geographically or by industry specialization.

Publishers frequently supply potential exporters with helpful market information, make specific recommendations for selling in the markets they cover, help advertisers locate sales representation, and render other services to aid international advertisers.

Many of these magazines and directories may be available at libraries, Commerce Export Assistance Centers, or in the Department of Commerce's Reference Room, Room 7046, Washington, D.C. State departments of commerce, trade associations, business libraries, and major universities may also provide these publications.

Television, radio, and specially produced motion pictures may also be used by a U.S. business for promoting products or services, depending on the country. In areas where programs may be seen and heard in public places, television and radio promotions offer one of the few means of bringing an advertising message to great numbers of people. In many countries, various forms of outdoor advertising (billboards, posters, electric signs, and streetcar and bus cards) are widely used to reach the mass audience.

Because of the specialized knowledge required to advertise and promote successfully in foreign markets, U.S. firms may find useful the services of a U.S. advertising agency with offices or correspondents abroad. Some U.S. advertising agencies handle nothing but foreign advertising, and some marketing consultants specialize in the problems peculiar to selling in foreign markets. Contact your local Export Assistance Center.

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Technology Licensing/ Joint Ventures

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Two alternative ways to obtain foreign trade income include technology licensing and joint ventures. While not necessarily the most profitable form of exporting, they do offer certain advantages, particularly for small and medium sized businesses.

Technology Licensing

Technology licensing is a contractual arrangement in which the licensor's patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property may be sold or made available to a licensee for compensation that is negotiated in advance between the parties. This compensation, or royalties, may be a lump sum royalty, a running royalty (royalty that is based on volume of production), or a combination of both. U.S. companies frequently license their technology to foreign companies that then use it to manufacture and sell products in a country or group of countries defined in the licensing agreement.

A technology licensing agreement usually enables a firm to enter a foreign market quickly, and poses fewer financial and legal risks than owning and operating a foreign manufacturing facility or participating in an overseas joint venture. Licensing also permits U.S. firms to overcome many of the tariff and nontariff barriers that frequently hamper the export of U.S. manufactured products. For these reasons, licensing can be a particularly attractive method of "exporting" for small companies or companies with little international trade experience, even though licensing is profitably employed by small and large firms alike. Technology licensing can also be used to acquire foreign technology such as, cross-licensing agreements or grantback clauses awarding rights to improved technology developed by a licensee.

Technology licensing is not limited to the manufacturing sector. Franchising is also an important form of technology licensing used by many service industries. In franchising, the franchisor (licensor) permits the franchisee (licensee) to employ its trademark or service mark in a contractually specified manner for the marketing of goods or services. The franchisor usually continues to support the operation of the franchisee's business by providing advertising, accounting, training, and related services and in many instances also supplies products needed by the franchisee.

As a form of "exporting," technology licensing has certain potential drawbacks. One negative aspect of licensing is that control over the technology is weakened because it has been transferred to an unaffiliated firm. Additionally, licensing usually produces fewer profits than exporting actual goods or services. In certain developing countries, there also may be problems in adequately protecting the licensed technology from unauthorized use by third parties.

In considering the licensing of technology, it is important to remember that foreign licensees may attempt to use the licensed technology to manufacture products in direct competition with the licensor or its other licensees. In many instances, U.S. licensors may wish to impose territorial restrictions on their foreign licensees, depending on U.S. and foreign antitrust laws as well as the licensing laws of the host country. Also, U.S. and foreign patent, trademark, and copyright laws can often be used to bar unauthorized sales by foreign licensees, provided that the U.S. licensor has valid patent, trademark, or copyright protection in the United States or the other pertinent countries. In addition, unauthorized exports to the United States by foreign licensees can often be prevented by filing unfair import practices complaints under section 337 of the Tariff Act of 1930 with the U.S. International Trade Commission, and by recording U.S. trademarks and copyrights with the U.S. Customs Service.

As in all overseas transactions, it is important to investigate not only the prospective licensee but the licensee's country as well. The government of the host country often must approve the licensing agreement before it goes into effect. Some governments prohibit royalty payments that exceed a certain rate or contractual provisions barring the licensee from exporting products manufactured using the licensed technology to third countries.

The prospective licensor must always take into account the host country's:

- Foreign patent, trademark, and copyright laws;
- Exchange controls;
- Product liability laws;
- Possible countertrading or barter requirements;
- Antitrust and tax laws; and
- Government attitudes toward repatriation of royalties and dividends.

The existence of a tax treaty or bilateral investment treaty between the United States and the prospective host country is an important indicator of the overall commercial relationship. Prospective U.S. licensors, especially of advanced technology, also should determine whether they need to obtain an export license from the U.S. Department of Commerce or other regulating agencies.

In a few instances, international technology licensing agreements can unlawfully restrain trade in violation of U.S. or foreign antitrust laws. As a general rule, U.S. antitrust laws prohibit international technology licensing agreements that unreasonably restrict imports of competing goods or technology into the United States or unreasonably restrain U.S.

domestic competition or exports by U.S. persons.

Whether or not a restraint is reasonable is a fact-specific determination that is made after consideration of the availability of:

- Competing goods or technology;
- Market shares;
- Barriers to entry;
- The business justifications for and the duration of contractual restraints; and,
- Valid patents, trademarks, and copyrights.

The U.S. Department of Justice's and Federal Trade Commission's Antitrust Guidelines the Licensing of Intellectual Property (1995) states the two agencies' enforcement policies regarding the licensing of intellectual property protected by patent, copyright, and trade secret law and know-how. For instances in which significant federal antitrust issues are presented, U.S. licensors may wish to consider applying for an export trade certificate of review from the Department of Commerce (see ***Chapter 4***) or requesting a Department of Justice business review letter pursuant to 28 CFR50.6.

Foreign countries, particularly the European Union, also have strict antitrust laws that affect technology licensing. The European Union has issued detailed regulations known as a block exemption, governing patent and know-how licensing agreements as well as ancillary provisions relating to other intellectual property rights. These block exemption regulations are entitled "Commission Regulation (EC) No. 240/96 of 31 January 1997 on the Application of Article 85(3) of the Treaty [of Rome] to certain categories of technology transfer agreements." These regulations should be carefully considered by anyone currently licensing or contemplating the licensing of technology to the European Union.

Because of the potential complexity of international technology licensing agreements, firms should seek qualified legal advice in the United States before entering into such an agreement. In many instances, U.S. licensors should also retain qualified legal counsel in the host country in order to obtain advice on applicable local laws and to receive assistance in securing the foreign government's approval of the agreement. Sound legal advice and thorough investigation of the prospective licensee and the host country will increase the likelihood that your licensing agreement will be a profitable transaction.

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Joint Ventures

In some cases, joint ventures provide the best partner-like manner of obtaining foreign trade income. The firm then choses to begin a business relationship with a firm in the host country. International joint ventures are used in a wide variety of manufacturing, mining, and service industries and frequently involve technology licensing by the U.S. firm to the joint venture.

Host country laws may require that a certain percentage (often 51 percent or more) of manufacturing or mining operations be owned by nationals of that country, thereby limiting U.S. firms' local participation to minority shares of joint ventures. In addition to such legal requirements, U.S. firms may find it desirable to enter into a joint venture with a foreign firm to help spread the high costs and risks frequently associated with foreign operations.

The local partner will likely bring to the joint venture its knowledge of the customs and tastes of the people, an established distribution network, and valuable business and political contacts. Having a local partner may also lessen the "foreigner" image of the firm and thus may provide some protection against discrimination or expropriation if conditions change.

There are some possible disadvantages to international joint ventures. A major potential drawback of joint ventures, especially in countries that limit foreign companies to minority participation, is the loss of effective managerial control. This can result in reduced profits, increased operating costs, inferior product quality, exposure to product liability, and environmental litigation and fines. U.S. firms that wish to retain effective managerial control will find this issue an important topic in negotiations with the prospective joint venture partner and the host government.

Like technology licensing agreements, joint ventures can raise U.S. or foreign anti-trust issues in certain circumstances, particularly when the prospective joint venture partners are major existing or potential competitors in the affected national markets. Firms may wish to consider applying for an export trade certificate of review from the Department of Commerce or a busi-ness review letter from the Department of Justice when significant federal anti-trust issues are raised by the proposed international joint venture. (See ***Chapter 4***).

Because of the complex legal issues frequently raised by international joint venture agreements, it is very important, to seek legal advice from qualified U.S. counsel before entering into any such agreement. Many of the export counseling sources in ***Chapter 2*** can help direct a U.S. company to legal counsel suitable for its needs.

U.S. firms contemplating international joint ventures should consider retaining experienced counsel in the host country. U.S. firms can find it very disadvantageous to rely upon their potential joint venture partners to negotiate host government approvals and advise them on legal issues, since their prospective partners' interests may not always coincide with their own. Qualified foreign counsel can be very helpful in obtaining government approvals and providing ongoing advice regarding the host country's intellectual property, tax, labor, corporate, commercial, antitrust, and exchange control laws.

Preparing Your Product for Export

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Selecting and preparing your product for export requires not only product knowledge but also knowledge of the unique characteristics of each market being targeted. Market research conducted (see ***Chapter 2***) and foreign representatives contacts (see ***Chapter 14***) should give the U.S. company an idea of what products can be sold and where. However, before the sale can occur, the company may need to modify a particular product to satisfy buyer tastes or needs in foreign markets.

The extent to which the company will modify products sold in export markets is a key policy issue to be addressed by management. Some exporters believe the domestic product can be exported without significant changes. Others seek to consciously develop uniform products that are acceptable in all markets.

If the company manufactures more than one product or offers many models of a single product, it should start with the one best suited to the targeted market. Ideally, the firm chooses one or two products that fit the market without major design or engineering modifications. Doing so works best when the U.S. company:

- Deals with international customers that have the same demographic characteristics or the same specifications for manufactured goods;
- Supplies parts for U.S. goods that are exported to foreign countries without modifications;
- Produces a unique product that is sold on the basis of its status or foreign appeal; or produces a product that has few or no distinguishing features and that is sold almost exclusively on a commodity or price basis.

Questions to Consider:

- What foreign needs does the product satisfy?
- What product should the firm offer abroad?
- Should the firm modify its domestic-market product for sale abroad? Should it

develop a new product for the foreign market?

- What specific features, such as design, color, size, packaging, brand and warranty should the product have?
- What specific services are necessary abroad at the pre-sale and post-sale stages?
- Are the firm's service and repair facilities adequate?

Product Adaptation

To enter a foreign market successfully, a U.S. company may have to modify its product to conform to government regulations, geographic and climatic conditions, buyer preferences, or standards of living. The company may also need to modify its product to facilitate shipment or to compensate for possible differences in engineering and design standards.

Foreign government product regulations are common in international trade and are expected to expand in the future. These regulations can take the form of high tariffs or nontariff barriers, such as regulations or product specifications. Governments impose these regulations to:

- Protect domestic industries from foreign competition;
- Protect the health of their citizens;
- Force importers to comply with environmental controls;
- Ensure that importers meet local requirements for electrical or measurement systems;
- Restrict the flow of goods originating in or having components from certain countries; and
- Protect their citizens from cultural influences deemed inappropriate.

Detailed information on regulations imposed by foreign countries is available from the Trade Information Center at 1-800-USA-TRADE, or your local Export Assistance Center. Where particularly onerous or discriminatory barriers are imposed by a foreign government, a U.S. company may be able to obtain help from the U.S. Government to press for their removal. The firm should contact an Export Assistance Center or the Office of the U.S. Trade Representative (USTR) in Washington, D.C. USTR can be contacted at 202-395-3000.

It is often necessary for a company to adapt its product to account for geographic and climatic conditions as well as for the availability of resources. Factors such as topography, humidity, and energy costs can affect the performance of a product or even define its use. For example, the cost of petroleum products and the state of a country's infrastructure, may indicate the demand for energy-consuming products.

Buyer preferences in a foreign market may also lead a U.S. manufacturer to modify its product. Local customs, such as religious practices or the use of leisure time, often determine whether a product is marketable. The sensory impact of a product, such as taste or visual impact, may also be a critical factor. For example, Japanese tend to desire beautiful packaging. This has led many U.S. companies to redesign cartons and packages that are destined for this market.

A country's standard of living can also determine whether a company needs to modify a product. The level of income, education, and the availability of energy are all factors that help predict the acceptance of a product in a foreign market. If a country is less developed than the United States, its market may be geared towards less sophisticated products. Certain high-technology products may not be successful in some countries not only because of their cost, but also because of their nature. For example, a computerized industrial washing machine that might replace workers could conflict with a country's employment goals. Another facet of this scenario is that this product may need a level of servicing that is unavailable in some countries.

Market potential must be large enough to justify the direct and indirect costs involved in product adaptation. The firm should assess the costs to be incurred and though it may be difficult, determine the increased revenues expected from adaptation. The decision to adapt a product is based partly on the degree of commitment to the specific foreign market; a firm with short-term goals will probably have a different perspective than a firm with long-term goals.

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Engineering and Redesign

In addition to adaptations related to cultural and consumer preference, the exporter should be aware that even fundamental aspects of its products may require changing. For example, electrical standards in many foreign countries differ from U.S. electrical standards. It is not unusual to find phases, cycles, or voltages (for both residential and commercial use) that would damage or impair the operating efficiency of equipment designed for use in the United States. These electrical standards sometimes vary even in the same country. Knowing this requirement, the manufacturer can determine whether a special motor must be substituted or arrange for a different drive ratio to achieve the desired operating revolutions per minute.

Similarly, many kinds of equipment must be engineered in the metric system for integration with other pieces of equipment or for compliance with the standards of a given country. The United States is virtually alone in its adherence to a non-metric system, and U.S. firms that compete successfully in the global market realize that conversion to metric measurement is an important detail in selling to overseas customers. Even instruction or maintenance manuals should take care to give dimensions in centimeters, weights in grams or kilos, and temperatures in Celsius degrees. Information on foreign standards and certification systems is available from the National Center for Standards and Certificates Information, National Institute for Standards and Technology, Administration Building, A629, Gaithersburg, MD 20899; telephone 301-975-4040.

Branding, Labeling, and Packaging

Consumers are concerned with both the product itself and the product's supplementary features, such as packaging, warranties, and service. Branding and labeling products in foreign markets raise new considerations for the U.S. company such as:

- Are international brand names important to promote and distinguish a product? Conversely, should local brands or private labels be employed to heighten local interest?
- Are the colors used on labels and packages offensive or attractive to the foreign buyer? For example, in some countries certain colors are associated with death.
- Can labels be produced in official or customary languages if required by law or practice?
- Does information on product content and country of origin have to be provided?
- Are weights and measures stated in the local unit?
- Must each item be labeled individually?
- Are local tastes and knowledge considered? A dry cereal box picturing a U.S. athlete may not be as attractive to overseas consumers as the picture of a local sports hero.

A company may find that building international recognition for a brand is expensive. Protection for brand names varies from one country to another. In some developing countries, barriers to the use of foreign brands or trademarks may exist. In other countries, piracy of a company's brand names and counterfeiting of its products are widespread. To protect its products and brand names, a company must comply with local laws on patents, copyrights, and trademarks (see ***Chapter 9***).

A U.S. firm may find it useful to obtain the advice of local lawyers and consultants when appropriate. The U.S. company may also find it advantageous to apply for a patent for its product, as well as applying for an international patent for the countries where it will be conducting business. For additional information about applying for patents, contact the Patent and Trademark Office of the U.S. Department of Commerce at 1-800-786-9199.

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Installation

Another element of product preparation that a company should consider is the ease of installing that product overseas. If technicians or engineers are needed overseas to assist in installation, the company should minimize their time in the field if possible. To do so, the company may wish to preassemble or pretest the product before shipping.

Disassembling the product for shipment and reassembling abroad may be considered by the company. This method can save the firm shipping costs, but it may add to delay in payment if the sale is contingent on an assembled product. The company should be careful to provide all product information, such as training manuals, installation instructions, and parts lists - all in the local language - even relatively simple instructions.

As a sidenote, because freight charges are usually assessed by weight or volume (whichever provides the greater revenue for the carrier), a company should give some consideration to shipping an item unassembled to reduce delivery costs. Shipping unassembled goods also facilitates movement on narrow roads or through doorways and elevators.

Warranties

The company should include a warranty on the product (and be very specific as to the warranty's coverage) since the buyer expects a specific level of performance and a guarantee that it will be achieved. Levels of expectation for a warranty vary by country depending upon its level of development, competitive practices, the activism of consumer groups, local standards of production quality, and other factors. Product service guarantees are important since customers overseas typically have service expectations as high or greater than in the United States.

A company may use warranties for advertising purposes to distinguish its product from the competition. Strong warranties may be required to break into a new market, especially if the company is an unknown supplier. In some cases, warranties may be instrumental in making the sale and become a major element in negotiations. In other cases, warranties similar to those in the United States are not expected. By providing an unnecessary warranty, the company may raise the cost of the product higher than the competitors' costs. When considering this point, exporters should keep in mind that servicing warranties will probably be more expensive and troublesome in foreign markets. It is desirable to arrange warranty service locally with the assistance of a representative or distributor.

Servicing

Of special concern to foreign consumers is the service the U.S. company provides for its product. Service after the sale is critical for some products. Generally, the more complex the product's technology, the greater the demand for pre-sale and post-sale service. Therefore, there is pressure in some firms to offer simpler, more robust products overseas thereby reducing the need for maintenance and repairs. U.S. suppliers who rely on foreign distributors or agents to provide service backup must take steps to ensure an adequate level of service. These steps include training, periodically checking service quality, and monitoring inventories of spare parts. (See ***Chapter 16*** for more information on after- sales service.)

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Service Exports

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The United States leads the world as the premier producer and exporter of services. As the largest component of the U.S. economy, the services sector includes all economic activity other than agriculture, mining and manufacturing. The service sector accounts for about 80 percent of GDP and private nonfarm employment (over 81 million jobs).

Looking into the future, the service sector looms ever larger in the U.S. economy. This services-driven business expansion is overwhelmingly led by small, entrepreneurial firms, those firms employing fewer than 500 employees. Small services companies account for more than 41 million jobs. Although small services firms comprise most of the service sector, many of the most prominent U.S. services exporters are large firms. Seven of the thirty companies that comprise the widely cited Dow Jones index of industrial stocks are services firms.

The dominant role that services play throughout the U.S. economy translates into leadership in technology advancement, growth in skilled jobs, and global competitiveness. U.S. services exports more than doubled over the last ten years - increasing $135 billion since 1987, and $84 billion since 1990.

In 1996 U.S. services exports exceeded imports by $80 billion offsetting 42% of the deficit in merchandise trade. U.S. services compete successfully worldwide. Major markets for U.S. services include the European Union ($70 billion in 1996 exports), Japan ($35 billion), and Canada ($20 billion). At $8 billion, Mexico is presently the largest emerging market for service exports. Services exports support millions of high quality U.S. jobs - 3.5 million in 1994 according to recent estimates - and play a key role in U.S. economic growth.

Typical Service Exports

A fundamental shift has been taking place in the world's economy over the past 25 years for most developed economies and multinational firms. While economic well-being will always be closely linked to the efficient production, consumption and trade in goods, it is also increasingly being determined by the productivity, application, and utilization of information, as well as less tangible services - either throughout the industrial process, or as a separate activity. In global trade, many of the industries in which the United States maintains a strong competitive lead are accompanied by sophisticated sales support. The following sectors have grown most rapidly from technology development and have particularly high export potential:

- ***Travel and tourism.*** The largest single category within the U.S. service sector involves, quite simply, all businesses involved in its related services. Recreational and cultural services are also included. The industry is diverse and includes services in transportation, lodging, food and beverage service, recreation, purchase of incidentals consumed while in transit, and traveling on commercial airlines.

- ***Transportation services.*** This sector includes aviation, ocean shipping, inland waterways, railroads, trucking, pipelines, and intermodal services as well as ancillary and support services in ports, airports, railyards, and truck terminals. It is the indispensable service for international trade in goods moving all manufactured, mining, and agriculture products to market as well as transporting business and leisure travelers around the world.

- ***Architectural, construction, and engineering.*** The vast experience and technological leadership of the U.S. construction industry, as well as special skills in operations, maintenance, and management, frequently give U.S. firms a competitive edge in international projects. Some U.S. firms with expertise in specialized fields, such as electric power utilities, also export related design, construction, and engineering services.

- ***Education and training services.*** Management training, technical training, and English language training are areas where U.S. expertise remains unchallenged. The export market for this training is almost limitless, encompassing most industry sectors, both products and services.

- ***Banking, financial, and insurance services.*** U.S. financial institutions are very competitive internationally, particularly when offering account management, credit card operations, and collection management. U.S. insurers offer valuable services ranging from underwriting and risk evaluation to insurance operations and management contracts in the international marketplace.

- ***Entertainment.*** U.S. filmed entertainment and recorded music have been very successful in appealing to foreign audiences. U.S. film companies license and sell rights to exhibit film in movie theaters, on television, and on videocassette. U.S. music has been successful in both English-speaking and non-English-speaking countries.

- ***Information services.*** This sector includes companies which generate, process, and export electronic commerce activities such as e-mail, funds transfer and data interchange, as well as data processing and network services, electronic information services, and professional computer services. The United States leads the world in marketing new technologies and enjoys a competitive advantage in computer operations, data processing and transmission, online services, computer consulting, and systems integration.

- ***Professional business services.*** This sector includes accounting, advertising, legal, and management consulting services. The international market for these services is expanding at a more rapid rate than the U.S. domestic market.

Organizations and business enterprises all over the world look to U.S. firms, as leaders in these sectors, for advice and assistance.

Exporting of Services

Services can be crucial in stimulating product exports and are critical in maintaining such transactions. Many U.S. merchandise exports would not take place if they were not supported by service activities such as banking, insurance, and transportation.

There are, however, many obvious differences between services and products. Some aspects that differentiate the exporting of services from products include intangibiliy and customer involvement. Since services are less tangible than products, communicating a service offer is much more difficult than communicating a product offer. Also, services frequently must be tailored to the specific needs of the client. This adaptation often necessitates the client's direct participation and cooperation. The involvement of the client requires the service provider to possess interpersonal skills and cultural sensitivity.

The intangibility of services makes financing somewhat more difficult, given that no form of collateral is involved, and financial institutions may be less willing to provide financial support. However, there are many public and private institutions that provide financial assistance to credit-worthy service exporters. Trade organizations offer two important finance services under various terms and conditions that are extremely valuable financing tools. One is a guarantee program that requires the participation of an approved lender, while another program provides loans or grants to the exporter or a foreign government. Exporters who insure their accounts receivable against commercial credit and political risk loss are usually able to secure financing from commercial banks and other institutions at lower rates and on a more liberal basis than would otherwise be the case.

Marketing Services Abroad

Since service exports may be delivered in support of product exports, a sensible approach for some beginning exporters is to follow the path of complementary product exports. For years, many large accounting and banking firms have exported by following their major international clients abroad and continuing to assist them in their international activities. Smaller service exporters who cooperate closely with manufacturing firms are operating internationally and aim to provide service support for these manufacturers abroad.

Also, a services firm may seek affiliation with a foreign firm in which opportunities exist. An agent, representative, or joint venture relationship could prove beneficial to the U.S. services firm. An indigenous services firm already has a knowledge of the various aspects of marketing in that country; i.e., regulations, restrictions, as well as the primary players, e.g., potential clients, competitors, etc. The indigenous firm will also have market research, exposure, and contacts that can be used to the advantage of the U.S. services firms.

Government Support for Service Exports

The Service Industries and Finance offices of the U.S. Department of Commerce provide assistance to small and medium-sized U.S. service firms interested in exporting. For more information on how they and other U.S. Government entities can assist your firm, contact them directly at 202-482-3575 (U.S. Department of Commerce, Office of Service Industries and Office of Finance, Room 1124, Washington, D.C. 20230).

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International Legal Considerations

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This chapter covers a wide range of regulations, procedures, and practices that fall into three categories: regulations that exporters must follow to comply with U.S. law; procedures that exporters should follow to ensure a successful export transaction; and programs and certain tax procedures that open new markets or provide financial benefits to exporters.

Export Regulations

General Introduction

The Export Administration Regulations (EAR) regulate the export and reexport of items for national security, nonproliferation, foreign policy, and short supply reasons. The Department of Commerce's Bureau of Export Administration (BXA) has taken important steps to remove unnecessary obstacles to exporting, including completion of U.S. regulatory reform effort and export control liberalizations. Working closely with the exporting community, BXA has simplified the EAR, especially for those companies new to exporting. In addition, export controls have been liberalized on many products sold by U.S. companies around the world, consistent with national security and foreign policy concerns.

A relatively small percentage of exports and reexports requires the submission of a license application to BXA. License requirements are dependent upon an item's technical characteristics, the destination, the end use, and the end user. Determining whether a license is required for export is easier under the newly drafted regulations which consolidate license requirements previously scattered throughout the regulations. Once a classification has been determined, exporters may use a single chart to determine if licenses are needed for a country. The revised regulations include answers to frequently asked questions, detailed step-by-step instructions for finding out if a transaction is subject to the regulations, how to request a commodity classification or advisory opinion, and how to apply for a license.

The EAR groups items (commodities, software, and technology) into ten categories each containing several entries. These entries are the Export Control Classification Numbers (ECCN). These entries are in Supplemental N0. 1 to part 774 of the EAR, which is the Commerce Control List (CCL). The CCL and the Country Chart, Supplement No. 1 to part 738 taken together, define items subject to export controls based solely on the technical parameters of the item and the country of ultimate destination. Items that are listed on the CCL but do not require a license by reason of the Country Chart and items classified as EAR99 (see 734.3(c) of the EAR entitled "Scope of the EAR") are designated as "NLR," or "no license required."

All countries are not treated in the same way under the EAR because different countries present different national security, nonproliferation, or foreign policy considerations for the United States. A license requirement may be based on the end use or end user in a transaction, primarily for proliferation reasons. Part 744 of the EAR describes such requirements and relevant licensing policies and includes both restrictions on items and restrictions on the activities of U.S. persons.

The EAR covers more than exports. Items subject to the EAR are generally controlled for reexport from one foreign country to another. A relatively small percentage of exports and reexports requires an application to BXA for a license. Many items are not on the CCL or, if on the CCL, require a license only to a limited number of countries. Other transactions may be covered by one or more License Exceptions in the EAR, part 740. However, a license is required for virtually all exports to embargoed destinations such as Cuba. Part 746 of the EAR describes embargoed destinations and refers to certain additional controls imposed by the Office of Foreign Assets Controls of the Treasury Department.

Sometimes the EAR are referred to as "dual use" regulations. The term "dual use" refers to items that can be used for both military and other strategic uses (e.g., nuclear) and commercial applications. It also refers to items with solely civil uses. The term is also used to distinguish the scope of the EAR from items covered by the regulations of other agencies. For example, the U.S. Department of State controls exports of weapons and military related items on the U.S. Munitions List, while the Department of Energy and the Nuclear Regulatory Commission control certain items for nuclear reasons. For more information on the control of agencies other than BXA, see Supplement No. 3 to part 730 of the EAR.

Steps for Using the EAR

You may first look at part 732 of the EAR for the steps you follow to determine your obligations. Part 734 defines the scope of the EAR and excludes certain "publicly available" technology, as well as items properly subject to the jurisdiction of another agency. What is the proper classification for your item? This information is essential to determining any licensing requirements under the EAR. You may either classify your item on your own according to the CCL or you may ask BXA for assistance. The EAR is structured in a way that you should follow the steps in order. To determine whether you need a license, consider, in order, the scope of the EAR (part 734), the ten general prohibitions (part 736), and the license exceptions (part 740).

General Prohibitions

The general prohibition are found in part 736 of the EAR. The ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you have a license from BXA or qualify under part 740 of the EAR for a license exception from each applicable general prohibition paragraph.

License Exceptions

A license exception is an authorization for the export or reexport of some commodities, technology, or software under certain conditions. This gives you authority to ship certain items subject to the EAR that would otherwise require a license. Eligibility for license exceptions may be based on the item to be exported or reexported, the country of ultimate destination, the end use of the item, or the end user. If a license exception is available for a particular transaction, you may proceed with the transaction without a license. A license exception does not require a specific application nor approval from the Department of Commerce. However, you are required to meet all terms, conditions, and provisions for the use of that license exception.

Applying for a License and Application Processing

If an export license is required, you must prepare a Form BXA-748P, "Mulipurpose Application Form," and submit it to BXA. The form can be used for requesting an export license, reexports, or commodity classifications. You may request forms by fax at 202-219-9179 or by phone on 202-482-3332. You must be certain to follow the instructions on the form carefully. In some instances, technical brochures and support documentation must also be included.

In reviewing specific license applications, BXA will conduct a complete analysis of the license application along with all documentation submitted in support of the application. In addition to reviewing the item and end use, BXA will consider the reliability of each party to the transaction and review any available intelligence information. To the maximum extent possible, BXA will make licensing decisions without referral of license applications to other agencies; however, BXA may consult with other U.S. departments and agencies regarding any license application. Further information concerning the review policy for various controls is contained in parts 742 and 750.

You may contact BXA for status of your pending certification request, advisory opinion, or license application. For advisory opinion requests, telephone 202-482-4905 or send a fax to 202-219-9179. For license applications and classification requests, telephone BXA's System for Tracking Export License Applications (STELA) at 202-482-2752. STELA is an automated voice response system that, upon request via any standard touch-tone telephone, will provide you with up-to-the-minute status on any license application pending at BXA. Requests for status may be made only by the applicant or the applicant's agent.

Avoiding Delays in Receiving a License

In filling out a license application, rexporters commonly make four errors that account for most delays in processing applications:

1. Failing to sign the application.

2. Handwriting, rather than typing the application.

3. Responding inadequately to section 22(j) of the application, "Description of Commodity or Technical Data," which calls for a description of the item or items to be exported. You must be specific, and you are encouraged to attach additional material to explain the product fully.

4. Responding inadequately to section 21 of the application, where the specific end use of the products or technical data is to be described. Again, you must be specific. Answering vaguely or entering "unknown" is likely to delay the application process.

In an emergency, the Department of Commerce may consider expediting the processing of an export license application, but this procedure cannot be used as a substitute for filing of an application. If you feel you qualify for emergency handling, you should contact the Exporter Counseling Division at 202-482-4811 or by mail to the:

U.S. Department of Commerce
Bureau of Export Administration
Office of Exporter Services
Exporter Counseling Division
14th Street and Constitution Avenue, NW, Room 2706
Washington, D.C. 20230

Export Clearance

If you are issued a BXA license, or you rely on a license exception described in part 740 of the EAR, you are responsible for the proper use of that license or license exception and for the performance of all its terms and conditions.

If you export without either a license issued by BXA or a license exception, you are responsible for determining that the transaction is outside the scope if the EAR or the export is designated as "No License Required."

Both the Foreign Trade Statistics Regulations of the Census Bureau (15 CFR part 30) and the Export Administration Regulations require that the Shippers Export Declaration (SED) be submitted to the U.S. Government. There are exceptions to this rule, but if you are required to submit an SED, you must prepare it in accordance with the rules of the Foreign Trade Statistics Regulations (FTSR) and present the number of copies specified in the FTSR at the port if export. For more information about the FTSR or the SED, visit the Census Bureau online at http://www.census.gov/foreign-trade/www.

Records on exports must be retained for five years from date of export, reexport, or any known diversion. For more information on export clearances, see part 758 of the EAR. For additional information on recordkeeping, see part 762.

Where to Get Assistance

The staring point for export licensing requirements and the regulations is the Exporter Counseling Division. BXA's counselors can guide you through the regulations to determine your licensing requirements. They can be reached by phone at 202-48-4811 and fax at 202-482-3617. BXA also maintains a Web site at http://www.bxa.doc.gov. The regulations are published in volume 15 of the Code of Federal Regulations starting at part 730. If you wish to purchase a loose-leaf version of the EAR or any electronic version of the EAR with updates, you may contact the National Technical Information Service order desk at 703-487-4630. In addition, the Export Administration Regulations are available through the EAR Electronic Market Place on the World Wide Web at http://w3.access.gpo.gov/bxa.

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Antidiversion, Antiboycott, and Antitrust Requirements

Antidiversion Clause

To help ensure that U.S. exports go only to legally authorized destinations, the U.S. government requires a destination control statement on shipping documents. Under this requirement, the commercial invoice and bill of lading (or air waybill) for nearly all commercial shipments leaving the United States must display a statement notifying the carrier and all foreign parties (the ultimate and intermediate consignees and purchaser) that the U.S. material has been licensed for export only to certain destinations and may not be diverted contrary to U.S. law. Exceptions to the use of the destination control statement are shipments to Canada and intended for consumption in Canada and shipments being made under certain general licenses. Advice on the appropriate statement to be used can be provided by the Department of Commerce, an attorney, or the freight forwarder.

The minimum antidiversion statement for goods exported under Commerce Department authority is: "These commodities, technology, or software, were exported from the United States in accordance with the Export Administration

Regulations. Diversion contrary to U.S. law is prohibited."

Antiboycott Regulations

The United States has an established policy of opposing restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. This policy is implemented through the antiboycott provisions of the Export Administration Act enforced by the Department of Commerce and through the Tax Reform Act of 1977 enforced by the Department of the Treasury.

In general, these laws prohibit U.S. persons from participating in foreign boycotts or taking actions that further or support such boycotts. The antiboycott regulations carry out this general purpose by:

- Prohibiting U.S. agencies or persons from refusing to do business with blacklisted firms and boycotted friendly countries pursuant to foreign boycott demands;
- Prohibiting U.S. persons from discriminating against, or agreeing to discriminate against other U.S. persons on the basis of race, religion, sex, or national origin in order to comply with a foreign boycott;
- Prohibiting U.S. persons from furnishing information about business relationships with boycotted friendly foreign countries or blacklisted companies in response to boycott requirements;
- Providing for public disclosure of requests to comply with foreign boycotts; and
- Requiring U.S. persons who receive requests to report receipt of the requests to the Commerce Department and disclose publicly whether they have complied with such requests.

The antiboycott provisions of the Export Administration Act apply to all U.S. persons, including intermediaries in the export process, as well as foreign subsidiaries that are "controlled in fact" by U.S. companies and U.S. officials.

The Department of Commerce's Office of Antiboycott Compliance (OAC) administers the program through ongoing investigations of corporate activities. OAC operates an automated boycott-reporting system providing statistical and enforcement data to Congress and to the public, issuing interpretations of the regulations for the affected public, and offering nonbinding informal guidance to the private sector on specific compliance concerns. U.S. firms with questions about complying with antiboycott regulations should call OAC at 202-482-2381 or write to Office of Antiboycott Compliance, Bureau of Export Administration, Room 6098, U.S. Department of Commerce, Washington, DC 20230.

Antitrust Laws

The U.S. antitrust laws reflect this nation's commitment to an economy based on competition. They are intended to foster the efficient allocation of resources by providing consumers with goods and services at the lowest price that efficient business operations can profitably offer. Various foreign countries - including the European Union, Canada, Mexico, Japan, and Australia - also have their own antitrust laws that U.S. firms must comply with when exporting to such nations.

The U.S. antitrust statutes do not provide a checklist of specific requirements. Instead they set forth broad principles that are applied to the specific facts and circumstances of a business transaction. Under the U.S. antitrust laws, some types of trade restraints, known as per se violations, are regarded as conclusively illegal. Per se violations include price-fixing agreements and conspiracies, divisions of markets by competitors, and certain group boycotts and tying arrangements.

Most restraints of trade in the United States are judged under a second legal standard known as the rule of reason. The rule of reason requires a showing that certain acts occurred and such acts had an anti-competitive effect. Under the rule of reason, various factors are considered, including business justification, impact on prices and output in the market, barriers to entry, and market shares of the parties.

In the case of exports by U.S. firms, there are special limitations on the application of the per se and rule of reason tests by U.S. courts. Under Title IV of the Export Trading Company Act (also known as the Foreign Trade Antitrust Improvements Act), there must be a "direct, substantial and reasonably foreseeable" effect on the domestic or import commerce of the United States or on the export commerce of a U.S. person before an activity may be challenged under the Sherman Antitrust Act or the Federal Trade Commission Act (two of the primary federal antitrust statutes). This provision clarifies the particular circumstances under which the overseas activities of U.S. exporters may be challenged under these two antitrust statutes. Under Title III of the Export Trading Company Act (see ***Chapter 4***) the Department of Commerce, with the concurrence of the U.S. Department of Justice, can issue an export trade certificate of review that provides certain limited immunity from the federal and state antitrust laws.

Although the great majority of international business transactions do not pose antitrust problems, antitrust issues may be raised in various types of transactions, among which are:

- overseas distribution arrangements;
- overseas joint ventures for research, manufacturing, construction, and distribution;

- patent, trademark, copyright, and know-how licenses;
- mergers and acquisitions involving foreign firms; and
- raw material procurement agreements and concessions.

The potential U.S. and foreign antitrust problems posed by such transactions are discussed in greater detail in ***Chapter 16***. Where potential U.S. or foreign antitrust issues are raised, it is advisable to obtain the advice and assistance of qualified antitrust counsel.

For particular transactions that pose difficult antitrust issues, and for which an export trade certificate of review is not desired, the Antitrust Division of the Department of Justice can be asked to state its enforcement views in a business review letter. The business review procedure is initiated by writing a letter to the Antitrust Division describing the particular business transaction that is contemplated and requesting the department's views on the antitrust legality of the transaction.

Certain aspects of the federal antitrust enforcement policies regarding international transactions are explored in the Department of Justice's Antitrust Enforcement Guidelines for International Operations (1995).

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Foreign Corrupt Practices Act

It is unlawful for a U.S. firm (as well as any officer, directors employee, agent, or agent of a firm or any stockholder acting on behalf of the firm) to offer, pay, or promise to pay (or to authorize any such payment or promise) money or anything of value to any foreign official (or foreign political party or candidate for foreign political office) for the purpose of obtaining or retaining business. It is also unlawful to make a payment to any person while knowing that all or a portion of the payment will be offered, given, or promised, directly or indirectly, to any foreign official (or foreign political party or candidate for foreign political office) for the purposes of assisting the firm in obtaining or retaining business. "Knowing" includes the concepts of "conscious disregard" and "willful blindness."

There is an exception to the antibribery provisions for "facilitating payments for routine governmental action." The statute lists a number of examples. Actions similar to those listed are also covered by this exception.

A person charged with a violation of the antibribery provisions of the Federal

Corrupt Practices Act (FCPA) may assert as a defense that the payment was lawful under the written laws and regulations of the foreign country or that the payment was associated with demonstrating a product or performing a contractual obligation.

Firms are subject to a fine of up to $2 million; officers, directors, employees, agents, and stockholders are subject to a fine of up to $100,000 and imprisonment for up to five years. The Attorney General can bring a civil action against a domestic concern (and the Securities and Exchange Commission [SEC] against an issuer) for a fine of up to $10,000 as well as against any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of the firm, who willfully violates the antibribery provisions. Under federal criminal laws other than the FCPA, individuals may be fined up to $250,000 or up to twice the amount of the gross gain or gross loss if the defendant derives pecuniary gain from the offense or causes a pecuniary loss to another person.

The Attorney General may also bring a civil action to enjoin any act or practice of a domestic concern (and the SEC with respect to an issuer) whenever it appears that the domestic concern or issuer (or an officer, director, employee, agent, or stockholder acting on behalf of the domestic concern or issuer) is in violation (or about to be) of the antibribery provisions.

A person or firm found in violation of the FCPA may be barred from doing business with the federal government. Indictment alone can lead to suspension of the right to do business with the U.S. Government.

The Department of Justice has established an Foreign Corrupt Practices Act Opinion Procedure, the details of which are found at 28 CFR Part 77. Under the Opinion Procedure, any party may request a statement of the Justice Department's present enforcement intentions under the antibribery provisions of the FCPA regarding any proposed business conduct. Conduct for which the Department of Justice has issued an opinion stating that the conduct conforms with current enforcement policy will be entitled to a presumption of conformity with the FCPA.

For further information from the Department of Justice about the FCPA and the Foreign Corrupt Practices Act Opinion Procedure, contact the Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice, Room 2424, Bond Building, 1400 New York Avenue, NW, Washington, D.C.20530, 202-514-0651 (FTS) 202-368-0651.

The Department of Commerce supplies general information to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA and international bribery. For further information from the Department of Commerce about the FCPA, contact the Chief Counsel for International Commerce or the Senior Counsel for International Finance and Trade, Office of the Chief Counsel for International Commerce, U.S. Department of Commerce, Room 5882, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, 202-482-0937.

Food and Drug Administration and Environmental Protection Agency Restrictions

In addition to the various export regulations that have been discussed, rules and regulations enforced by the Food and Drug Administration (FDA) and the Environmental Protection Agency(EPA) also affect a limited number of exporters.

Food and Drug Administration

FDA enforces U.S. laws intended to assure the consumer that foods are pure and wholesome, that drugs and devices are safe and effective, and that cosmetics are safe. FDA has promulgated a wide range of regulations to enforce these goals. Exporters of products covered by FDA's regulations are affected as follows:

If the item is intended for export only, meets the specifications of the foreign purchaser, is not in conflict with the laws of the country to which it is to be shipped, and is properly labeled, it is exempt from the adulteration and misbranding provisions of the Federal Food, Drug, and Cosmetic Act (see 801(e)). This exemption does not apply to "new drugs" that have not been approved as safe and effective, or to certain devices and biologics. Additional requirements apply to these products. Banned new animal drugs may not be exported.

If the exporter thinks the export product may be covered by FDA, it is important to contact the nearest FDA field office or the Food and Drug Administration. Companies can make inquiries by writing to the FDA at 5600 Fishers Lane, Rockville, MD 20857, calling 1-800-532-4440, or visiting the FDA Web site at: http://www.fda.gov.

Environmental Protection Agency

EPA regulates the export of hazardous waste, pesticides, toxic chemicals, and ozone deplete substances. Although EPA generally does not prohibit the export of these substances(there are some exceptions). There are various statutory notification systems design to inform receiving foreign governments that materials of possible human health or environmental concern will be entering their countries, and in some cases, allows for the foreign governments to object to such shipments.

Under the Resource Conservation and Recovery Act (RCRA), there are two different sets of export regulations - one for exports of hazardous wastes moving for recycling within the Organization for Economic Cooperation and Development (OECD) (40 CFR 262 subpart H), and the other for non-OECD hazardous waste exports, as well as for hazardous wastes exported for treatment and disposal, both within and outside the OECD (40 CFR 262 subpart E). In both cases, exports are prohibited absent the consent of the importing government. Exporters are required to notify EPA's Office of Compliance (EPA/OC) in writing. EPA/OC then forwards the notification to the importing government (and to transit countries, if applicable). In some cases, the written consent of the importing government is required before the shipment may commence; in other cases, consent is considered "tacit" if there is no response from the importing government after 30 days. Exporters should be aware of the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* This treaty bans trade in hazardous wastes between parties and nonparties unless there is a Basel-consistent bilateral agreement in place. Approximately 110 countries have ratified the Basel Convention; however, the U.S. has not. Therefore, exporters should be aware of potential trade restrictions. Exporters of hazardous waste should contact either EPA's Office of Compliance, Import/Export Program at 202-564-2290 or the RCRA/Superfund Hotline at 800-424-9346 or 703-412-9810.

As for pesticides and other toxic chemicals, neither the federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) nor the Toxic Substances Control Act (TSCA) requires exporters of banned or severely restricted chemicals to obtain written consent before shipping. However, exporters of unregistered pesticides or other chemicals subject to regulatory control actions must comply with certain notification requirements. Under TSCA importing countries are notified of the export or the intended export of many industrial chemicals or mixtures (40 CFR 707 subpart D). These chemicals or mixtures are subject to certain regulator actions taken under the act. Exporters send to EPA, for each affected chemical or mixture, a notice for each country to which the chemical or mixture is exported. The notice is sent annually or only once, depending on the regulatory action controlling the chemical or mixture. The agency then informs the importing country of the regulatory action taken. These notices are also used to satisfy the information exchange provisions of the Prior Informed Consent (PIC) procedures, which are under the United Nations Environment Programme. For chemicals banned or severely restricted in the U.S. and subject to the PIC procedures, EPA forwards to the designated national authority of the importing country information on the chemical's regulatory controls. In addition, TSCA also prohibits the export of polychlorinated biphenyls (PCBs) and PCB-containing items in concentrations greater than or equal to 50 ppm, unless an exemption was granted. The TSCA hotline, 202-554-1404, can provide general information on these export requirements.

A person may not export class I ozone-depleting substances, including chlorofluorcarbons (CFCs), to any country that is not a signatory to the international treaty entitled the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol). The United States is a signatory to the

Montreal Protocol.Under authority of the Clean Air Act Amendations of 1990, the EPA published regulations prohibiting the export of bulk shipments of CFCs, halons, methyl chloroform, carbon tetrachloride, and hydrobromoflurocarbons (HBFCs) to any country not a party to the protocol (40 CFR Part 82 subpart A). Currently, there are 162 nations that are signatories to the Montreal Protocol. The U.S. Customs Service and EPA coordinate to monitor and enforce import and export restrictions on ozone-depleting substances. To obtain an up-to-date list of signatories to Montreal Protocol to export class I ozone-depleting substances contact EPA's Stratospheric Protection Division at 202-233-9410.

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Import Regulations of Foreign Governments

Import documentation requirements and other regulations imposed by foreign governments vary from country to country. It is vital that exporters be aware of the regulations that apply to their own operations and transactions. Many governments, for instance, require consular invoices, certificates of inspection, health certification, and various other documents. For sources of information about foreign government import regulations, see ***Chapter 2***.

Customs Benefits for Exporters

Drawback of Customs Duties

Historically, the word "drawback" has denoted a situation in which the duty or tax, lawfully collected, is refunded or remitted, wholly, or partially, because of a particular use made of the commodity on which the duty or tax was collected.

Drawback was initially authorized by the first tariff act of the United States in 1789. Since then, it has been part of the law, although from time to time the conditions under which it is payable have changed.

The rationale for drawback has always been to encourage American commerce or manufacturers to compete in foreign markets without the handicap of including costs, and consequently in his sales price, the duty paid on imported merchandise.

Types of Drawback

Several types of drawback are authorized under section 1313, Title 19, United States Code:

1. If articles are exported or destroyed, which were manufactured in the United States with the use of imported merchandise, then the duties paid on the imported merchandise used may be refunded as drawback, (less 1 percent which is retained by the U.S. Customs Service (Customs) to defray costs (section 1313(a) drawback).

2. If both imported merchandise and any other merchandise of the same kind and quality are used to manufacture articles, some of which are exported or destroyed before use, then drawback not exceeding 99 percent of the duty which was paid on the imported merchandise is payable on the exports. It is immaterial whether the actual imported merchandise or the domestic merchandise of the same kind and quality was used in the exported articles. This provision in the code makes it possible for firms to obtain drawback without the expense of maintaining separate inventories for imported and domestic merchandise (section 1313(b) drawback - the substitution provision).

3. If merchandise is exported or destroyed because it does not conform with sample or specifications, or was shipped without the consent of the consignee, then 99 percent of the duties which were paid on the merchandise may be recovered as drawback.

4. When certain products manufactured with the use of domestic alcohol are exported or shipped to various island possessions, a drawback of the internal revenue taxes paid on the domestic alcohol may be refunded (section 1313(e) drawback).

5. If imported salt is used to cure fish, the duties on the salt may be remitted (section 1313(e) drawback).

6. If imported salt is used to cure meat which is exported, a drawback, in amounts not less than $100, of duties paid on the salt may be obtained (section 1313(f) drawback).

7. If imported materials are used to construct and equip vessels and aircraft built for foreign account and ownership, 99 percent of the duties paid on the materials may be recovered as drawback, even though the vessels and aircraft are not, in the strict meaning of the word, exported (section 1313(g) drawback).

8. If imported merchandise is used in the United States to repair jet aircraft engines originally manufactured abroad, the duties paid on the imported

merchandise may be recovered as drawback, in the amounts not less than $100, when the engines are exported (section 1313(h) drawback).

9. If imported merchandise is exported without being used, or destroyed under Customs supervision, 99 percent of the duties paid on the merchandise may be recovered as drawback (section 1313(j) drawback).

If merchandise that is commercially interchangeable with imported merchandise is exported or destroyed under Customs supervision and at the time of exportation or destruction has not been used, 99 percent of the duties on the merchandise may be recovered as drawback (section 1313(j) drawback).

Packaging material used to package merchandise exported or destroyed under section 1313(a), (b), (c), or (j), may receive 99 percent of the duties paid on the packaging materials as drawback (section 1313(q) drawback).

How to Obtain Drawback

As most manufacturers are interested in sections 1313(a) and (b), only the procedures for obtaining drawback under these provisions are discussed.

The purpose of drawback is to enable a manufacturer to compete in foreign markets. To do so, however, the manufacturer must know, prior to making contractual commitments, that he will be entitled to drawback on his exports. The drawback procedure has been designed to give the manufacturer this assurance and protection.

Drawback Proposal

To obtain drawback, first prepare a drawback proposal (statement) and file it with a Regional Commissioner of Customs for section 1313(a) drawback and with the Entry Rulings Branch, Customs headquarters, for other types of drawback, including combination 1313(a) and (b) drawback.

There are currently several general drawback contracts available (orange juice, steel, sugar, component parts, and greige goods) which eliminate the need for submission of a proposal. These have been published in the *Customs Bulletin and Decisions* with instructions as to the procedure for adhering to them.

A simple drawback proposal to serve as a model may be obtained from regional commissioners for section 1313(a) drawback. For other types of drawback, including combination 1313(a) and (b), write to: U.S. Customs Service, Entry Rulings Branch, 1301 Constitution Ave., NW, Franklin Court, Washington, D.C., 20229, or call 202-482-7040. The U.S. Customs Service also maintains an Internet site at http://www.customs. ustreas.gov.

Approval

The approval of section 1313(a) proposal takes the form of a letter from a Regional Commissioner of Customs to the applicant. The approval of a section 1313(b) drawback proposal takes the form of a letter from U.S. Customs Service headquarters to the Regional Commissioner of Customs where the applicant will file claims. The applicant receives a copy of this letter. Synopses of all contracts are published in the *Customs Bulletin and Decisions* The proposal and approval together are called a drawback contract or drawback rate.

If the manufacturer desires to have his contract (rate) changed in any way, he should file a new proposal (statement) and the procedure is the same as above.

Completion of Drawback Claims

Claims must be filed within three years after the exportation of the articles. To prevent tolling by the statute of limitations, a claim may be filed before a drawback contract (rate) is effective, although no payments will be made until the contract is approved. For completion of same condition

Export Procedure

It is necessary for a drawback claimant to establish that the articles on which drawback is being claimed were exported within five years after importation of the imported merchandise which is the basis for the drawback. In the case of same condition drawback, the time period for exportation is three years after importation. There are three methods which can be used to do so, and these are described in sections 191.51 through 191.56 of the Customs Regulations. Before exporting, a future claimant should make certain that he is taking the necessary steps to comply with one of these procedures.

Export of qualified U.S.-made petroleum products may be shown by matching production at a specific refinery with exports of qualified petroleum of the same kind and quality that occur within 180 days after the refinery produced the designated petroleum product.

Export of qualified imported petroleum products may be shown by matching the amount imported with exports of qualified petroleum products of the same kind and quality that occur within 180 days after the import (section 1313(p) drawback).

Payment of Claims

When a claim has been completed by the filing of all required documents, the entry will be liquidated by the Regional Commissioner of Customs to determine the amount of drawback due. Drawback is payable to the exporter unless the manufacturer reserves to himself the right to claim the drawback.

Accelerated Payment

Accelerated payment of drawback under certain conditions is authorized by section 192.72 of the Customs Regulations. Accelerated payment generally will ensure that a claimant will receive his drawback no later than two months after he files a claim. Accelerated drawback currently applies to same condition drawback.

Effect of the North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) provisions on drawback will apply to goods imported into the United States and subsequently exported to Canada on or after January 1, 1996. The NAFTA provisions on drawback will apply to goods imported into the United States and subsequently exported to Mexico on or after January 1, 2001.

Drawback

Under the NAFTA, the amount of Customs duties that will be refunded, reduced, or waived is the lesser of the total amount of Customs duties paid or owed on the finished good in the NAFTA country to which it is exported, for purposes of sections 1313(a), (b), (f), (h), and (g).

No NAFTA country, on condition of export, will refund, reduce, or waive the following: antidumping or countervailing duties, premiums offered or collected pursuant to any tendering system with respect to the administration of quantitative import restrictions, tariff rate quotas or trade preference levels, or a fee pursuant to section 22 of the U.S. Agricultural Adjustment Act. Moreover, same condition substitution drawback was eliminated as of January 1, 1994.

U.S. Foreign-Trade Zones

Exporters should also consider the customs privileges of U.S. foreign-trade zones. These zones are domestic U.S. sites that are considered outside U.S. customs territory and are available for activities that might otherwise be carried on overseas for customs reasons. For export operations, the zones provide accelerated export status for purposes of excise tax rebates and customs drawback. For import and reexport activities, no customs duties, federal excise taxes, or state or local ad valorem taxes are charged on foreign goods moved into zones unless and until the goods, or products made from them, are moved into customs territory. This means that the use of zones can be profitable for operations involving foreign dutiable materials and components being assembled or produced here for reexport. Also, no quota restrictions ordinarily apply to export activity.

There are now 217 approved foreign-trade zones in port communities throughout the United States. Associated with these projects are some 356 subzones. These facilities are available for operations involving storage, repacking, inspection, exhibition, assembly, manufacturing, and other processing.

More than 2,800 business firms used foreign-trade zones in fiscal year 1995. The value of merchandise moved to and from the zones during that year exceeded $143 billion. Export shipments from zones and subzones amounted to nearly $17 billion.

Information about the zones is available from the zone manager, from local Commerce Export Assistance Centers, or from the Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

Foreign Free Port and Free Trade Zones

To encourage and facilitate international trade, more than 300 free ports, free trade zones, and similar customs-privileged facilities are now in operation in some 75 foreign countries, usually in or near seaports or airports. Many U.S. manufacturers and their distributors use free ports or free trade zones for receiving shipments of goods that are reshipped in smaller lots to customers throughout the surrounding areas. For further information, contact your local Department of Commerce Export Assistance Center or the Trade Information Center (1-800-872-8723).

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U.S. Customs Bonded Warehouse

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated , or undergo manufacturing operations without payment of duty. Authority for establishing bonded storage warehouses is set forth in Title 19. United States Code (U.S.C.) section 1555. Bonded manufacturing and smelting and refining warehouses are established under Title 19, U.S.C., sections 1311 and 1312.

Upon entry of good into the warehouse, the importer and warehouse proprietor incur liability under a bond. The liability is canceled when the goods are:

- Exported;
- Withdrawn for supplies to a vessel or aircraft in international traffic;
- Destroyed under Customs supervision; or
- Withdrawn for consumption within the United States after payment of duty.

Types of Customs Bonded Warehouses

Nine different types or classes of Customs bonded warehouses are authorized under section 19.1, Customs Regulations (19 CFR 19.1):

1. Premises owned or leased by the government and used for the storage of merchandise that is undergoing Customs examination, is under seizure, or is pending final release from Customs custody. Unclaimed merchandise stored in such premises shall be held under "general order." When such premises are not sufficient or available for the storage of seized or unclaimed goods, such goods may be stored in a warehouse of class 3,4,or 5;
2. Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A class 4 or 5 warehouse may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it should be known as a private bonded warehouse;
3. Public bonded warehouse used exclusively for the storage of imported merchandise;
4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, or corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for storage of imported liquid merchandise in bulk;
5. Bonded bins or parts of buildings or elevators to be used for the storage of grain;
6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal revenue tax; and for the manufacture for home consumption or exportation of cigars made in whole of tobacco imported from one

country;

7. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption;

8. Bonded warehouses established for the cleaning, sorting, repacking, or otherwise changing the condition of, but not the manufacturing of, imported merchandise, under Customs supervision, and at the expense of the proprietor;

9. Bonded warehouses, known as duty-free stores, used for selling conditionally duty-free merchandise for use outside the Customs territory. Merchandise in this class must be owned or sold by the proprietor and delivered from the warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the Customs territory for foreign destinations.

Advantages of Using a Bonded Warehouse

There are several advantages of using a bonded warehouse. No duty is collected until merchandise is withdrawn for consumption. An importer, therefore, has control over use of money until the duty is paid upon withdrawal of merchandise from the bonded warehouse. If no domestic buyer is found for the imported articles, the importer can sell merchandise for exportation, thereby canceling his obligation to pay duty.

Many items subject to quota or other restrictions may be stored in a bonded warehouse. Check with the nearest Customs office before assuming that such merchandise may be placed in a bonded warehouse.

Duties owed on articles that have been manipulated are determined at the time of withdrawal from the Customs bonded warehouse.

Merchandise: Entry, Storage, Treatment

All merchandise subject to duty may be entered for warehousing except perishables and explosive substances other than firecrackers.

Full accountability for all merchandise entered into a Customs bonded warehouse must be maintained; that merchandise will be inventoried and the proprietor's records will be audited on a regular basis. Bonded merchandise may not be commingled with domestic merchandise and must be kept separate from unbonded merchandise.

Merchandise in a Customs bonded warehouse may, with certain exceptions, be transferred from one bonded warehouse to another in accordance with the provisions of Customs Regulations. Basically, merchandise placed in a Customs bonded warehouse, other than class 6 or 7, may be stored, cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured (Title 19, U.S.C., section 1562).

Articles manufactured in a class 6 warehouse must be exported in accordance with Customs Regulations. Waste or byproduct from a class 6 warehouse may be withdrawn for consumption upon payment of applicable duties. Imported merchandise may be stored in a Customs bonded warehouse for a period of five years (Title 19, U.S.C., section 1557(a)).

How to Establish a Customs Bonded Warehouses

Application

An owner or lessee seeking to establish a bonded warehouse must make written application to his or her local Customs port director describing the premises, giving the location, and stating the class of warehouse to be established.

Except in the case of a class 2 or 7 warehouse, the application must state whether the warehouse is to be operated only for the storage or treatment of merchandise belonging to the applicant, or whether it is to be operated as a public bonded warehouse.

If the warehouse is to be operated as a private bonded warehouse, the application must also state the general character of the merchandise to be stored therein, with an estimate of the maximum duties and taxes that will be due on the merchandise at any one time.

Other Requirements

The application must be accompanied by the following:

A certificate signed by the president or a secretary of a board of fire underwriters that the building is a suitable warehouse and acceptable for fire insurance purposes. At ports where there is no board of fire underwriters, certificates should be obtained and signed by officers of agents of two or more insurance companies.

A blueprint showing measurements to be bonded.

If the warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipelines and shall be certified as correct by the proprietor of the tank. A gauge table showing the capacity of the tank in U.S. gallons per inch or fraction of an inch of height, shall be included and certified by the proprietor as correct.

When a part or parts of the building are to be used as a warehouse, a detailed description of the materials and construction of all partitions shall be included.

Bonds Required

Bonds for each class of warehouse shall be executed on Customs Form 301.

Duty-free shops (class 9) have specific requirements governing their establishment. These requirements include location, exit ports, record-keeping systems, and the approval of local governments.

Where are Customs Offices Located?

The U.S. Customs Service has more than 300 ports of entry in the United States, Puerto Rico, and the U.S. Virgin Islands. Please consult your local telephone directory under "U.S. Treasury Department, Customs Service."

Foreign Sales Corporations

One of the most important steps a U.S. exporter can take to reduce federal income tax on export-related income is to set up a foreign sales corporation (FSC). This tax incentive for U.S. exporters replaced the domestic international sales corporation (DISC), except the interest charge DISC. While the interest charge DISC allows exporters to defer paying taxes on export sales, the tax incentive provided by the FSC legislation is in the form of a permanent exemption from federal income tax for a portion of the export income attributable to the offshore activities of FSCs (26 U.S.C., sections 921-927). The tax exemption can be as great as 15 to 30 percent on gross income from exporting, and the expenses can be kept low through the use of intermediaries who are familiar with and able to carry out the formal requirements. A firm that is exporting or thinking of exporting can optimize available tax benefits with proper planning, evaluation, and assistance from an accountant or lawyer.

An FSC is a corporation set up in certain foreign countries or in U.S. possessions (other than Puerto Rico) to obtain a corporate tax exemption on a portion of its earnings generated by the sale or lease of export property and the performance of some services. A corporation initially qualifies as an FSC by meeting certain basic formation tests. An FSC (unless it is a small FSC) must also meet several foreign management tests throughout the year. If it complies with those requirements, the FSC is entitled to an exemption on qualified export transactions in which it performs the required foreign economic processes.

FSCs can be formed by manufacturers, nonmanufacturers, or groups of exporters, such as export trading companies. An FSC can function as a principal, buying and selling for its own account, or as a commission agent. It can be related to a manufacturing parent or it can be an independent merchant or broker.

An FSC must be incorporated and have its main office (a shared office is acceptable) in the U.S. Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, or a qualified foreign country. In general, a firm must file for incorporation by following the normal procedures of the host nation or U.S. possession. Some nations, offer tax incentives to attract FSCs. To qualify, a company must identify itself as an FSC to the host government. Consult the government tax authorities in the country or U.S. possession of interest for specific information.

A country qualifies as an FSC host if it has an exchange of information agreement with the United States approved by the U.S. Department of the Treasury. As of September 17, 1996, the qualified countries were Australia, Austria, Barbados, Belgium, Bermuda, Canada, Costa Rica, Cyprus, Denmark, Dominica, the Dominican Republic, Egypt, Finland, France, Germany, Grenada, Guyana, Honduras, Iceland, Ireland, Jamaica, Korea, the Marshall Islands, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Peru, the Philippines, St. Lucia, Sweden, and Trinidad and Tobago. Since the Internal Revenue Service (IRS) does not allow foreign tax credits for foreign taxes imposed on the FSC's qualified income, it is generally advantageous to locate an FSC only in a country where local income taxes and withholding taxes are minimized. Most FSCs are incorporated in the U.S. Virgin Islands or Guam.

The FSC (unless it is a small FSC) must have at least one director who is not a U.S. resident, must keep one set of its books of account (including copies or summaries of invoices) at its main offshore office, cannot have more than 25 shareholders, cannot have any preferred stock, and must file an election to become an FSC with the IRS. Also, a group may not own both an FSC and an interest charge DISC.

The portion of the FSC gross income from exporting that is exempt from U.S. corporate taxation is 30 percent for a corporate-held FSC if it buys from independent suppliers or contracts with related suppliers at an "arm's-length" price - a price equivalent to that which would have been paid by an unrelated purchaser to an unrelated seller. An FSC supplied by a related entity may also qualify to use the special administrative pricing rules to compute its tax exemption. Although an FSC does not have to use the two special administrative pricing rules, these rules may provide additional tax savings for certain FSCs.

Small FSCs and interest charge DISCs are designed to give export incentives to smaller businesses. The tax benefits of a small FSC or an interest charge DISC are limited by ceilings on the amount of gross income that is elegible for the benefits.

The small FSC is generally the same as an FSC, except that a small FSC must file an election with the IRS designating itself as a small FSC - which means it does not have to meet foreign management or foreign economic process requirements. A small FSC tax exemption is limited to the income generated by $5 million or less in gross export revenues.

An exporter can still set up a DISC in the form of an interest charge DISC to defer the imposition of taxes for up to $10 million in export sales. A corporate shareholder of an interest charge DISC may defer the imposition of taxes on approximately 94 percent of its income up to the $10 million ceiling if the income is reinvested by the DISC in qualified export assets. An individual who is the sole shareholder of an interest charge DISC can defer 100 percent of the DISC income up to the $10 million ceiling. An interest charge DISC must meet the following requirements: the taxpayer must make a new election; the tax year of the new DISC must match the tax year of its majority stockholder; and the DISC shareholders must pay interest annually at U.S. Treasury bill rates on their proportionate share of the accumulated taxes deferred.

A shared FSC is an FSC that is shared by 25 or fewer unrelated exporter-shareholders to reduce the costs while obtaining the full tax benefit of an FSC. Each exporter-shareholder owns a separate class of stock and each runs its own business as usual. Typically, exporters pay a commission on export sales to the FSC, which distributes the commission back to the exporter.

States, regional authorities, trade associations, or private businesses can sponsor a shared FSC for their state's companies, their association's members, or their business clients or customers, or for U.S. companies in general. A shared FSC is a means of sharing the cost of the FSC. However, the benefits and proprietary information are not shared. The sponsor and the other exporter-shareholders do not participate in the exporter's profits, do not participate in the exporter's tax benefits, and are not a risk for another exporter's debts.

For more information about FSCs, U.S. companies may contact the the Office of the Associate Chief Counsel for International Commerce, U.S. Internal Revenue Service 202-622-3810; the Office of the Chief Counsel for International Commerce, U.S. Department of Commerce 202-482-0937; or a local office of the IRS.

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Intellectual Property Considerations

Intellectual property refers to a broad collection of rights relating to such matters as works of authorship, which are protected under copyright law; inventions, which are protected under patent law; marks, which are protected by trademark law; as well as designs and trade secrets. No international treaty completely defines these types of intellectual property, and the laws of the various countries differ from each other in significant respects. National intellectual property laws create, confirm, or regulate a property right without which others could use or copy a trade secret, an expression, a design, or a product or its mark and packaging.

The rights granted by a U.S. patent, trademark registration, copyright, or mask work (semiconductor chip) registration extend only through the United States and its territories and possessions. They confer no protection in a foreign country. There is no such thing as an international patent, trademark, or copyright. To secure rights in any country, you must apply for a patent or register a mask work or trademark in that country. Copyright protection depends on national laws, but registration is typically not required. There is no real "short cut" to worldwide protection of intellectual property. However, some advantages and minimum standards for the protection and enforcement of intellectual property exist under treaties or other international agreements.

International Agreements: The oldest treaty relating to patents, trademarks, and unfair competition is the Paris Convention for the Protection of Industrial Property. The United States and over 130 other countries are parties of this treaty. The Paris Convention sets minimum standards of protection and provides two important benefits: the right of national treatment and the right of priority.

Overgeneralizing, "national treatment" means that a Paris Convention country will not discriminate against foreigners in granting patent or trademark protection. Rights may be greater or less than those provided under U.S. law but the rights given will be the same as that country provides to its own citizens.

An invention may become public and therefore unpatentable in many countries, when a patent is issued or an application is laid open to inspection in any country. In addition, a delay in filing a patent or trademark application leaves open the possibility that those rights will be lost because of intervening acts such as sale of the invention or registration of the trademark by another. The Paris Convention's "right of priority" provides a solution to this problem by giving an inventor an alternative to filing applications in many countries simultaneously. It allows the applicant one year from the date of the first application filed in a Paris Convention country (six months for a design or trademark) in which to file in other countries. Publication or sale of an invention after first filing will therefore not jeopardize patentability in countries which grant a right of priority to U.S. applicants. Not all countries adhere to the Paris Convention but these benefits may be available under another treaty or bilateral agreement. These substantive obligations have been incorporated into the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPs), by reference for adherence by WTO members.

The United States is also a party to the Patent Cooperation Treaty (PCT), which provides procedures for filing patent applications in its member countries. The PCT allows an applicant to file one "international application" designating member countries in which a patent is sought, with the same effect as filing national applications in each of those countries. The applicant may then later proceed with the filing of separate "national" applications in those countries.

The United States' international copyright regulations are governed principally by the Berne Convention for the Protection of Literary and Artistic Works ("Berne"), to which more than 120 other nations adhere. The United States is also a member of the Universal Copyright Convention (UCC) and has special bilateral relations with a number of foreign countries. Under the Berne Convention, works created by a national of a Berne Union country, or works first or simultaneously published in a Berne country are automatically eligible for protection in every other country of the Berne Union, without registration or compliance with any other formality of law. This is true of works first published in the United States on or after March 1, 1989 the date on which the United States acceded to the Berne Convention. Works first published before March 1989 were protected in many countries by virtue of the United States' membership in the UCC, if published with the formalities specified in that convention. Older works may also be protected as a consequence of simultaneous publication in a Berne country, or by virtue of bilateral obligations. In any event, the requirements and protection available vary from country to country, and should be investigated before first publication anywhere.

North American Free Trade Agreement and Agreement on Trade-related Aspects of Intellectual Property: Both the North American Free Trade Agreement(NAFTA) and the Agreement on Trade-related Aspects of Intellectual Property (TRIPs) (which is under the auspices of the World Trade Organization) establish minimum standards for the protection and enforcement of intellectual property. Neither of these agreements bestow rights upon U.S. intellectual property owners. Rather, both agreements ensure that a member state that is party to one or both of these agreements provides a certain level of protection to those individuals or companies protected under that member state's laws.

Patents: U.S. patent law differs from the laws of most other countries in several important aspects. The U.S. patent law grants a patent to the first inventor even if another person independently makes the invention and files an application first. Most other countries award the patent to the inventor who first files a patent application. The United States also provides a one-year "grace period" that does not preclude an inventor from obtaining protection after an act such as publishing, offering for sale, or using the invention which would make the invention public. Many countries, including most European countries, lack such a grace period to allow an inventor to so disclose the invention prior to filing a patent application. In countries with an "absolute novelty" rule, a patent application must be filed before making the invention public anywhere. Hence, even the publication of an invention in a U.S. patent grant is a disclosure that can defeat the right to obtain foreign patents, unless the applicant is entitled to claim the "right of priority" under the Paris Convention, as described.

Unlike the United States, many countries require that an invention be "worked" locally to retain the benefit of the patent. "Working" may require commercial-scale manufacture within the country, or may be met by importation of goods covered by the patent, depending on a particular country's law. The Paris Convention permits penalties for nonworking, which may include a compulsory license at a reasonable royalty followed by possible forfeiture of the patent for continuing to fail to work an invention.

For an invention made in the United States, U.S. law prohibits filing abroad without a foreign filing license from the Patent and Trademark Office unless six months have elapsed since filing a U.S. application. This prohibition protects against transfer of information which might damage the national security. The penalties for filing abroad without following these requirements range from loss of U.S. patent rights to possible imprisonment if classified information is released. In addition, other export control laws require that a license be obtained prior to the export of certain technologies, even if no patent application is filed, or bar their export altogether.

Trademarks: A trademark is a word, symbol, or device which identifies and distinguishes the source of sponsorship of goods and may serve as an index of quality. Service marks perform the same function for businesses dealing in services rather than goods. For example, an airplane manufacturer might register its service mark. In the United States, rights to trademarks, service marks, and other marks such collective marks are acquired through use or prior foreign registration. However, in most countries, trademark rights are acquired only through registration, and many countries require local use of the registered mark to maintain the registration. Whether a given mark can be registered in a particular country will depend on the law of that country. For example, some countries do not protect service marks. The United States is not a member of any agreement under which a single filing will provide international protection, although the right of priority under the Paris Convention confers a substantial benefit.

Expanding businesses sometimes face a period of time in which their mark may be known and perhaps registered in the United States, but they are not quite ready to do business abroad. It is prudent to decide early where trademark protection will be needed and to protect rights by filing in those countries. Where to file is a business decision, balancing the expense of registration against its benefit. At a minimum, you will want to file in countries in which you will do business. You may also find it desirable to file in countries which are known sources of counterfeit goods, although some require local use to maintain a registration. Although trademark laws impose no deadlines for registering a mark, as a practical matter, a business should register promptly in order to avoid having its mark registered by someone else.

Although not a legal requirement, it may help to investigate the connotation of a trademark, trade name, number, or trade dress before making a major investment in another country. A different language or culture may have unfavorable, silly, or even rude meanings for words or symbols with neutral or favorable connotations in the United States. Even packaging colors may connote different meanings. For example, white may imply purity in the United States, but it is the color of mourning in most of the Far East.

Trade names are also protected on a country-by-country basis. Although the Paris Convention requires protection of trade names, they are not necessarily registered as is the case in the United States. Each country protects them in accordance with its own business practices.

Copyrights: A copyright protects original works of authorship. In the United States, this protection gives the owner the exclusive right to reproduce the work, prepare derivative works, distribute copies, or perform or display the work publicly.

In the United States, "original works of authorship" include literary, dramatic, musical, artistic, and certain other intellectual works. A computer program, for example is considered a literary work protected by copyright in the United States and in a large and increasing number of foreign countries.

In most countries, the place of first publication determines whether copyright protection is available. Some countries require certain formalities to maintain copyright protection. Many other countries, particularly member countries of the Berne Union, offer copyright protection without these formalities. Still others offer little or no protection for the works of foreign nationals. Before publishing a work anywhere, it is advisable to investigate the scope of protection available, as well as the specific legal requirements for copyright protection in countries in which copyright protection is desired.

Semiconductor Chips and Mask Works: The Semiconductor Chip Protection Act of 1984 provides a special system of legal protection for original mask works used in the production of semiconductor chips. It confers the exclusive right to produce and distribute mask works for a term of ten years, subject to registration by the Copyright Office.

The act also created an incentive for other countries to provide such protection since its benefits are available to any foreign national whose home country's laws extend similar protection to U.S. nationals. Protection on an intertim basis is available to foreign nationals whose country undertakes good faith efforts to provide protection for mask works of U.S. nationals. The Secretary of Commerce, through the Patent and Trademark Office, determines which countries are entitled to protection under this act.

Unfair Competition and Related Rights: In the United States, federal law protects exclusive rights in patents, copyrights, and mask works. Other intangible property such as trademarks, trade names, business goodwill, trade secrets, and know-how are protected against unfair competition by federal and state law.

Most developed countries have unfair competition laws similar to the United States, although details vary. The European Union, for example, bans "restrictive business practices" that would restrict trade among the countries of the Union.

Not all countries have unfair competition laws, and even in some countries that do have them, their coverage may not be as extensive as in the United States. For example, protection for trade secrets of valuable unpatented technology may be inadequate. Before divulging any information which could be helpful to a potential competitor, it would be wise to investigate the protection available in the recipient's country and in any country which may be a potential market. Written agreements also should be used to protect all trade secrets that are divulged (e.g. licensing agreements and employment agreements).

Social and economic policies may also affect the value of intellectual property. Some countries restrict the right to do business unless the foreign concern assists in meeting certain goals. Typical examples include requirements for generic labels of comparable size with the trademark, requirements for local working of patented inventions, better treatment for businesses with local ownership, and restrictions on intellectual property regulations may still require submission of proprietary information to the authorities, without restricting access to it by local competitors. The best rule is to investigate before you invest.

Enforcement: After securing valuable intellectual property, the owner must enforce it vigorously to derive the maximum benefit. The ease of enforcement depends on local law, the resources of the intellectual property owner, the attitude of local officials, and many other factors. In general, the United States views intellectual property as a private right to be enforced by its owner.

Enforcement must be accomplished through local law. In the United States and many countries, intellectual property rights are enforced by a civil suit for infringement. The intellectual property owner may be awarded damages or an injunction against infringement. Preliminary injunctions may also be available to prevent ongoing violations of intellectual property rights before a final decision on the merits by a court.

In the United States, the owner may protect against importation of infringing goods by recording a trademark or copyright with the U.S. Customs Service. An intellectual property owner also may bring a proceeding before the International Trade Commission under Section 337 of the Tariff Act of 1930 for an exclusion order to prevent infringing goods from entering the country or a cease and desist order to prevent an infringing use once the goods have entered the country.

In more serious matters, criminal penalties may apply. The Trademark Counterfeiting Act of 1984 imposes heavy criminal penalties for trafficking in goods or services which bear a counterfeit mark. These penalties can amount to a fine of as much as $1 million and 15 years imprisonment of individuals. Civil penalties can include the recovery of the trademark owner of treble damages and attorney's fees. **Ex parte** seizure orders are also authorized in certain cases.

Piracy of copyrighted materials is also subject to criminal penalties. In the United States, a person who willfully infringes a copyright for financial gain is subject to a $25,00 fine, one-year imprisonment, or both. If the offense involves a substantial number of infringing copies of phonorecords or motion pictures, or trafficking in counterfeit labels for phonorecords, motion pictures, or other audiovisual works, the penalties may be as much as $250,000 and five-year imprisonment. In addition, a court may order seizure and destruction or other disposition of infringing copies and equipment used in their manufacture.

Some foreign countries provide criminal penalties for infringement, either as the exclusive remedy or in addition to private suits. The remedies available against an infringer will vary from country to country.

Ease of enforcement will depend on a number of factors. If a government action is required, as with criminal penalties, are the local authorities cooperative? If private remedies are available, may the intellectual property owner get an injunction as well as damages? How long will it take to get enforcement? What methods are available to obtain proof? These and other questions are part of a detailed study that should be done for each country before investing.

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Shipping Your Product

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When shipping a product overseas, the exporter must be aware of packing, labeling, documentation, and insurance requirements. It is important that exporters ensure that the merchandise is:

- Packed correctly so that it arrives in good condition;
- Labeled correctly to ensure that the goods are handled properly and arrive on time at the right place;
- Documented correctly to meet U.S. and foreign government requirements, as well as proper collection standards; and
- Insured against damage, loss, pilferage and delay.

Most exporters rely on an international freight forwarder to perform these services because of the multitude of considerations involved in physically exporting goods.

Freight Forwarders

An international freight forwarder is an agent for the exporter in moving cargo to an overseas destination. These agents are familiar with the import rules and regulations of foreign countries, the export regulations of the U.S. government, the methods of shipping, and the documents related to foreign trade. Export freight forwarders are licensed by the International Air Transport Association (IATA) to handle air freight and the Federal Maritime Commission to handle ocean freight.

Freight forwarders assist exporters in preparing price quotations by advising on freight costs, port charges, consular fees, costs of special documentation, insurance costs, and their handling fees. They recommend the packing methods that will protect the merchandise during transit or can arrange to have the merchandise packed at the port or containerized. If the exporter prefers, freight forwarders can reserve the necessay space on a vessel, aircraft, train, or truck. The cost for their services is a legitimate export cost that should be included in the price charged to the customer (see ***Chapter 11*** for pricing information.).

Once the order is ready for shipment, freight forwarders should be review all documents to ensure that everything is in order. This is of particular importance with letter of credit payment terms. They may also prepare the bill of lading and any special required documentation. After shipment, they can route the documents to the seller, the buyer, or to a paying bank. Freight forwarders can also make arrangements with customs brokers overseas to ensure that the goods comply with customs export documentation regulations. A customs broker is an individual or company that is licensed to transact customs business on behalf of others. Customs business is limited to those activities involving transactions related to the entry and admissibility of merchandise; its classification and valuation; the payment of duties, taxes, or other charges assessed or collected; or the refund, rebate, or drawback thereof.

Packing

Exporters should be aware of the demands that international shipping puts on packaged goods. Exporters should jeep four potential problems in mind when designing an export shipping crate: breakage, moisture, pilferage and excess weight.

Generally, cargo is carried in containers, but sometimes it is still shipped as breakbulk cargo. Besides the normal handling encountered in domestic transportation, a breakbulk shipment transported by ocean freight may be loaded aboard vessels in a net or by a sling, conveyor, or chute, that puts an added strain on the package. During the voyage, goods may be stacked on top of or come into violent contact with other goods. Overseas, handling facilities may be less sophisticated than in the United States and the cargo could be dragged, pushed, rolled, or dropped during unloading, while moving through customs, or in transit to the final destination.

Moisture is a constant concern because condensation may develop in the hold of a ship even if it is equipped with air conditioning and a dehumidifier. Another aspect of this problem is that cargo may also be unloaded in precipitation, or the foreign port may not have covered storage facilities. Theft and pilferage are added risks.

Buyers are often familiar with the port systems overseas, so they will often specify packaging requirements. If the buyer does not specify this, be sure the goods are prepared using these guidelines:

- Pack in strong containers, adequately sealed and filled when possible.
- To provide proper bracing in the container, regardless of size, make sure the weight is evenly distributed.
- Goods should be palletized and when possible containerized.
- Packages and packing filler should be made of moisture-resistant material.
- To avoid pilferage, avoid writing contents or brand names on packages. Other safeguards include using straps, seals, and shrink wrapping.

- Observe any product-specific hazardous materials packing requirements.

One popular method of shipment is to use containers obtained from carriers or private leasing companies. These containers vary in size, material, and construction and accommodate most cargo, but they are best suited for standard package sizes and shapes. Also, refrigerated and liquid bulk containers are usually readily available. Some containers are no more than semi-truck trailers lifted off their wheels, placed on a vessel at the port of export and then transferred to another set of wheels at the port of import.

Normally, air shipments require less heavy packing than ocean shipments, though they should still be adequately protected, especially if they are highly pilferable. In many instances, standard domestic packing is acceptable, especially if the product is durable and there is no concern for display packaging. In other instances, high-test (at least 250 pounds per square inch) cardboard or tri-wall construction boxes are more than adequate.

Finally, because transportation costs are determined by volume and weight, specially reinforced and lightweight packing materials have been developed for exporting. Packing goods to minimize volume and weight while reinforcing them may save money, as well as ensure that the goods are properly packed. It is recommended that a professional firm be hired to pack the products if the supplier is not equipped to do so. This service is usually provided at a moderate cost.

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Labeling

Specific marking and labeling is used on export shipping cartons and containers to:

- Meet shipping regulations;
- Ensure proper handling;
- Conceal the identity of the contents;
- Help receivers identify shipments; and
- Insure compliance with environmental and safety standards.

The overseas buyer usually specifies which export marks should appear on the cargo for easy identification by receivers. Products can require many markings for shipment. For example, exporters need to put the following markings on cartons to be shipped:

- Shipper's mark;
- Country of origin (U.S.A.);
- Weight marking (in pounds and in kilograms);
- Number of packages and size of cases (in inches and centimeters);
- Handling marks (international pictorial symbols);
- Cautionary markings, such as "This Side Up" or "Use No Hooks" (in English and in the language of the country of destination);
- Port of entry;
- Labels for hazardous materials (universal symbols adapted by the International Airi Transport Association and the International Maritime Organization); and;
- Ingredients (if applicable, also included in the language of the destination country).

Packages should be clearly marked to prevent misunderstandings and delays in shipping. Letters are generally stenciled onto packages and containers in waterproof ink. Markings should appear on three faces of the container, preferably on the top and on the two ends or the two sides. Ant old markings must be completely removed from previously used packaging.

In addition to the port marks, the customer identification code, and an indication of origin, the marks should include the package number, gross and net weights, and dimensions. If more than one package is being shipped, the total number of packages in the shipment should be included in the markings. The exporter should also add any special handling instructions. It is a good idea to repeat these instructions in the language of the country of destination. and use standard international shipping and handling symbols.

Customs regulations regarding freight labeling are strictly enforced. For example, many countries require that the country of origin be clearly labeled on each imported package. Most freight forwarders and export packing specialists can supply the necessary information regarding specific regulations.

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Documentation

Exporters should seriously consider having the freight forwarder handle the formidable amount of documentation that exporting requires as forwarders are specialists in this process. The following documents are commonly used in exporting; but which of them are necessary in a particular transaction depends on the requirements of the U.S. government and the government of the importing country.

- Air freight shipments are handled by ***air waybills***, which can never be made in negotiable form (see ***figure 1***).

- A ***bill of lading*** is a contract between the owner of the goods and the carrier (as with domestic shipments). For vessels, there are two types: a straight bill of lading which is nonnegotiable and a negotiable or shipper's order bill of lading. The latter can be bought, sold, or traded while the goods are in transit. The customer usually needs an original as proof of ownership to take possession of the goods (see ***figure 3*** for a Short Form Straight Bill of Lading and ***figure 8*** for a Liner Bill of Lading).

- A ***commercial invoice*** is a bill for the goods from the seller to the buyer. These invoices are often used by governments to determine the true value of goods when assessing customs duties. Governments that use the commercial invoice to control imports will often specify its form, content, number of copies, language to be used, and other characteristics (see ***figure 2***).

- A ***consular invoice*** is a document that is required in some countries. It describes the shipment of goods and shows information such as the consignor, consignee, and value of the shipment. Certified by the consular official of the foreign country stationed here, it is used by the country's customs officials to verify the value, quantity, and nature of the shipment.

- A ***certificate of origin*** is a document that is required in certain nations. It is a signed statement as to the origin of the export item. Certificate of origin are usually signed through a semiofficial organization, such as a local chamber of commerce. A certificate may still be required even if the commercial invoice contains the information (see ***figure 4***).

- A ***NAFTA certificate of origin*** is required for products traded among the NAFTA countries (Canada, the United States, and Mexico).

- ***Inspection certification*** is required by some purchasers and countries in order to attest to the specifications of the goods shipped. This is usually performed by a third party and often obtained from independent testing organizations.

- A ***dock receipt and a warehouse receipt*** are used to transfer accountability when the export item is moved by the domestic carrier to the port of embarkation and left with the ship line for export.

- A ***destination control statement*** appears on the commercial invoice, and ocean or air waybill of lading to notify the carrier and all foreign parties that the item can be exported only to certain destinations.

- A ***Shipper's Export Declaration(SED)*** is used to control exports and act as a source document for official U.S. export statistics. SEDs must be prepared for shipments through the U.S. Postal Service when the shipment is valued over $500. SEDs are required for shipments not using the U.S. Postal Service when the value of the commodities, classified under any single Schedule B number, is over $2,500. SEDs must be prepared, regardless of value, for all shipments requiring an export license or destined for countries restricted by the Export Administration Regulations (see ***Chapter 9***). SEDs are prepared by the exporter or the exporter's agent and delivered to the exporting carrier (for example, the post office, airline, or vessel line). The exporting carrier will present the required number of copies to the U.S. Customs Service at the port of export (see ***figure 5***). Often, the SED is prepared as a by-product of another document, the Shipper's Letter of Instructions, as shown in ***figure 6***.

- An ***export license*** is a government document that authorizes the export of specific goods in specific quantities to a particular destination. This document may be required for most or all exports to some countries or for other countries only under special circumstances.

- An ***export packing list*** considerably more detailed and informative than a standard domestic packing list. It an itemizes the material in each individual package and indicates the type of package, such as a box, crate, drum, or carton. It also shows the individual net, legal, tare, and gross weights and measurements for each package (in both U.S. and metric systems). Package markings should be shown along with the shipper's and buyer's references. The list is used by the shipper or forwarding agent to determine the total shipment weight and volume and whether the correct cargo is being shipped. In addition, U.S. and foreign customs officials may use the list to check the cargo (see ***figure 7***).

- An ***insurance certificate*** is used to assure the consignee that insurance will cover the loss of or damage to the cargo during transit (see ***figure 7***).

Documentation must be precise because slight discrepancies or omissions may prevent merchandise from being exported, result in nonpayment, or even result in the seizure of the exporter's goods by U.S. or foreign government customs. Collection documents are subject to precise time limits and may not be honored by a bank if the time has expired. Most documentation is routine for freight forwarders and customs brokers, but the exporter is ultimately responsible for the accuracy of its documents.

The number and kind of documents the exporter must deal with varies depending on the destination of the shipment. Because each country has different import regulations, the exporter must be careful to provide all proper documentation. The following sources also provide information pertaining to foreign import restrictions:

- Export Assistance Centers (see http://www.doc.gov).
- The Trade Information Center (1-800-USA-TRADE).
- Foreign government embassies and consulates in the United States.

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Shipping

The handling of transportation is similar for domestic and export orders. Export marks are added to the standard information on a domestic bill of lading. These marks show the name of the exporting carrier and the latest allowed arrival date at the port of export. Instructions for the inland carrier to notify the international freight forwarder by telephone upon arrival should also be included.

Exporters may find it useful to consult with a freight forwarder when determining the method of international shipping. Since carriers are often used for large and bulky shipments, the exporter should reserve space on the carrier well before actual shipment date. This reservation is called the booking contract.

International shipments are increasingly made on a through bill of lading under a multimodal contract. The multimodal transit operator (frequently one of the transporters) takes charge of and responsibility for the entire movement from factory to final destination.

The cost of the shipment, the delivery schedule, and the accessibility to the shipped product by the foreign buyer are all factors to consider when determining the method of international shipping. Although air carriers can be more expensive, their cost may be offset by lower domestic shipping costs (for example, using a local airport instead of a coastal seaport) and quicker delivery times. These factors may give the U.S. exporter an edge over other competitors.

Before shipping, the U.S. firm should be sure to check with the foreign buyer about the destination of the goods. Buyers often want the goods to be shipped to a free-trade zone or a free port where they are exempt from import duties (see ***Chapter 9***).

Insurance

Damaging weather conditions, rough handling by carriers, and other common hazards to cargo make insurance an important protection for U.S. exporters. If the terms of sale make the exporter responsible for insurance, the exporter should either obtain its own policy or insure the cargo under a freight forwarder's policy for a fee. If the terms of sale make the foreign buyer responsible, the exporter should not assume (or even take the buyer's word) that adequate insurance has been obtained. If the buyer neglects to obtain adequate coverage, damage to the cargo may cause a major financial loss to the exporter.

Shipments by sea are covered by marine cargo insurance (see ***figure 9***).

Air shipments may also be covered by marine cargo insurance or insurance may be purchased from the air carrier.

Export shipments are usually insured against loss, damage, and delay in transit by cargo insurance. Carrier liability is frequently limited by international agreements. Additionally, the coverage is substantially different from domestic coverage. Arrangements for insurance may be made by either the buyer or the seller, in accordance with the terms of sale. Exporters are advised to consult with international insurance carriers or freight forwarders for more information.

Although sellers and buyers can agree to different components, coverage is usually placed at 110 percent of the CIF (cost, insurance, freight) or CIP (carriage and insurance paid to) value.

Tariffs

Finally, it is very important to consider the effects of tariffs, port handling fees, and taxes when determining your product's final cost as they can be high. Typically, the importer pays these charges. However, these costs will influence how much the buyer is willing to pay for your product.

Figure 1 - Sample Air Waybill

Figure 2 - Sample Commercial Invoice

Figure 3 - Sample Short Form Straight Bill of Lading

Figure 4 - Sample Certificate of Origin

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Pricing, Quotations, and Terms

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Proper pricing, complete and accurate quotations, choosing the terms of the sale, and selecting the payment method are four critical elements in selling a product or service overseas. Of the four, pricing can be the most problematic, even for an experienced exporter. (Methods of payment are covered in ***Chapter 12***.)

Pricing Considerations

The price considerations listed below will help an exporter determine the best price for the product overseas.

- At what price should the firm sell its product in the foreign market?
- What type of market positioning (customer perception) does the company want to convey from its pricing structure?
- Does the export price reflect the product's quality?
- Is the price competitive?
- Should the firm pursue market penetration or market-skimming pricing objectives abroad?
- What type of discount (trade, cash, quantity) and allowances (advertising, trade-off) should the firm offer its foreign customers?
- Should prices differ by market segment?
- What should the firm do about product line pricing?
- What pricing options are available if the firm's costs increase or decrease? Is the demand in the foreign market elastic or inelastic?
- Are the prices going to be viewed by the foreign government as reasonable or exploitative?

- Do the foreign country's antidumping laws pose a problem?

As in the domestic market, the price at which a product or service is sold directly determines a firm's revenues. It is essential that a firm's market research include an evaluation of all of the variables that may affect the price range for the product or service. If a firm's price is too high, the product or service will not sell. If the price is too low, export activities may not be sufficiently profitable or may actually create a net loss.

The traditional components of determining proper pricing are costs, market demand, and competition. Each of these must be compared with the firm's objective in entering the foreign market. An analysis of each component from an export perspective may result in export prices that are different from domestic prices.

It is also very important that the exporter take into account additional costs that are typically borne by the importer. They include tariffs, customs fees, currency fluctuation transaction costs and value-added taxes (VATs). These additional costs can add substantially to the final price paid by the importer, sometimes resulting in a total of more than double the U.S. domestic price.

Foreign Market Objectives

An important aspect of a company's pricing analysis is determining market objectives. For example, is the company attempting to penetrate a new market, looking for long-term market growth, or looking for an outlet for surplus production or outmoded products? Many firms view the foreign market as a secondary market and consequently have lower expectations regarding market share and sales volume. This naturally affects pricing decisions.

Marketing and pricing objectives may be general or tailored to particular foreign markets. For example, marketing objectives for sales to a developing nation where per capita income may be one tenth of that in the United States are necessarily different from the objectives for Europe or Japan.

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Costs

The computation of the actual cost of producing a product and bringing it to market is the core element in determining if exporting is financially viable. Many new exporters calculate their export price by the cost-plus method. In the cost-plus method of calculation, the exporter starts with the domestic manufacturing cost and adds administration, research and development, overhead, freight forwarding, distributor margins, customs charges, and profit.

The effect of this pricing approach may be that the export price escalates into an uncompetitive range. ***Table 4*** gives a sample calculation. It clearly shows that if an export product has the same ex-factory price as the domestic product, its final consumer price is considerably higher once exporting costs are included.

Marginal cost pricing is a more competitive method of pricing a product for market entry. This method considers the direct, out-of-pocket expenses of producing and selling products for export as a floor beneath which prices cannot be set without incurring a loss. For example, additional costs may occur due to product modification for the export market that accommodates different sizes, electrical systems, or labels. On the other hand, costs may decrease if the export products are stripped-down versions or made without increasing the fixed costs of domestic production.

Other costs should be assessed for domestic and export products according to how much benefit each product receives from such expenditures. Additional costs often associated with export sales include:

- Market research and credit checks;
- Business travel;
- International postage, cable, and telephone rates;
- Translation costs;
- Commissions, training charges, and other costs involving foreign representatives;
- Consultants and freight forwarders; and
- Product modification and special packaging.

After the actual cost of the export product has been calculated, the exporter should formulate an approximate consumer price for the foreign market.

Table 4
Sample Cost-Plus Calculation of Product Cost

	Domestic Sale	Export Sale
Factory price	$7.50	$7.50
Domestic freight	.70	.70

subtotal	8.20	8.20
Export documentation		.50
subtotal		8.70
Ocean freight and insurance		1.20
subtotal		9.90
Import duty (12 percent of landed cost)		1.19
subtotal		11.09
Wholesaler markup (15 percent)	1.23	
subtotal	9.43	
Importer/distributor markup		2.44
subtotal		13.53
Retail markup (50 percent)	4.72	6.77
Final consumer price	$14.15	$20.30

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Market Demand

For most consumer goods, per capita income is a good gauge of a market's ability to pay. Some products may create such a strong demand such as popular goods like Levis, that even low per capita income will not affect their selling price. Simplifying the product to reduce its selling price may be an answer for the exporter to most lower per capita income markets. The firm must also keep in mind that currency fluctuations may alter the affordability of its goods. Thus, pricing should try to accommodate wild changes in the U.S. and/or foreign currency. The firm should anticipate the type of potential customers. If the firm's primary customers in a developing country are expatriates or belong to the upper class, a higher price might be feasible even if the average per capita income is low.

Competition

In the domestic market, few companies are free to set prices without carefully evaluating their competitors' pricing policies. This situation is true in exporting, and is further complicated by the need to evaluate the competition's prices in each potential export market.

If there are many competitors within the foreign market, the exporter may have little choice but to match the market price or even underprice the product or service in order to establish a market share. On the other hand, if the product or service is new to a particular foreign market, it may actually be possible to set a higher price than in the domestic market.

Pricing Summary

In summary, here are the key points to remember when determining your product's price:

- Determine the objective in the foreign market.
- Compute the actual cost of the export product.
- Compute the final consumer price.
- Evaluate market demand and competition.
- Consider modifying the product to reduce the export price.
- Include "nonmarket" costs, such as tariffs and customs fees.
- Exclude cost elements that provide no benefit to the export function, such as domestic advertising.

Quotations and Pro Forma Invoices

Many export transactions, particularly initial export transactions, begin with the receipt of an inquiry from abroad that is followed by a request for a quotation. The preferred method for export is a pro forma invoice, which is a quotation prepared in invoice format.

A quotation describes the product, states a price for it, sets the time of shipment, and specifies the terms of the sale and terms of the payment. Since the foreign buyer may not be familiar with the product, the description of it in an overseas quotation usually must be more detailed than in a domestic quotation. The description should include the following 15 points:

1. Seller's and buyer's names and addresses.
2. Buyer's reference number and date of inquiry.

3. Listing of requested products and brief description.
4. Price of each item (it is advisable to indicate whether items are new or used and to quote in U.S. dollars to reduce foreign-exchange risk).
5. Appropriate gross and net shipping weight (in metric units where appropriate).
6. Appropriate total cubic volume and dimensions packed for export(in metric units where appropriate).
7. Trade discount (if applicable).
8. Delivery point.
9. Terms of sale.
10. Terms of payment.
11. Insurance and shipping costs.
12. Validity period for quotation.
13. Total charges to be paid by customer.
14. Estimated shipping date from U.S. port or airport.
15. Currency of sale.

Pro forma invoices (see ***figure 11***) are not used for payment purposes. In addition to the 15 items previously mentioned, a pro forma invoice should include two statements. One that certifies the pro forma invoice is true and correct and another that gives the country of origin of the goods. The invoice should also be clearly marked "pro forma invoice."

Pro forma invoices are models that the buyer uses when applying for an import license, opening a letter of credit or arranging for funds. In fact, it is a good practice to include a pro forma invoice with any international quotation, regardless of whether it has been requested or not. When final commercial invoices are being prepared prior to shipment, it is advisable to check with the U.S. Department of Commerce or another reliable source for any special invoicing requirements that may be required by the importing country.

If a specific price is agreed upon or guaranteed by the exporter, the precise period during which the offer remains valid should be specified. Additionally, it is very important that price quotations state explicitly that they are subject to change without notice.

Terms of Sale

In any sales agreement, it is important that there is a common understanding of the delivery terms since confusion over their meaning can result in a lost sale or a loss on a sale. The terms in international business transactions often sound similar to those used in domestic business, but they frequently have very different meanings. For this reason, the exporter must know the terms before preparing a quotation or a pro forma invoice.

A complete list of important terms (including many new terms and abbreviations)and their definitions is provided in *Incoterms 1990*. This booklet is issued by ICC Publishing Corporation, Inc., 156 Fifth Avenue, Suite 820, New York, NY 10010; telephone 212-206-1150.

The following are a few of the more frequently used terms in international trade:

- **CIF (cost, insurance, freight)** to a named overseas port where the seller quotes a price for the goods (including insurance), all transportation, and miscellaneous charges to the point of debarkation from the vessel. (Used only for ocean shipments.)

- **CFR (cost and freight)** to a named overseas port where the seller quotes a price for the goods that includes the cost of transportation to the named point of debarkation. The the buyer covers the cost of insurance. (Used only for ocean shipments.)

- **CPT (carriage paid to)** and **CIP (carriage and insurance paid to)** a named place of destination. These terms are used in place of CFR and CIF, respectively, for all modes of transportation, including intermodal.

- **EXW (ex works)** at a named point of origin (e.g., ex factory, ex mill, ex warehouse)where the price quoted applies only at the point of origin. The seller agrees to place the goods at the buyer's disposal at the specified place within the fixed time period. All other charges are put on the buyer's account.

- **FAS (free alongside ship)** at a named port of export where the seller quotes a price for the goods that includes the charge for delivery of the goods alongside a vessel at the port. The seller handles the cost of wharfage, while the buyer is accountable for the costs of loading, ocean transportation, and insurance.

- **FCA (free carrier)** at a named place. This term replaces the former "FOB named inland port" to designate the seller's responsibility for handing over the goods to a named carrier at the named shipping point. It may also be used for multimodal transport, container stations, or any mode of transport, including air.

- **FOB (free on board)** at a named port of export where the seller quotes the buyer a price that covers all costs up to and including the loading of goods aboard a vessel.

- **Charter Terms:**
  - **Free In** is a pricing term that indicates that the charterer of a vessel is responsible for the cost of loading goods onto the vessel.

  - **Free In and Out** is a pricing term that indicates that the charterer of the vessel is responsible for the cost of loading and unloading goods from the vessel.

  - **Free Out** is a pricing term that indicates that the quoted prices include the cost of unloading goods from the vessel.

It is important to understand and use sales terms correctly. A simple misunderstanding may prevent exporters from meeting contractual obligations or make them responsible for shipping costs they sought to avoid.

When quoting a price, the exporter should make it meaningful to the prospective buyer. For example, a price for industrial machinery quoted "EXW Saginaw, Michigan, not export packed" is meaningless to most prospective foreign buyers. These buyers would find it difficult to determine the total cost and might hesitate to place an order.

The exporter should quote CIF or CIP whenever possible, as it shows the foreign buyer the cost of getting the product to or near the desired country.

If assistance is needed in figuring CIF or CIP prices, an international freight forwarder can help. The exporter should furnish the freight forwarder with a description of the product to be exported and its weight and cubic measurement when packed. The freight forwarder can compute the CIF price usually at no charge.

If at all possible, the exporter should quote the price in U.S. dollars. This will eliminate the risk of exchange rate fluctuations and problems with currency conversion.

Figure 10 - Sample Export Quotation Worksheet

Figure 11 - Sample Pro Forma Invoice

Methods of Payment

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Prudent Credit Practices

An experienced exporting firm extends credit cautiously. It evaluates new customers with care and continuously monitors older accounts. Such a firm may wisely decide to decline a customer's request for open account credit if the risk is too great and propose instead payment on delivery terms through a documentary sight draft or irrevocable confirmed letter of credit or even payment in advance. On the other hand, for a fully creditworthy customer, the experienced exporter may decide to allow a month or two to pay, perhaps even on open account.

Other good credit practices include being aware of any unfavorable changes in your customers' payment patterns, refraining from going beyond normal commercial terms, and consulting with your international banker n how to cope with unusual circumstances or in difficult markets. It is always advisable to check a buyer's credit (even if safest payment methods are employed). A Department of Commerce International Company Profile (ICP) (see ***Chapter 5***) provides useful information for credit checks. For a fee, an ICP may be requested on foreign companies in many countries. It contains financial information on the company and a discussion regarding its size, capitalization, years in business, and other information such as citing some U.S. companies that conduct business with the firm. The exporter can then contact the U.S. companies to find out about their payment experience with the foreign firm.

ICPs are not available in every country, and in these instances, EACs can provide a list of private credit reporting services. There are several U.S. companies that compile financial information on foreign firms (particularly larger firms) and make it available to their subscribers. Also, banks are sometimes able to provide credit reports on foreign companies, either through their own foreign branches or through a correspondent bank.

As being paid in full and on time is of the utmost concern to exporters, the level of risk in extending credit is a major consideration. There are several ways in which you can receive payment when selling your products abroad, depending on how trustworthy you consider the buyer to be. Typically with domestic sales, if the buyer has good credit, sales are made on open account; if not, cash in advance is required. For export sales, these ways are not the only common methods. Listed in order from most secure for the exporter to the least secure, the basic methods of payment are:

1. Cash in advance;

2. Documentary letter of credit;

3. Documentary collection or draft;
4. Open account; and
5. Other payment mechanisms, such as consignment sales.

Cash in Advance

Receiving payment by cash in advance of the shipment might seem ideal. In this situation, the exporter is relieved of collection problems and has immediate use of the money. A wire transfer is commonly used and has the advantage of being almost immediate. Payment by check, may result in a collection delay of up to six weeks. Therefore, this method may defeat the original intention of receiving payment before shipment.

Many exporters accept credit cards in payment for exports of consumer and other products, generally of a low follar value, sold directly to the end user. Domestic and international rules governing credit card transactions sometimes differ, so U.S. merchants should contact their credit card processor for more specific information. International credit card transactions are typically done by telephone or fax. Due to the nature of these methods, exporters should be aware of fraud. Merchants should determine the validity of transactions and obtain the proper authorizations.

For the buyer, however, advance payment tends to create cash flow problems, as well as increase risks. Furthermore, cash in advance is not as common in most of the world as it is in the United States. Buyers are often concerned that the goods may not be sent if payment is made in advance. Exporters that insist on this method of payment as their sole method of doing business may find themselves losing out to competitors who offer more flexible payment terms.

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Documentary Letters of Credit and Documentary Drafts

Documentary letters of credit or documentary drafts are often used to protect the interests of both buyer and seller. These two methods require that payment be made based on the presentation of documents conveying the title and that specific steps have been taken. Letters of credit and drafts can be paid immediately or at a later date. Drafts that are paid upon presentation are called sight drafts. Drafts that are to be paid at a later date, often after the buyer receives the goods, are called time drafts or date drafts.

Since payment by these two methods is made on the basis of documents, all terms of payment should be clearly specified in order to avoid confusion and delay. For example, "net 30 days" should be specified as "30 days from acceptance." Likewise, the currency of payment should be specified as "US$30,000." International bankers can offer other suggestions.

Banks charge fees - based mainly on a percentage of the amount of payment - for handling letters of credit and smaller amounts for handling drafts. If fees charged by both the foreign and U.S. banks are to be applied to the buyer's account, this should be explicitly stated in all quotations and in the letter of credit.

The exporter usually expects the buyer to pay the charges for the letter of credit, but some buyers may not agree to this added cost. In such cases, the exporter must either absorb the costs of the letter of credit or risk losing that potential sale. Letters of credit for smaller amounts can be somewhat expensive since fees can be high relative to the sale.

Letters of Credit

A letter of credit adds a bank's promise to pay the exporter to that of the foreign buyer *provided* that the exporter has complied with all the terms and conditions of the letter of credit. The foreign buyer applies for issuance of a letter of credit from the buyer's bank to the exporter's bank and therefore is called the applicant; the exporter is called the beneficiary.

Payment under a documentary letter of credit is based on documents, not on the terms of sale or the physical condition of the goods. The letter of credit specifies the documents that are required to be presented by the exporter, such as an ocean bill of lading (original and several copies), consular invoice, draft, and an insurance policy. The letter of credit also contains an expiration date. Before payment, the bank responsible for making payment, verifies that all document conform to the letter of credit requirements. If not, the discrepancy must be resolved before payment can be made and before the expiration date.

A letter of credit issued by a foreign bank is sometimes confirmed by a U.S. bank. This confirmation means that the U.S. bank (the confirming bank), adds its promise to pay to that of the foreign bank (the issuing bank). If a letters of credit is not confirmed, it is advised through a U.S. bank and thus called an advised letter of credit. U.S. exporters may wish to confirm letters of credit issued by foreign banks if they are unfamiliar with the foreign banks or concerned about the political or economic risk associated with the country in which the bank is located. An Export Assistance Center or international banker can assist exporters in evaluating the risks to determine what might be appropriate for specific export transactions.

A letter of credit may either be irrevocable and thus, unable to be changed unless both parties agree; or revocable where either party may unilaterally make changes. A revocable letter of credit is inadvisable as it carries many risks for the exporter.

A change made to a letter of credit after it has been issued is called an amendment. Banks also charge fees for this service. It should be specified in the amendment if the exporter or the buyer will pay these charges. Every effort should be made to get the letter of credit right the first time since these changes can be time-consuming and expensive.

To expedite the receipt of funds, wire transfers may be used. Exporters should consult with their international bankers about bank charges for such services.

A Typical Letter of Credit Transaction

Here are the typical steps of an irrevocable letter of credit that has been confirmed by a U.S. bank:

1. After the exporter and buyer agree on the terms of a sale, the buyer arranges for its bank to open a letter of credit that specifies the documents needed for payment. The buyer determines which documents will be required.

2. The buyer's bank issues, or opens, its irrevocable letter of credit includes all instructions to the seller relating to the shipment.

3. The buyer's bank sends its irrevocable letter of credit to a U.S. bank and requests confirmation. The exporter may request that a particular U.S. bank be the confirming bank, or the foreign bank may select a U.S. correspondent bank.

4. The U.S. bank prepares a letter of confirmation to forward to the exporter along with the irrevocable letter of credit.

5. The exporter reviews carefully all conditions in the letter of credit. The exporter's freight forwarder is contacted to make sure that the shipping date can be met. If the exporter cannot comply with one or more of the conditions, the customer is alerted at once.

6. The exporter arranges with the freight forwarder to deliver the goods to

the appropriate port or airport.

7. When the goods are loaded, the freight forwarder completes the necessary documentation.

8. The exporter (or the freight forwarder) presents the documents, evidencing full compliance with the letter of credit terms, to the U.S. bank.

9. The bank reviews the documents. If they are in order, the documents are sent to the buyer's bank for review and then transmitted to the buyer.

10. The buyer (or the buyer's agent) uses the documents to claim the goods.

11. A draft, which accompanies the letter of credit, is paid by the buyer's bank at the time specified or, if a time draft, may be discounted to the exporter's bank at an earlier date.

Example of a Confirmed Irrevocable Letter of Credit

The example of a confirmed irrevocable letter of credit in ***figure 13*** illustrates the various parts of a typical letter of credit. In this sample, the letter of credit was forwarded to the exporter, The Walton Building Supply Company (A), by the confirming bank, Megabank Corporation (B), as a result of c letter of credit being issued by the Third Hong Kong Bank, Hong Kong (C), for the account of the importer, HHB Hong Kong (D). The date of issue was March 8, 1997 (E), and the exporter must submit the proper documents (e.g., a commercial invoice in one original and three copies) (F) by June 23, 1997 (G) in order for a sight draft (H) to be honored.

Tips on Using a Letter of Credit

- When preparing quotations for prospective customers, exporters should keep in mind that banks pay only the amount specified in the letter of credit - even if higher charges for shipping, insurance, or other factors are incurred and documented.

- Upon receiving a letter of credit, the exporter should carefully compare the letter's terms with the terms of the exporter's pro forma quotation. This step is extremely important, since the terms must be precisely met or the letter of credit may be invalid and the exporter may not be paid. If meeting the terms of the letter of credit is impossible or if any of the information is incorrect or even misspelled, the exporter should contact the customer immediately and ask for an amendment to the letter of credit.

- The exporter must provide documentation showing that the goods were shipped by the date specified in the letter of credit or the exporter may not be paid. Exporters should check with their freight forwarders to make sure that no unusual conditions may arise that would delay shipment.

- Documents must be presented by the date specified for the letter of credit to be paid. Exporters should verify with their international bankers that there will be sufficient time to present the letter of credit for payment.

- Exporters may request that the letter of credit specify that partial shipments and transshipment will be allowed. Specifying what will be allowed can prevents unforeseen last minute problems.

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Documentary Drafts

A draft, sometimes also called a bill of exchange, is analogous to a foreign buyer's check. Like checks used in domestic commerce, drafts carry the risk that they will be dishonored. However, in international commerce, title does not transfer to the buyer until he pays the draft, or at least engages a legal undertaking that the draft will be paid when due.

Sight Drafts

A sight draft is used when the exporter wishes to retain title to the shipment until it reaches its destination and payment is made. Before the shipment can be released to the buyer, the original ocean bill of lading (the document that evidences title) must be properly endorsed by the buyer and surrendered to the carrier. It is important to note that air waybills of lading, on the other hand, do not need to be presented in order for the buyer to claim the goods. Hence, risk increases when a sight draft is being used with an air shipment.

In actual practice, the ocean bill of lading is endorsed by the exporter and sent via the exporter's bank to the buyer's bank. It is accompanied by the sight draft, invoices, and other supporting documents that are specified by either the buyer or the buyer's country (e.g., packing lists, consular invoices, insurance certificates). The foreign bank notifies the buyer when it has received these documents. As soon as the draft is paid, the foreign bank turns over the bill of lading thereby enabling the buyer to obtain the shipment.

There is still some risk when a sight draft is used to control transferring the title of a shipment. The buyer's ability or willingness to pay might change from the time the goods are shipped until the time the drafts are presented for payment; there is no bank promise to pay standing behind the buyer's obligation. Additionally, the policies of the importing country could also change. If the buyer cannot or will not pay for and claim the goods, returning or disposing of the products becomes the problem of the exporter.

Time Drafts and Date Drafts

A time draft is used when the exporter extends credit to the buyer. The draft states that payment is due by a specific time after the buyer accepts the time draft and receives the goods (e.g., 30 days after acceptance). By signing and writing "accepted" on the draft, the buyer is formally obligated to pay within the stated time. When this is done the time draft is then called a trade acceptance. It can be kept by the exporter until maturity or sold to a bank at a discount for immediate payment.

A date draft differs slightly from a time draft in that it specifies a date on which payment is due, rather than a time period after the draft is accepted. When either a sight draft or time draft is used, a buyer can delay payment by delaying acceptance of the draft. A date draft can prevent this delay in payment though it still must be accepted.

When a bank accepts a draft, it becomes an obligation of the bank and thus, a negotiable investment known as a banker's acceptance. A banker's acceptance can also be sold to a bank at a discount for immediate payment.

Open Account

In a foreign transaction, an open account can be a convenient method of payment if the buyer is well established, has a long and favorable payment record, or has been thoroughly checked for creditworthiness. With an open account, the exporter simply bills the customer, who is expected to pay under agreed terms at a future date. Some of the largest firms abroad make purchases only on open account.

However, there are risks to open account sales. The absence of documents and banking channels might make it difficult to pursue the legal enforcement of claims. The exporter might also have to pursue collection abroad, which can be difficult and costly. Another problem is that receivables may be harder to finance, since drafts or other evidence of indebtedness are unavailable. There are several ways to reduce credit risk,through such means as export credit insurance and factoring (see ***Chapter 13***).

Exporters contemplating a sale on open account terms should thoroughly examine the political, economic, and commercial risks. They should also consult with their bankers if financing will be needed for the transaction before issuing a pro forma invoice to a buyer.

Other Payment Mechanisms

Consignment sales

International consignment sales follow the same basic procedures as in the United States. The goods are shipped to a foreign distributor who sells them on behalf of the exporter. The exporter retains title to the goods until they are sold, at which point payment is sent to the exporter. The exporter has the greatest risk and least control over the goods with this method. Additionally, receiving payment may take quite a while.

It is wise to consider risk insurance with international consignment sales. The contract should clarify who is responsible for property risk insurance that will cover the merchandise until it is sold and payment is received. In addition, it may be necessary to conduct a credit check on the foreign distributor.

Countertrade

International countertrade is a trade practice whereby one party accepts goods, services, or other instruments of trade in partial or whole payment for its products. This type of trade fulfills financial, marketing, or public policy objectives of the trading parties. For example, a firm might trade by bartering because it or its trading partner lacks foreign exchange.

Many U.S. exporters consider countertrade a necessary cost of doing business in markets where U.S. exports would otherwise not be sold. One consideration for smaller firms is that this type of trade may cause cash flow problems. Therefore, many smaller exporters do not consider this an option as they wish to do business in U.S. dollars.

There are several types of countertrade, including counterpurchase and barter. Counterpurchase is quite common. In this situation, exporters agree to purchase a quantity of goods from a country in exchange for that country's purchase of the exporter's product. These goods are typically unrelated but have an equivalent value. Another form of this practice is contractually linked, parallel trade transactions that each involve a separate financial settlement. For example, a countertrade contract may provide that the U.S. exporter will be paid in a convertible currency as long as the U.S. exporter (or another entity designated by the exporter) agrees to purchase a related quantity of goods from the importing country.

Barter arrangements in international commerce are not as common, because the parties' needs for the goods of the other seldom coincide and because valuation of the goods may be problematic. This type of countertrade occurs without money exchanging hands as merchandise is traded directly for other merchandise or services. Barter might occur by swapping (one good for another) or by switching (using a chain of buyers and sellers in different markets to barter).

U.S. exporters can take advantage of countertrade opportunities by trading through an intermediary with countertrade expertise, such as an international broker, an international bank, or an export management company. One drawback to this type of exporting is that there are often higher transaction costs and greater risks than with other kinds of export transactions.

The Department of Commerce can advise and assist U.S. exporters on countertrade requirements. The Financial Services and Countertrade Division of ITA's Office of Finance, monitors countertrade trends, disseminates information (including lists of potentially beneficial countertrade opportunities), and provides general assistance to enterprises seeking barter and countertrade opportunities. For more information, contact the Financial Services and Countertrade Division/Office of Finance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone 202-482-4471.

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Foreign Currency

A buyer and a seller who are in different countries rarely use the same currency. Payment is usually made in either the buyer's or the seller's currency or in a third mutually agreed-upon currency.

One of the risks associated with foreign trade is the uncertainty of the future exchange rates. The relative value between the two currencies could change between the time the deal is concluded and the time payment is received. If the exporter is not properly protected, a devaluation or depreciation of the foreign currency could cause the exporter to lose money. For example, if the buyer has agreed to pay 500,000 French francs for a shipment and the franc is valued at 20 cents, the seller would expect to receive US$100,000. If the franc later decreased in value to be worth 19 US cents, payment under the new rate would be only US$95,000, a loss of US$5,000 for the seller. On the other hand, if the foreign currency increases in value the exporter would get a windfall in extra profits. Nonetheless, most exporters are not interested in speculating on foreign exchange fluctuations and prefer to avoid risks.

One of the simplest ways for a U.S. exporter to avoid this type of risk is to quote prices and require payment in U.S. dollars. Then the burden of exchanging currencies and risk are placed on the buyer. Exporters should also be aware if there are problems with currency convertibility. Not all currencies are freely or quickly converted into U.S. dollars. Fortunately, the U.S. dollar is widely accepted as an international trading currency, and American firms can often secure payment in dollars.

If the buyer asks to make payment in a foreign currency, the exporter should consult an international banker before negotiating the sales contract. Banks can offer advice on the foreign exchange risks that exist with a particular currency. Some international banks can also help hedge against such a risk, by agreeing to purchase the foreign currency at a fixed price in dollars, regardless of the currencies value at the time the customer pays. Banks will normally charge a fee or discount the transaction for this service. If this mechanism is used, the bank's fee should be included in the price quotation.

Payment Problems

In international trade, problems involving bad debts are more easily avoided than rectified after they occur. Credit checks and the other methods that have been discussed in this chapter can limit the risks. Nonetheless, just as in a company's domestic business, exporters occasionally encounter problems with buyers who default on their payment. When these problems occur in international trade, obtaining payment can be both difficult and expensive. Even when the exporter has insurance to cover commercial credit risks, a default by a buyer still requires the time, effort, and cost of the exporter to collect a payment. The exporter must exercise normal business prudence in exporting and exhaust all reasonable means of obtaining payment before an insurance claim is honored. Even then there is often a significant delay before the insurance payment is made.

The simplest (and least costly) solution to a payment problem is to contact and negotiate with the customer. With patience, understanding, and flexibility, an exporter can often resolve conflicts to the satisfaction of both sides.

This point is especially true when a simple misunderstanding or technical problem is to blame and there is no question of bad faith. Even though the exporter may be required to compromise on certain points - perhaps even on the price of the committed goods - the company may save a valuable customer and profit in the long run.

However, if negotiations fail and the sum involved is large enough to warrant the effort, a company should obtain the assistance and advice of its bank, legal counsel, and other qualified experts. Since arbitration is often faster and less costly, this step is preferable to legal action if both parties can agree to take their dispute to an arbitration agency. The International Chamber of Commerce handles the majority of international arbitration and is usually acceptable to foreign companies because it is not affiliated with any single country. For information contact the vice president for arbitration, U.S. Council of the International Chamber of Commerce, telephone 212-354-4480.

Figure 12 - Sample Draft Transmittal Letter

Figure 13 - Sample Confirmed Irrevocable Letter of Credit

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Methods of Payment

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Financing Export Transactions

Export financing is often a key factor in a successful sale. Contract negotiation and closure are important, but at the end of the day, your company must get paid.

Exporters naturally want to get paid as quickly as possible, while importers usually prefer to delay payment until they have received or resold the goods. Because of the intense competition for export markets, being able to offer attractive payment terms customary in the trade is often necessary to make a sale. Exporters should be aware of the many financing options open to them so that they choose the most acceptable one to both the buyer and the seller. In many cases, government assistance in export financing for small and medium-sized businesses can increase a firm's options. The following factors are important to consider in making decisions about financing:

- **The need for financing to make the sale.** In some cases, favorable payment terms make a product more competitive. If the competition offers better terms and has a similar product, a sale can be lost. In other cases, the buyer may have preference for buying from a particular exporter, but might buy your product because of shorter or more secure credit terms.

- **The length of time the product is being financed.** This determines how long the exporter will have to wait before payment is received and influences the choice of how the transaction is financed.

- **The cost of different methods of financing.** Interest rates and fees vary. Where an exporter can expect to assume some or all of the financing costs, their effect on price and profit should be well understood before a pro forma invoice is submitted to the buyer.

- **The risks associated with financing the transaction.** The riskier the transaction, the harder and more costly it will be to finance. The political and economic stability of the buyer's country can also be an issue. To provide financing for either accounts receivable or the production or purchase of the product for sale, the lender may require the most secure methods of payment, a letter of credit (possibly confirmed), or export credit insurance or guarantee.

- **The need for pre-shipment finance and for post-shipment working capital.** Production for an unusually large order, or for a surge of orders, may present unexpected and severe strains on the exporter's working capital. Even during normal periods, inadequate working capital may curb an exporter's growth. However, assistance is available through public and private sector resources discussed in this chapter.

For help in determining which financing options may be available or the most beneficial to your exporting endeavors, the following sources may be consulted:

- Your banker;
- Your local Department of Commerce Export Assistance Center (EAC);
- Your local Small Business Administration office;
- The Export-Import Bank in Washington, D.C. and selected cities; and
- Your state export promotion or export finance office.

Extending Credit to Foreign Buyers

Foreign buyers often press exporters for longer payment periods. While it is true that liberal financing is a means of enhancing export competitiveness, exporters need to weigh carefully the credit or financing they extend to foreign customers. Moreover, the extension of credit by the seller to the buyer is more common outside the United States. U.S. sellers who are reluctant to extend credit may face the possibility of the loss of the sale to their competitors.

A useful guide for determining the appropriate credit period is the normal commercial terms in the exporter's industry for internationally traded products. Buyers generally expect to receive the benefits of such terms. For off-the-shelf items like consumer goods, chemicals, and other raw materials, agricultural commodities, and spare parts and components, normal commercial terms raange with few exceptions from 30 to 180 days. (An allowance may have to be made for longer shipment times than are found in domestic trade, because foreign buyers are often unwilling to have the credit period start before receiving the goods.) Custom-made or high-value capital equipment, on the other hand, may warrant longer repayment periods. Once credit terms are extended to a buyer, they tend to be precedent for future sales, so the exporter should review with special care any credit terms extended to first-time buyers.

Exporters should follow the same careful credit principals they follow for domestic customers. An important reason for controlling the credit period is the cost incurred through use of working capital or through interest and fees. If the buyer is not responsible for paying these costs, then the exporter should factor them into the selling price. The exporter also should recognize that longer credit periods may increase any risk of default. (***Chapter 12*** described ways to minimize financial risk and still extend export credit abroad; some U.S. Government programs described in this chapter may be helpful as well.) Thus, the exporter must exercise judgement in balancing competitiveness against consideration of cost and safety.

Customers are frequently charged interest on credit periods of a year or longer but less frequently on short-term credit (up to 180 days). Most exporters absorb interest charges for short-term credit unless the customer pays after the due date.

Obtaining cash immediately is usually a high priority with exporters. Converting export receivables to cash at a discount with a bank is one way to do so. Another way is to expand working capital resources. A third approach, suitable when the purchase involves capital goods and the repayment period extends a year or longer, is to arrange for third-party financing. An example of this is a bank making a loan directly to the buyer for the product, with the exporter being paid immediately from the loan proceeds while the bank waits for payment and earns interest. A fourth possibility, when financing is difficult to obtain, is to engage in countertrade to afford the customer an opportunity to generate earnings with which to pay for the purchase (see ***Chapter 12***).

These options may involve the payment of interest, fees, or other costs by the exporter. Some options are more feasible when the amounts are in larger denominations. Exporters should also determine whether they incur financial liability should the buyer default.

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Commercial Banks

The same commercial bank facilities used to finance domestic activities, including revolving lines of credit for working capital, are often sought to finance export sales until payment is received. Banks do not regularly extend financing solely on the basis of an individual order as they prefer to establish an ongoing business relationship.

A logical first step for an exporter seeking to finance short-term export sales is to approach the local commercial bank with which it already does business. If the bank previously has extended credit to the exporter, the bank will be familiar with the exporter's financial standing, credit need, repayment record, and ability to perform. The bank may be willing to raise the overall limit on an existing working capital line of credit, expand its scope to cover export transactions, or approve a separate line specifically adapted to export-related transactions such as discounting.

Alternatively, the exporter may wish to approach a commercial bank with an international department. Such a bank will be familiar with export business and also be in a position to provide international banking services related to documentary collections and letters of credit, including the discounting of drafts. An intermediate approach is to retain a relationship with the exporter's bank, but seek a referral to a correspondent bank that has an international department.

The exporter should visit the bank's international department, to discuss export plans, available banking facilities, and applicable charges. The exporter may wish to inquire about such matters as: fees for amending or confirming a letter of credit; processing drafts; and about the bank's experience in working with U.S. Government agencies that offer export financing assistance. Generally, the bank's representative handing the exporter's account will not be lodged in the international department. It is in the exporter's best interest to create and foster a close working relationship with the international department.

The responsibility for repaying a working capital loan ordinarily rests with the exporter, even if the foreign buyer fails to pay. The bank takes this contingency into account in deciding on an export working capital line of credit. It is to the benefit of the bank and the exporter to improve the quality of the export receivables by using letters of credit (see ***Chapter 12***), by making use of credit insurance, or by using Export-Import Bank or Small Business Administration working capital guarantees.

An exporter shipping capital goods may want the commercial bank to make medium-term loans directly to the foreign buyer to finance the sale. Such loans are available for well-established foreign buyers in more stable markets, but where there is an element of risk, the bank may require a standby letter of credit, recourse on the exporter in case of default, or similar repayment reinforcement. The exporter should be knowledgeable about loans from his own bank with Export-Import Bank medium- and long-term export guarantee programs, assuming that the commercial bank is willing to utilize them.

Discounting and Banker's Acceptances

A time draft under an irrevocable letter of credit confirmed by a U.S. bank presents relatively little risk of default, so an exporter may be willing to hold such a draft until it matures. Unless the exporter has ample funds needed for other purposes, holding drafts will use up working capital.

As another course of action, the exporter's bank may be willing to buy, or lend against, time drafts from an exporter that a creditworthy foreign buyer has accepted or agreed to pay at a specified future date. This in effect converts the time draft into immediate cash. The amount received by the exporter is less than the face value of the draft. The difference, called a "discount," represents interest and fees that the bank charges for holding the draft until maturity. The bank may also require the exporter to reimburse the bank in case the draft is unpaid at the due date.

In a third instance, a commercial bank may undertake to accept the obligation of paying a draft for a fee; this is called a banker's acceptance. Banker's acceptances are usually in large denominations. Only a few well-known banks are accepted in the market as "prime-name" banks for purposes of creating banker's acceptances.

Other Private Sources

Factoring, Forfaiting, and Confirming

Factoring is the discounting of a foreign account receivable that does not involve a draft. The exporter transfers title to its foreign accounts receivable to a factoring house (an organization that specializes in the financing of accounts receivable) for cash at a discount from the face value. Although factoring is sometimes done without recourse to the exporter, the specific arrangements should be verified by the exporter. Factoring of foreign accounts receivable is less common than factoring of domestic receivables.

Forfaiting is the selling, at a discount, of longer term accounts receivable or promissory notes of the foreign buyer. These instruments may also carry the guarantee of the foreign government. Both U.S. and European forfaiting houses, which purchase the instruments at a discount from the exporter, are active in the U.S. market. Because forfaiting may be done either with or without recourse to the exporter, the specific arrangements should be verified by the exporter.

Confirming is a financial service in which an independent company confirms an export order in the seller's country and makes payment for the goods in the currency of that country. Among the items eligible for confirmation (and thereby eligible for credit terms) are the goods themselves; inland, air, and ocean transportation costs; forwarding fees; custom brokerage fees; and duties. For the exporter, confirming means that the entire export transaction from plant to end user can be fully coordinated and paid for over time. Although confirming is common in Europe, it is still in its infancy in the United States.

These three financing options are less frequently encountered and less widely available than commercial bank financing. Nevertheless, where offered locally, they help fill a financing gap for exporters.

Export Intermediaries

In addition to acting as export representatives, many export intermediaries, such as export trading companies (ETCs) and export management companies (EMCs), can help finance export sales (see ***Chapter 4***. Some of these companies may provide short-term financing or may simply purchase the goods to be exported directly from the manufacturer, thus eliminating any risks associated with the export transaction as well as the need for financing. Some of the larger companies may make countertrade arrangements that substitute for financing in some cases.

Buyers and Suppliers as Sources of Financing

Foreign buyers of capital goods may make down payments that reduce the need for financing from other sources. In addition, buyers may make progress payments as the goods are completed, which also reduce other financing requirements. Letters of credit that allow for progress payments upon inspection by the buyer's agent or receipt of a statement by the exporter that a certain percentage of the product has been completed are not uncommon.

In addition, suppliers may be willing to offer terms to the exporter if they are comfortable that they will receive payment. Suppliers may be willing to accept assignment of a part of the proceeds of a letter of credit or a partial transfer of a transferable letter of credit. However, some banks allow only a single transfer or assignment of a letter of credit. Therefore, the exporter should investigate the policy of the bank that will be advising or confirming the letter of credit.

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Government Assistance Programs

Several federal government agencies, as well as a number of state and local ones, offer programs to assist exporters with their financing needs. Some are guarantee programs that require the participation of an approved lender; others provide loans or grants to the exporter or a foreign government.

Government programs generally aim to improve exporters' access to credit rather than to subsidize the cost at below-market levels. With few exceptions, banks are allowed to charge market interest rates and fees including fees paid to the government agencies to cover the agencies' administrative costs and default risks.

Government guarantee and insurance programs are used by commercial banks to reduce the risk associated with loans to exporters. Lenders concerned with an exporter's ability to perform under the terms of sale, and with an exporter's ability to be paid, often use government programs to reduce the risks that would otherwise prevent them from providing financing. In other cases, lenders to a foreign buyer of U.S. goods and services are reluctant to provide the financing without support from a U.S. Government agency.

In overview, the Export-Import Bank (Ex-Im Bank) is the federal government's largest and most comprehensive trade finance agency, offering numerous programs to address a broad range of needs and small and medium-sized, as well as large, exporters. Credit insurance protects against default on exports sold under short-term credit. Other guarantee and loan programs extend medium- and long-term credit for durable goods.

Other agencies fill various market niches. The Small Business Administration (SBA) offers programs to address the needs of smaller exporters. The U.S. Department of Agriculture offers several medium- and long-term credit programs to foster agricultural exports. OPIC provides specialized assistance to U.S. firms through its performance bond and contractor insurance programs for U.S. investments abroad that also can be accessed by U.S. exporters. The Trade Development Administration provides grants for project planning activities conducted by U.S. firms and thereby seeks to give a U.S. imprint on project feasibility studies and design (see ***Chapter 5***). The Agency for International Development (AID) provides grants to developing nations that can be used to purchase U.S. goods and services (see ***Chapter 5***).

Although the Department of Commerce does not offer any financing programs of its own, export counseling is available through its extensive network of EACs (Export Assistance Centers). The following descriptions provide a basic overview of government financing programs.

The Export-Import Bank of the United States

The Export-Import Bank of the United States (Ex-Im Bank) is an independent U.S. Government agency with the primary purpose of facilitating the export of U.S. goods and services. Ex-Im Bank meets this objective by providing loans, guarantees, and insurance programs on market-related credit terms.

Ex-Im Bank's insurance and guarantee programs are structured to encourage private financial institutions to fund U.S. exports by reducing the commercial risks (such as buyer insolvency and failure to pay) and political risks (such as war and currency inconvertibility) of international trade that could lead to nonpayment of export receivables or debt. The financing made available under Ex-Im Bank's guarantees and insurance is on market terms, and most of the commercial and political risks are borne by Ex-Im Bank.

Ex-Im Bank's loan program, on the other hand, is structured to neutralize interest rate subsidies offered by foreign governments. By responding with its own loan assistance, Ex-Im Bank enables U.S. financing to be competitive on specific sales with that offered by foreign exporters.

Pre-export Financing

The Working Capital Guarantee Program enables lenders to provide financing an exporter needs to purchase or produce a product for export, as well as finance short-term accounts receivable. If the exporter defaults on a loan guaranteed under this program, Ex-Im Bank reimburses the lender for the guaranteed portion - generally, 90 percent of the loan - thereby reducing the lender's overall risk. The Working Capital Guarantee Program can be used either to support ongoing export sales or to meet a temporary cash flow demand arising from a single export transaction.

The loan principal can be up to 100 percent of the value of the collateral put up by the exporter, a relatively generous percentage. Eligible collateral includes foreign receivables, exportable inventory purchased with the proceeds of the loan, and goods in production. The term of the guaranteed line of credit is generally one year, but a longer period of renewals may be arranged.

Post-export Financing

Ex-Im Bank offers commercial and political risk insurance. Under the majority of policies, the insurance protects short-term credit extended for the sale of consumer goods, raw materials, commodities, spare parts, and other items normally sold on terms of up to 180 days. If the buyer fail to pay, Ex-Im Bank reimburses the exporter in accordance with the terms of the policy. Coverage is also available for some bulk commodities sold on 360-day terms and for capital and quasi-capital goods sold on terms of up to five years. Ex-Im Bank insurance is by far the largest federal program supporting short-term export credit.

Ex-Im Bank insurance policies for exporters include the Small Business Policy, Single-Buyer Policy, and Multi-Buyer Policy. Another policy, the Umbrella Policy enables an administrator to handle most administrative duties for a group of exporters. With prior written approval, an exporter can assign the rights to any proceeds to a lender as collateral for financing.

Ex-Im Bank's policies generally cover up to 100 percent of defaults due to specified political risks, such as war and expropriation, and up to 95 percent due to defaults arising from other commercial risks, such as buyer default and insolvency. Exporters generally must meet U.S. content requirements and, under some policies, must insure all eligible foreign sales.

Ex-Im Bank insurance premiums reflect various risk factors, including length of credit period, payment method, and the country of the buyer. In keeping with insurance principals, Ex-Im Bank seeks a reasonable spread of risk among the different export markets and avoids unduly concentrated credit exposure.

Several private companies also offer export credit insurance covering political and commercial risks. Private insurance is available for established exporters with a proven track record, often at competitive premium rates, although underwriting capacity in particular markets may be limited. Coverage for contract repudiation and wrongful calling of a bid or performance bond may also be available in the private market. Contact an insurance broker for more information.

Under a separate program, Ex-Im Bank offers its guarantee to encourage banks and other lenders to make export loans to creditworthy foreign buyers of U.S. goods and services. Ex-Im Bank's guarantee supports either medium-term financing (one to five years repayment after delivery or equipment installation) or long-term financing (in most cases, over five and up to ten years repayment) for heavy equipment and capital projects such as power plants, telecommunications systems, and transport facilities and equipment. Lenders charge the market rate for interest on the loan. A minimum 15 percent cash payment is required from the buyer; the remaining 85 percent is financed.

Ex-Im Bank's guarantee covers 100 percent of the political and commercial of default on the principal on loans. Coverage for the loan's interest is also provided. Ex-Im Bank guarantees loans made in U.S. dollars or any other freely convertible currency. Ex-Im Bank charges a fee for its guarantee depending on the risk it assumes and the duration of the credit.

Ex-Im Bank also extends medium- and long-term loans of its own as an alternative to its guarantees. Ex-Im Bank loans ate made on the same terms and conditions as guarantees, with the important difference that the bank sets the interest rate in accordance with international agreements. Often, an Ex-Im Bank guarantee results in an all-in cost that is lower than an Ex-Im Bank loan. In fiscal year 1996, $1.2 billion in loans and $6 billion in guarantees were approved by Ex-Im Bank.

Ex-Im Bank guarantees and loans, by law, must bear a reasonable assurance of repayment. To satisfy this requirement, Ex-Im Bank takes into consideration the financial soundness of the credit recipient and capacity to repay the export debt supported by Ex-Im Bank. In some cases, Ex-Im Bank may require credit enhancements such as a counter-guarantee by the government or by a creditworthy party. Under Ex-Im Bank's project loan program for major projects lacking a sovereign guarantee, the bank will help develop an appropriate project structure that offers the requisite reasonable assurance of repayment. For more information on Ex-Im Bank's programs, contact the Business Development Group, Export-Import Bank, 811 Vermont Avenue NW, Washington, DC 20571; telephone 202-565-EXIM, or your local Export Assistance Center. Ex-Im Bank also maintains a home page on the World Wide Web at http://www.exim.gov.

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Small Business Administration

The Small Business Administration (SBA) also provides financial assistance to U.S. exporters. SBA targets its assistance to small companies and strives to assist those businesses that otherwise might not be able to obtain trade financing. Applicants must qualify as small businesses under the SBA's size standards and meet other eligibility criteria.

Under SBA's Export Working Capital Program (EWCP), a business can obtain a loan of up to $833,333 from its bank with 90 percent of the loan amount (i.e., up to $750,000) guaranteed by SBA. These loans are available for many business purposes such as plant expansion, equipment purchase, etc., associated with carry out an export transaction. Interest rates are negotiated between the borrower and lender and may be fixed or variable, but are subject to SBA maximums. Depending on the size of the loan, the rate is generally no higher than the prime plus 2.75 percent, and the loan maturities are up to ten years for working capital and up to 25 years for fixed assets. The EWCP uses a one-page application form and streamlined documentation that usually provides a turnaround within ten days. A letter of prequalification is also available. SBA working capital guarantees are limited to $750,000, but larger loans can be financed through the Ex-Im Bank's working capital program.

Under its International Trade Loan program, SBA can guarantee up to $1.25 million in combined working capital and loans for facilities and equipment (including land and buildings; construction of new facilities; renovation, improvement, or expansion of existing facilities; and purchase or reconditioning of machinery, equipment, and fixtures). Applicants must establish either that loan proceeds will enable them to expand significantly existing export markets or develop new ones or that they have been adversely affected by import competition. Interest rates are negotiated with the lender and can be up to 2.25 percent above the prime rate.

Both the EWCP and the International Trade Loan programs are guarantee programs that require the participation of an eligible commercial bank. Most bankers are familiar with SBA's guarantee programs.

In addition to these export-oriented programs, SBA offers a variety of other loan programs that may meet specific needs of small businesses. For example, SBA's contractor bond program may help small exporters obtain bid or performance bonds if the transaction is structured in accordance with SBA requirements. SBA also has a Low Documentation loan program. This service provides loans of up to $100,000 with a minimum of paperwork. The SBA uses a one-page application and relies heavily upon the applicant's character and credit history. However, the borrower must first satisfy all of the lender's requirements. This loan is also obtained through a private lender.

For additional information on SBA's programs, contact the nearest Export Assistance Center, SBA field office, or call 800-U-ASK-SBA. SBA maintains a Web site at: http://www.sba.gov.

Department of Agriculture

The Commodity Credit Corporation (CCC) of the U.S. Department of Agriculture (USDA) provides several programs to assist in the financing of U.S. agricultural goods exports. Two long-established programs guarantee immediate-term irrevocable letters of credit opened by foreign banks and (often)confirmed by U.S. banks.

CCC's traditional export credit guarantee programs are known as GSM-102 (for General Sales Manager) and GSM-103. They are identical except that the permissible repayment period under GSM-102 is up to three years while the permissible repayment period under GSM-103 is up to ten years. GSM-102 is usually associated with grains, fibers, wood products, and similar commodities, while GSM-103 is generally associated with breeding livestock.

CCC periodically announces the availability of GSM-102 or GSM-103 programs through a press release. The announcements are for a specific country or group of countries, a specific dollar amount, and often list eligible agricultural commodities and name specific banks eligible to open the letter of credit. Exporters, foreign buyers, or banks may request CCC to make available its guarantee.

In accordance with the announcement, a U.S. exporter, who must be prequalified by CCC, concludes a firm sales agreement for eligible commodities with the foreign buyer. Arrangement is made for a letter of credit to be opened by an eligible foreign bank that provides for payment to the exporter or assignee within the permissible period of time. The exporter applies for CCC's guarantee which, if approved, covers 98 percent of the principal and part of the interest. The exporter then ships the commodities and obtains documentation to satisfy the letter of credit. The exporter may agree to await payment or, by prearrangement,to receive immediate funding by discounting drafts and assigning the proceeds from the letter of credit to the U.S. bank. The GSM-102 and GSM-103 programs are advantageous in providing longer than usual repayment terms for U.S. agricultural commodities and often a relatively low rate of interest because of the CCC guarantee.

In August 1996, the U.S. Department of Agriculture announced the establishment of a new CCC facility to finance imports: The Supplier Credit Guarantee Program It aims at promoting the export of higher value and value-added agricultural products and also responds to the demand for extending credit directly to a foreign buyer without going through a bank. CCC announces the availability of Supplier Export Credit Guarantees in a particular country or group of countries, following which exporters may apply for CCC's guarantee.

The Supplier Credit Guarantee Program differs from the GSM programs in several important ways:

- The risk of default rests with a foreign importer under the new program. By contrast, the default risk rests with a bank under the GSM programs.

- The guarantee covers only 50 percent of the credit principal and no interest under the new program. By contrast, the GSM programs cover 98 percent of principal and part of interest. CCC indicates the Supplier Credit Guarantee Program's greater risk sharing with the exporter allows CCC to forego a risk analysis of the importer under ordinary circumstances.

- Fees are higher under the new program.

- The repayment period is up to 180 days under the new program. By contrast, the GSM-102 program covers repayment terms of up to three years, and the GSM-103 program covers repayment of up to ten years.

Firms may obtain additional information on these financial programs by contacting the General Sales Manager, Export Credits, Foreign Agricultural Service, 14th Street and Independence Avenue, SW, Washington, DC 20250; telephone 202-720-3224. USDA maintains a Web site on its export credit programs at: http://www.fas.usda.gov/fasprograms.html.

Overseas Private Investment Corporation

The Overseas Private Investment Corporation (OPIC) is a federal agency that facilitates U.S. foreign direct investment in developing nations and emerging market economies. OPIC is an independent, financially self-supporting corporation, fully owned by the U.S. government.

OPIC encourages U.S. investment projects overseas by offering political risk insurance, all-risk guarantees, and direct loans. OPIC political risk insurance protects U.S. investment ventures abroad against the risks of civil strife and other violence, expropriation, and inconvertibility of currency. In addition, OPIC can cover business income loss due to political violence or expropriation. Insurance is available up to $200 million per investment, and both debt and equity is eligible for coverage.

OPIC also provides guarantees, limited to $50 million, that protect against both commercial and political risk. Guarantees are available up to $200 million, but cover only debt financing related to the investment. (Guarantees and insurance can be combined for aggregate OPIC support of $400 million.) OPIC extends direct loans that are aimed exclusively toward U.S. small and medium-sized companies investing in projects overseas. OPIC direct loans do not exceed $30 million.

U.S. exporters often can benefit from the construction and equipping of new facilities financed by OPIC, although the recipients of OPIC transactions are U.S. investors. However, U.S. exporters and contractors operating abroad can benefit directly from an OPIC program covering wrongful calling of performance, bid, and down payment bonds and contract repudiation. Under another program, OPIC ensures against expropriation of construction equipment temporarily located abroad, spare parts warehoused abroad, and some cross-border operating and capital loans.

OPIC also provides services to facilitate wider participation by smaller U.S. businesses in overseas investment, including investment missions, a computerized data bank, and investor information services. For more information on any of these programs contact OPIC's InfoLine for program information on 202-336-8799 or FactsLine on 202-336-8700. OPIC maintains a Web site at http://www.opic.gov.

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Multilateral Development Banks

The Multilateral Development Banks (MDBs) are international financial institutuins owned by member governments. Their individual and collective objective is to promote economic and social progress in their developing member countries. The MDBs (African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, and the World Bank Group) achieve this objective by providing loans, technical cooperation, grants, capital investment, and other types of assistance to governments, government agencies, and other entities in their developing member countries. The practical expression of MDB support usually takes the form of a project or study.

Increasingly, the MDBs are providing funding to private sector entities for private projects in developing countries. A growing number of companies and project developers around the world are taking advantage of this funding, which is secured based on the financial, economic, and social viability of the projects in question.

The MDBs have been traditionally been heavily involved in infrastructure and poverty-alleviation projects. All of the banks support projects in the following sectors: agriculture, energy, environment, finance, industry, transportation, telecommunications, health, education, urban development, tourism, microenterprise, and public sector, as well as other types of economic reform. All of the banks provide some funding for private ventures.

The design and execution of MDB-financed public sector projects affords lucrative business opportunities for suppliers, consultants, and contractors from MDB member countries. Many of the goods and services required for these projects are procured or purchased through International Competitive Bidding (ICP) or open tendering. These methods require notification to the international community that a contract is being let; the notification is to provide potential bidders with timely and adequate notification of a purchaser's requirements and an equal opportunity to bid.

The MDBs also provide debt, equity, and guarantee financing to eligible private ventures in developing countries. These funds, offered on commercial terms, can be accessed directly by private project sponsors and do not require a government guarantee.

The U.S. Government organization responsible for assisting American businesses pursue MDB opportunities is the Multilateral Development Bank Operations (MDBO) office within the U.S. Department of Commerce's International Trade Administration.

The MDB Counseling Center is the Commerce Department's centralized repository of electronic and hard copy information on MDBs. In addition to basic brochures provided by each of the MDBs, the Counseling Center supplies specific project information and "how to" guides written by MDBO and commercial liaison staff. Additionally, the Counseling Center provides electronic access to MDB information via the Commerce Department's National Trade Data Bank (NTDB). There is a section on the NTDB devoted exclusively to the MDBs, which includes the *Monthly Operational Summary* for each bank. Electronic access to MDB information is also available through MDB's home page, which can be found at http://sites.usatrade.gov/mdbo/. The MDBO home page is linked to the home pages of the various banks. For more information, contact: U.S. Department of Commerce, International Trade Administration, Multilateral Development Banks Operations, 14th Street and Constitution Avenue, NW, Room H-1107, Washington, D.C. 20230; telephone: 202-482-3399, fax: 202-273-0927.

State and Local Export Finance Programs

Several cities and states have funded and operate export financing programs, including preshipment and postshipment working capital loans and guarantees, accounts receivable financing, and export insurance. To be eligible for these programs, an export sale must generally be made under a letter of credit or with credit insurance coverage. A certain percentage of state or local content may also be required. However, some programs may require only that certain facilities, such as a state or local port, be used; therefore, exporters may have several options.

As exporters have several options for financing, they should contact a Department of Commerce EAC (Export Assistance Center) or their state economic development agency for more information.

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Business Travel Abroad

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It is highly recommended that company officials visit the countries to examine the markets where they are considering selling their products before any transaction occurs. As discussed in ***Chapter 2***, many foreign markets can differ greatly from the United States and by visiting a country, a company can familiarize itself with cultural nuances which may impact the design, packaging or advertising of the product. Moreover, traveling abroad allows one to locate and cultivate new customers, as well as improve relationships and communication with current foreign representatives and associates. As in the United States, clients and customers prefer to conduct business in person before concluding a transaction.

Typically, a successful business trip requires months of planning. This chapter focuses on the many steps required before traveling abroad and offers recommendations that will make the trip more successful.

Proper Documentation

All overseas travelers are required to have proper documentation before leaving the United States. Businesspersons are required to have a current U.S. passport, visas from certain host countries and, in some instances, vaccination records. If the company is bringing a product for demonstration or sample purposes, then an **ATA carnet** may also be required. Businesses should allow six to eight weeks to acquire all of these documents.

Carnets: The ATA (Admission Temporaire) Carnet The ATA Carnet is a standardized international customs document used to obtain duty-free temporary admission of certain goods into the countries that are signatories to the ATA Convention. Under the ATA Convention, commercial and professional travelers may take: commercial samples; tools of the trade; advertising material; and cinematographic, audiovisual, medical, scientific, or other professional equipment into member countries temporarily without paying customs duties and taxes or posting a bond at the border of each country to be visited.

The traveler should contact the U.S. Council for International Business to determine if the country to be visited is a member of the ATA Convention. The U.S. Council for International Business will answer questions regarding ATA Carnets and assist U.S. companies with the application. A fee is charged, depending on the value of the goods to be covered. A bond, letter of credit, or bank guaranty of 40 percent of the value of the goods is also required to cover duties and taxes that would be due if goods imported into a foreign country by carnet were not reexported and the duties were not paid by the carnet holder. Carnets are generally valid for 12 months. To receive an application or to ask questions, contact the U.S. Council for International Business, 1212 Avenue of the Americas, New York, NY 10036; telephone 212-354-4480.

Passports: A valid U.S. passport is required for all travel outside the United States and Canada. Passports may be obtained through passport agencies, certain local post offices, and U.S. district courts. Application may be made in person or by mail. A separate passport is needed for each individual who will be traveling. Applicants must provide proof of citizenship, proof of identity, two identical passport photos, a completed application form, and the appropriate fees. The cost is $65 per passport ($40 for travelers under 18). The usual processing time for a passport (including time in the mail) is three weeks, but travelers should apply as early as possible, particularly if time is needed to obtain visas, international drivers licenses, or other documents. Emergency situations can be expedited within two weeks for an additional $30 and proof of the need for the service. REMINDER: If you have a current passport, make sure that it remains valid for the entire duration of the trip. some countries require that the passport has a validity period of up to one year after travel to the country.

Information is available from the nearest local passport office or by calling the Office of Passport Services in Washington, D.C. (202-647-0518). Individuals can obtain a nationwide listing of government offices which have passport applications or they can download a printable application from the U.S. Department of State homepage at http://travel.state.gov.

Visas: Visas are required by many countries and cannot be obtained through the Office of Passport Services. They are provided by the foreign country's embassy or consulate in the United States for a small fee. The traveler must have a current U.S. passport to obtain a visa; many cases, a recent photo is required. The traveler should allow several weeks to obtain visas, especially if traveling to developing nations. It is important to note that some foreign countries require visas for business travel but not tourist travel. Therefore, when company representatives request visas from a consulate or embassy, they should notify the authorities that they will be conducting business. Business people should check visa requirements each time they travel to a ccountry because regulations change periodically. Contact an Export Assistance Center to learn about documentation requirements for the countries where you will be traveling.

Vaccinations: Requirements for vaccinations differ by country. While there may not be any restrictions on direct travel to and from the United States, there may be restrictions if individuals travel indirectly, by stopping over in one country before reaching their final destination. Vaccinations against typhus, typhoid, and other diseases are advisable even though they are not required. The Center for Disease Control (CDC) maintains a fax-back system and a homepage to advise travelers of current and accurate country and region conditions. To receive a document dial 888-232-3299 and follow the prompts. The CDC internet address is http://www.cdc.gov.

Foreign Customs: Since foreign customs regulations vary widely with each country, travelers are advised to learn in advance the regulations that apply to each country that will be visited. If allowances for cigarettes, liquor, currency, and certain other items, are not taken into account, they can be impounded at national borders. Business travelers that plan to carry product samples with them may be required to pay import duties. In some countries, duties and extensive customs procedures on sample products may be avoided by obtaining an ATA Carnet.

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Planning an Itinerary

Travel Agents: Travel agents can arrange transportation and hotel reservations quickly and efficiently. They can also help plan the itinerary, obtain the best travel rates, explain which countries require visas, advise on hotel rates and locations, and provide other valuable services. Since travel agents' fees are paid by the hotels, airlines, and other carriers, this assistance and expertise may be free to the traveler.

A well-planned itinerary enables a traveler to make the best possible use of time abroad. Although it is expensive to travel and a businessperson's time is valuable, an overloaded schedule can be counterproductive. Two or three definite appointments, confirmed well in advance and spaced comfortably throughout a day, are more productive and enjoyable than a crowded agenda that forces the businessperson to rush from one meeting to the next before business is really concluded. If possible, an extra rest day to deal with jet lag should be planned before scheduled business appointments. The following travel tips should be kept in mind:

- The travel plans should reflect goals and priorities.
- Obtaining names of possible contacts, arranging appointments, and checking transportation schedules should be accomplished before the trip begins. The most important meetings should be confirmed before leaving the United States. The Department of Commerce can offer assistance through programs such as the Gold Key Service. Refer to ***Chapter 13*** for additional information.
- As a general rule, the businessperson should keep the schedule flexible enough to allow for both unexpected problems (such as transportation delays) and unexpected opportunities. For instance, accepting an unscheduled luncheon invitation from a prospective client should not make it necessary to miss the next scheduled meeting.
- The traveler should confirm the normal work days and business hours in the countries being visited. In many Middle Eastern regions, for instance, the work week typically runs from Saturday to Thursday. Moreover, lunch hours of two to four hours are customary in many countries.
- Foreign holidays should also be taken into consideration. The Department of Commerce's *Business America* magazine annually publishes a list of holidays observed in countries around the world. Information from this useful schedule,

entitled "World Commercial Holidays," can be obtained by contacting the local Export Assistance Center.

- The U.S. traveler should also contact an Export Assistance Center to learn of any travel advisories issued by the U.S. Department of State for countries to be visited. Advisories alert travelers to potentially dangerous in-country situations. The Department of State also maintains a telephone service for recorded travel advisories: 202-647-5225.

- The U.S. business person should be aware that travel from one country to another may be restricted.

Check List for Business Meetings and Travel Abroad

- **Schedule meetings before leaving the United States** - Businesses should determine if an interpreter is required and make all necessary arrangements prior to arriving. REMINDER: Business language is generally more technical than the conversational speech with which many travelers are familiar and mistakes can be costly.

- **Prepare new business cards in proper languages** - In most countries, exchanging business cards at any first meeting is considered a basic part of good business manners. As a matter of courtesy, it is best to carry business cards printed both in English and in the language of the country being visited. Some international airlines can arrange this service.

- **Prepare for adverse weather conditions** - Seasonal weather conditions in the countries being visited are likely to be different than the United States.

- **Address health care issues** - Plan appropriately for prescription drugs, health insurance, vaccinations, diet, and other matters.

- **Electrical current** - A transformer and/or plug adapter may be needed to demonstrate company products and to use personal electrical appliances.

- **Money** - U.S. banks will be able to provide a list of ATMs overseas, exchange rates, and traveler checks.

- **Transportation** - Companies should prepare for any travel in-country via public or private transportation.

- **Communication** - Individuals should leave phone and fax numbers and an itinerary with proper company officials in case of an emergency.
- **Culture** - Individuals should familiarize themselves with basic cultural traits such as hand signals, street signs, and basic courtesy such as tipping.
- **Foreign goods** - Individuals should be aware of U.S. Customs regulations on what can be brought into the United States.

Assistance from U.S. Embassies and Consulates

Commercial and economic officers in U.S. embassies and consulates abroad provide assistance to U.S. exporters through in-depth briefings and by arranging introductions to appropriate firms, individuals, or foreign government officials. Because of the value and low cost of these services, it is recommended that the exporter contact the local Export Assistance Center before traveling to a foreign country.

When planning a trip, business travelers can discuss their needs and the services available at particular embassies with the staff of the local Export Assistance Center. The business traveler will also find it useful to read the appropriate Country Commercial Guide provided by the Department of Commerce. Additionally, it is advisable to write directly to the U.S. embassy or consulate in the countries to be visited at least two weeks before leaving the United States and to address any communication to the commercial section. The U.S. business traveler should identify his or her business affiliation and complete address and indicate the objective of the trip and the type of assistance required from the post.

Also, a description of the firm and the extent of its international experience would be helpful to the post. Addresses of U.S. embassies and consulates are provided in *Key Officers of Foreign Service Posts*, a publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9371; telephone 202-512-1800. The cost for this publication is $5 for one year, and it is issued three times per year.

Cultural Factors

Business executives who hope to profit from their travel should learn about the history, culture, and customs of the countries they wish to visit. Flexibility and cultural adaptation should be the guiding principles for traveling abroad on business. Business manners and methods, religious customs, dietary practices, humor, and acceptable dress vary widely from country to country. It is recommended that business travelers prepare for country visits by reading travel guides, which are located in the travel sections of most libraries and bookstores.

Some of the cultural distinctions that U.S. firms most often face include differences in business styles, attitudes toward development of business relationships, attitudes toward punctuality, negotiating styles, gift-giving customs, greetings, significance of gestures, meanings of colors and numbers, and customs regarding titles. For example, consider the following:

- The head is considered sacred in Thailand so never touch the head of a Thai or pass an object over it.
- The number 7 is considered bad luck in Kenya and good luck in the Czech Republic, and it has magical connotations in Benin. The number 10 is bad luck in Korea, and 4 means death in Japan.
- In Bulgaria a nod means no, and shaking the head from side to side means yes.
- The "okay" sign commonly used in the United States (thumb and index finger forming a circle and the other fingers raised) means zero in France, is a symbol for money in Japan, and carries a vulgar connotation in Brazil.
- The use of a palm-up hand and moving index finger signals "come here" in the United States and in some other countries, but it is considered vulgar in others.

Understanding and heeding cultural variables such as these are critical to success in international business. Lack of familiarity with the business practices, social customs, and etiquette of a country can weaken a company's position in the market, prevent it from accomplishing its objectives, and ultimately lead to failure.

American firms must pay close attention to different styles of doing business and the degree of importance placed on developing business relationships. In some countries, businesspeople have a very direct style, while in others they are much more subtle in style and value the personal relationship more than most Americans do in business. For example, in the Middle East, engaging in small talk before engaging in business is standard practice.

Attitudes toward punctuality vary greatly from one culture to another and, if misunderstood, can cause confusion and misunderstanding. Romanians, Japanese, and Germans are very punctual, whereas people in many of the Latin countries have a more relaxed attitude toward time. The Japanese consider it rude to be late for a business meeting, but acceptable, even fashionable, to be late for a social occasion. In

Guatemala, on the other hand, one might arrive any time from ten minutes early to 45 minutes late for a luncheon appointment.

When cultural lines are being crossed, something as simple as a greeting can be misunderstood. Traditional greetings may be a handshake, a hug, a nose rub, a kiss, placing the hands in praying position, or various other gestures. Lack of awareness concerning the country's accepted form of greeting can also lead to awkward encounters.

People around the world use body movements and gestures to convey specific messages. A misunderstanding over gestures is a common occurrence in intercultural communication, and misinterpretation along these lines can lead to business complications and social embarrassment.

Proper use of names and titles is often a source of confusion in international business relations. In many countries (including the United Kingdom, France, and Denmark) it is appropriate to use titles until use of first names is suggested. First names are seldom used when doing business in Germany. Visiting business people should use the surname preceded by the title. Titles such as "Herr Direktor" are sometimes used to indicate prestige, status, and rank. Thais, on the other hand, address one other by first names and reserve last names for very formal occasions and written communications. In Belgium it is important to address French-speaking business contacts as "Monsieur" or "Madame," while Flemish-speaking contacts should be addressed as "Mr." or "Mrs." To confuse the two is a great insult.

It is also important to understand the customs concerning gift giving. In some cultures, gifts are expected and failure to present them is considered an insult, whereas in other countries offering a gift is considered offensive. Business executives also need to know when to present gifts - on the initial visit or afterwards; where to present gifts - in public or private; what type of gift to present; what color it should be; and how many to present.

Gift giving is an important part of doing business in Japan, where gifts are usually exchanged at the first meeting. In sharp contrast, gifts are rarely exchanged in Germany and are usually not appropriate. Gift giving is not a normal custom in Belgium or the United Kingdom either, although in both countries, flowers are a suitable gift when invited to someone's home.

Customs concerning the exchange of business cards also vary. Although this point seems of minor importance, observing a country's customs for card giving is a key part of business protocol. In Japan, for example, the Western practice of accepting a business card and pocketing it immediately is considered rude. The proper approach is to carefully look at the card after accepting it, observe the title and organization, acknowledge with a nod that the information has been digested, and perhaps make a relevant comment or ask a polite question.

Negotiating is a complex process even between parties from the same nation. It is even more complicated in international transactions because of the potential misunderstandings that stem from cultural differences. It is essential to understand the importance of rank in the other country, to know who the decisionmakers are, to be familiar with the business style of the foreign company, and to understand the nature of agreements in the country, the significance of gestures, and negotiating etiquette.

As illustrated in the examples, it is very important to have a working knowledge of the business culture, management attitudes, business methods, and consumer habits before traveling abroad. This can be accomplished through research or training and is very likely to have a positive impact on overseas travel.

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Selling Overseas

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Many successful exporters first started selling internationally by responding to an inquiry from a foreign firm. Thousands of U.S. firms receive such requests annually, but most firms do not become successful exporters. Generally, successful firms: properly respond to inquiries; conduct research on foreign customers; differentiate between domestic and international sales; build positive relationships with partners.

Responding to Inquiries

Most but not all, foreign letters of inquiry are in English. A firm may look to certain service providers (such as banks or freight forwarders) for assistance in translating a letter of inquiry in a foreign language. Colleges and universities are also an excellent source for translation. Most large cities have commercial translators who are hired on a fee-basis.

Typically, a foreign firm will request product specifications, information, and price. Some inquiries will come directly from the end user, while other inquiries will come from distributors and agents who wish to sell the product in their market. A few foreign firms may already be familiar with the product and wish to immediately place an order.

Regardless of the form such inquiries take, a firm should establish a policy to deal with them. Here are a few suggestions:

- Expect some inquiries to have grammatical or typographical errors, which may result from the writer knowing English only as a second language. Secondly, printing standards differ outside the U.S. so do not consider the quality of the stationery as an indication of the wealth of the company. Despite first impressions, the inquiry may be from a reputable, well-established firm.

- Reply promptly, completely, and clearly. The correspondent naturally wants to know something about the U.S. firm before a transaction takes place. The letter should introduce the firm sufficiently and establish it as a reliable supplier. The reply should provide a short, but adequate introduction to the firm, including bank references and other sources that confirm reliability. The firm's policy on exports should be stated, including cost, terms, and delivery. The firm may wish to respond with a pro forma invoice (see ***Chapter 11***).

- Enclose information on the firm's goods or services.

- Send the reply airmail. Surface mail can take weeks or even months, whereas airmail usually takes only days. If a foreign firm's letter shows both a street address and a post office box, write to the post office box. In countries where mail delivery is unreliable, many firms prefer to have mail sent to the post office box.

- If the company needs to meet a deadline, send the information via fax. Unlike telephone communications, fax may be used effectively despite differences in time zones and languages.

- Set up a file for foreign letters. They may turn into definite prospects as export business grows. If the firm has an intermediary handling exports, the intermediary may use the file.

Learning about Potential Clients

There are many ways for a U.S. firm to research a foreign company before conducting any formal business. A U.S. company can save time and money by conducting basic research. These methods include:

- ***Business Libraries.*** Several private sector publications list and qualify international firms. There are also many regional and country directories.

- ***International banks.*** Bankers have access to vast amounts of information on foreign firms and are usually very willing to assist corporate customers.

- ***Foreign embassies.*** Foreign embassies are located in Washington, D.C. and some have consulates in other major cities. The commercial (business) sections of most foreign embassies have directories of firms located in their countries.

- ***Sources of credit information.*** Credit reports on foreign companies are available from many private sector sources and the U.S. Foreign Commercial Service For help in identifying sources of credit reports,, contact the nearest Export Assistance Center.

Business Practices in International Selling

Companies should be aware of basic business practices that are paramount to successful international selling. Because cultures vary, there is no single code by which to conduct business. These practices transcend culture barriers and will help the U.S.

company conduct business overseas.

- Keep promises. The biggest complaint from foreign importers about U.S. suppliers is failure to ship as promised. A first order is particularly important because it shapes the customer's image of a firm as a dependable or an undependable supplier.

- Be polite, courteous, and friendly. However, it is important to avoid undue familiarity or slang. Some overseas firms feel that the usual brief U.S. business letter is lacking in courtesy.

- Personally sign all letters. Form letters are not satisfactory.

Building a Working Relationship

Once a relationship has been established with an overseas customer, representative, or distributor, it is important that the exporter work on building and maintaining that relationship. Common courtesy should dictate business activity. By following the points outlined in this chapter, a U.S. firm can present itself well. Beyond these points, the exporter should keep in mind that a foreign contact should be treated and served as well as a domestic contact. For example, the U.S. company should keep customers and contacts notified of all changes, including price, personnel, address, and phone numbers.

Because of distance, a contact can "age" quickly and cease to be useful unless communication is maintained. For many companies, monthly or quarterly visits should be made to customers or distributors. This commitment to the business relationship, although not absolutely necessary, ensures that both the company and the product maintain high visibility in the marketplace. If the U.S. exporting firm cannot afford such frequent travel, it may use fax, e-mail, and telephone to keep the working relationship active and up to date.

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After-sales Service

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Quality, price, and service are three factors are critical to the success of any export sales effort. Quality and price are addressed in earlier chapters. Service, which is addressed here, should be an integral part of any company's export strategy from the start. Properly handled, service can be a foundation for growth. Ignored or left to chance, it can cause an export effort to fail.

Service is the prompt delivery of the product. It is courteous sales personnel. It is a user or service manual manual modified to meet your customer's needs. It is ready access to a service facility. It is knowledgeable, cost-effective maintenance, repair, or replacement. Service is location. Service is dealer support.

Service varies by the product type, the quality of the product, the price of the product, and the distribution channel employed. For export products that require no service - such as food products, some consumer goods, and commercial disposables - the issue is resolved once distribution channels, quality criteria, and return policies have been identified.

On the other hand, the characteristics of consumer durables and some consumables demand that service be available. For such products, service is a feature expected by the consumer. In fact, foreign buyers of industrial goods typically place service at the forefront of the criteria they evaluate when making a purchase decision.

All foreign markets are sophisticated, and each has its own expectations of suppliers and vendors. U.S. manufacturers or distributors must therefore ensure that their service performance is comparable to that of the predominant competitors in the market. This level of performance is an important determinant in ensuring a reasonable competitive position, given the other factors of product quality, price, promotion, and delivery.

An exporting firm's strategy and market entry decision may dictate that it does not provide after-sale service. It may determine that its export objective is the single or multiple opportunistic entry into export markets. Although this approach may work in the short term, subsequent product offerings will be less successful as buyers recall the failure to provide expected levels of service. As a result, market development and sales expenditures may result in one-time sales.

Service Delivery Options

Service is an important factor in the initial export sale and ongoing success of products in foreign markets. U.S. firms have many options for the delivery of service to foreign buyers.

A high-cost option - and the most inconvenient for the foreign retail, wholesale, commercial, or industrial buyer - is for the product to be returned to the manufacturing or distribution facility in the United States for service or repair. The buyer incurs a high cost and loses the use of the product for an extended period, while the seller must incur the export cost of the same product a second time to return it. Fortunately, there are practical, cost-effective alternatives to this approach.

If the selected export distribution channel is a joint venture or other partnership arrangement, the overseas partner may have a service or repair capability in the markets to be penetrated. An exporting firm's negotiations and agreements with its partner should include explicit provisions for repairs, maintenance, and warranty service. The cost of providing this service should be negotiated into the agreement.

For goods sold at retail outlets, a preferred service option is to identify and use local service facilities. Though this requires up-front expenses to identify and train local service outlets, the costs are more than repaid in the long run.

For example, a leading Canadian manufacturer of consumer personal care items uses U.S. distributors and sales representatives to generate purchases by large and small retailers across the United States. The products are purchased at retail by individual consumers. The Canadian firm contracted with local consumer electronic repair facilities in leading U.S. cities to provide service or replacement for its product line. Consequently, the manufacturer can include a certificate with each product listing "authorized" local warranty and service centers.

There are administrative, training, and supervisory overhead costs associated with such a warranty and service program. The benefit, however, is that the company is now perceived to be a local company that competes on equal footing with domestic U.S. manufacturers. U.S. exporters should keep this example in mind when entering foreign markets.

Exporting a product into commercial or industrial markets may dictate a different approach. For the many U.S. companies that sell through distributors, selection of a representative to serve a region, a nation, or a market should be based not only on the distributing company's ability to sell effectively but also on its ability and willingness to service the product.

Assessing that ability to service requires that the exporter ask questions about existing service facilities; about the types, models, and age of existing service equipment; about training practices for service personnel; and about the firm's experience in servicing similar products.

If the product being exported is to be sold directly to end users, service and timely performance are critical to success. The nature of the product may require delivery of on-site service to the buyer within very specific time parameters. These are negotiable issues for which the U.S. exporter must be prepared. Such on-site service may be available from service organizations in the buyer's country; or the exporting company may have to send personnel to the site to provide service. The sales contract should anticipate a reasonable level of on-site service and should include the associated costs. Existing performance and service history can serve as a guide for estimating service and warranty requirements on export sales, and sales can be costed accordingly. This practice is accepted by small and large exporters alike.

At some level of export activity, it may become cost-effective for a U.S. company to establish its own branch or subsidiary operation in the foreign market. The branch or subsidiary may be a one-person operation or a more extensive facility staffed with sales, administration, service, and other personnel, most of whom are local nationals in the market. This high-cost option enables the exporter to ensure sales and service quality, provided that personnel are trained in sales, products, and service on an ongoing basis. The benefits of this option include the control it gives to the exporter and the ability to serve multiple markets in a single region.

Manufacturers of similar or related products may find it cost-effective to consolidate service, training, and support in each export market. Service can be delivered by U.S.-based personnel, a foreign facility under contract, or a jointly owned foreign-based service facility. Despite its cost benefits, this option raises a number of issues. Such joint activity may be interpreted as being in restraint of trade or otherwise market controlling or monopolistic. Exporters that are considering it should therefore obtain competent legal counsel when developing this joint operating arrangement. Exporters may wish to consider obtaining an export trade certificate of review, which provides limited immunity from U.S. antitrust laws.

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Legal Considerations

Service is a very important part of many types of representation agreements. For better or worse, the quality of service in a country or region affects the U.S. manufacturer's reputation there.

Quality of service also affects the intellectual property rights of the manufacturer. A trademark is a mark of source, with associated quality and performance. If quality control is not maintained, the manufacturer can lose its rights to the product, because one can argue that, within that foreign market, the manufacturer has abandoned the trademark to the distributor.

It is, therefore, imperative that agreements with a representative be specific about the form of the repair or service facility, the number of people on the staff, inspection provisions, training programs, and payment of costs associated with maintaining a suitable facility. The depth or breadth of a warranty in a given country or region should be tied to the service facility to which the manufacturer has access in that market. It is important to promise only what can be delivered.

Another part of the representative agreement may detail the training the exporter will provide to its foreign representative. This detail can include frequency of training, who must be trained, where the training is provided, and which party absorbs travel and per diem costs.

New Sales Opportunities and Improved Customer Relations

Foreign buyers of U.S.-manufactured products typically have limited contact with the manufacturer or its personnel. The foreign service facility is, in fact, one of the major contact points between the exporter and the buyer. To a great extent, the U.S. manufacturer's reputation is made by the overseas service facility.

The service experience can be a positive and reinforcing sales and service encounter. It can also be an excellent sales opportunity if the service personnel are trained to take advantage of the situation. Service personnel can help the customer make life cycle decisions regarding the efficient operation of the product, how to update it for more and longer cost-effective operation, and when to replace it as the task expands or changes. Each service contact is an opportunity to educate the customer and expand the exporter's sales opportunities.

Service is also an important aspect of selling solutions and benefits rather than product features. More than one leading U.S. industrial products exporter sells its products as a "tool to do the job" rather than as a "truck" or a "cutting machine" or "software." Service capability enables customers to complete their jobs more efficiently with the exporter's "tool." Training service managers and personnel in this type of thinking vitalizes service facilities and generates new sales opportunities.

Each foreign market offers a unique opportunity for the U.S. exporter. Care and attention to the development of in-country sales and distribution capabilities is paramount. Delivery of after-sales service is critical to the near- and long-term success of the U.S. company's efforts in any market.

Senior personnel should commit to a program of regular travel to each foreign market to meet with the company's representatives, clients, and others who are important to the success of the firm in that market. Among those persons would be the commercial officer at the Commercial Service's post and representatives of the American Chamber of Commerce and the local chamber of commerce or business association.

The benefits of such a program are twofold. First, executive management learns more about the foreign marketplace and the firm's capabilities. Second, the in-country representative appreciates the attention and understands the importance of the foreign market in the exporter's long-term plans. As a result, such visits help build a strong, productive relationship.

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