



*Excellence in Export Education.*

# ***Trade Regulations & Legal Issues***

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# ***Export 101 Agenda***

**1. Getting Ready to Export**

**2. Developing Customer Relationships**

**3. Building a Global Infrastructure**

**4. International Logistics**

**5. Managing Payments & Financing**

**6. *Trade Regulations & Legal Issues***



# ***Trade Regulations & Legal Issues***

***This section is designed provide you with an overview of the legal issues and regulations that affect exporting.***

- This section will:
  - Make you aware of the legal and regulatory issues you have to consider in order to be a successful exporter
- Following this section, you will be better positioned to:
  - Identify and manage legal and regulatory risks in international trade



# ***Trade Regulations and Legal Issues***

## ***Agenda***

- 1. Export Legal Risks and Exposures**
- 2. Export Sales Quotes & Contracts**
- 3. Distribution Network Legal Issues**
- 4. EEI Filing Requirements**
- 5. U.S. Export Regulations**
- 6. Foreign Regulations & Trade Barriers**





# ***Export Legal Risks and Exposures***

## **External Legal Factors**

- Different Legal Environments
- Different Legal Cultures
- Different Legal Behaviors

## **Government and Political Risk**

- Currency Fluctuations
- Political Instability
- Regulatory Environment



# ***Export Sales Quotes***

***The Pro Forma Invoice is used when buyers request quotes.***

- Results from a buyer's request for a quote
- Quotation is prepared in an invoice format
- Used for terms of sale purposes only
- Legally is an offer to sell with terms
- Requirements exist
  - Statement that the invoice is “good and correct”
  - Statement of country of origin
  - Clear indication that invoice is “pro forma”
  - Include product, price, delivery and payment terms



# ***Export Sales Contracts***

***Export sales contracts cover individual export shipments.***

- Equivalent to a bill of sale
- Minimum terms
  - Writing
  - Payment (including L/C terms if payment by L/C)
  - Detailed goods description, quality and quantity
  - Delivery method (e.g. INCOTERMS) and date
  - Warranties (express-disclaim all implied warranties)
  - Service/returns procedures
  - Governing law (recommend U.S. jurisdiction)



# ***Export Distribution Network Legal Considerations***

***There are legal considerations to review for the distribution network choices.***

- Direct Exporter
  - Sales to a direct exporter are domestic sales
  - Direct exporter is the exporter of record
  - Direct exporter bears export legal risks
- Foreign Sales Representative
  - Agent who does not take title to goods
  - Contractual express grant of authority – be precise
  - Exclusivity options
  - Foreign regulatory issues – term/termination
  - U.S. export compliance ultimate purchaser issues



# ***Export Distribution Network Legal Considerations***

- Foreign Distributor
  - Independent contractor who takes title to goods
  - Export sales contract
  - Foreign distribution contract
  - Exclusivity options
  - Foreign regulatory issues – term/termination/inventory
  - U.S. export compliance issues
- Foreign Sales Office/Branch
  - Foreign regulatory employee issues
  - Foreign regulatory approvals
  - Foreign customs issues



# ***Electronic Export Information (EEI) Filing Requirements***

***It is important to implement an export compliance program.***

- When does EEI have to be filed?
  - Independent contractor who takes title to goods
  - Individual shipments over \$2500 in value
  - Values determined by HTS# classification, not by line item
  - Any controlled item has to be filed, despite its value
  - Other exceptions, see FTR § 30.2(d)(2)
  - Use the HTS # of your exported items on your EEI
- How to File EEI
  - Freight forwarder or agent files EEI through Automated Export System (AES) for a small fee
  - File EEI yourself through AES



# ***Overview of U.S. Export Regulations and Enforcement***

***U.S. exports are regulated by several entities.***



**U.S. Commerce Dept. Bureau of Industry & Security (BIS)**

- Export Administration Regulations (EAR)



**U.S. State Dept. Directorate of Defense Controls (DDTC)**

- International Traffic in Arms Regulations (ITAR)



**U.S. Treasury Dept. Office of Foreign Assets Control (OFAC)**



# Overview of U.S. Export Regulations and Enforcement



## EAR

Most common regulatory regime for U.S. exporters



## ITAR

Applies to items mainly of a military nature and application



## OFAC

Prohibits shipments to certain countries, companies and individuals – such prohibited lists should always be consulted



# ***Overview of U.S. Export Regulations and Enforcement***

***EAR has jurisdiction over several items.***

- **All items (regardless of their country of origin) in the U.S.**
- **All U.S. origin items anywhere in the world**
- **Foreign products with U.S. content exceeding de minimis levels**
- **Certain foreign products produced directly from using U.S. technology or software**



# ***Overview of U.S. Export Regulations and Enforcement***

***How to determine if your exports are controlled by EAR.***

What is it?	HTS Classification
Export Control Number?	ECCN
Where is it going?	Destination
Who will receive it?	End User
What will they do with it?	End Use



# ***Overview of U.S. Export Regulations and Enforcement***

***There are consequences to failure to comply with EAR.***

- Criminal Penalties (“willful violation”)
  - Fine - \$250,000 and/or 10 years imprisonment for individuals
  - \$1 Million or 5 times the value of the exports involved for firms
- Civil Sanctions (administrative penalties)
  - Fines - \$11,000 per violation
  - Denial of Export Privileges / Revocation of Export Licenses
  - Exclusion from practice



# ***Complying with Foreign Regulations***

***Complying with foreign regulations is just as important as complying with domestic regulations.***

- Understand compliance issues which pertain to you
  - Your industry, products, business model
- Analyze specific countries from which your export products are made
  - Determine particular compliance requirements
- As the exporter, are you also the importer of record?
  - Being the importer of record will add compliance obligations that you would otherwise not have as merely an exporter
  - DDP INCOTERM shipments or shipments to a foreign branch or sales office will make you the importer of record



# Foreign Non-Tariff Barriers

**Most  
Common**

Customs clearance & tariff classification

Trademark protection

Import licenses/quotas/special duties

Labeling/packaging/marketing

Consumer product health & safety

Product & quality standards

Product warranty & specification



# Next Steps

Having an awareness of legal issues is the key.

Strategically  
Approach  
Legal Issues

Manage  
Your  
Legal  
Risks

Execute  
Solid  
Contracts for  
Exporting

Be  
Compliant  
with Export  
Regulations



# ***Frequently Asked Questions***

- How do I decide between using a foreign sales representative or a distributor?
- Do agreements need to be in writing? If so, what kind of document is necessary?
- Do I need to review in detail legal documents such as bills of lading or letters of credit?
- Should I register my trademarks in my export markets?
- Should I outsource export compliance?
- When do I need to use an attorney?



# ***What Questions Do You Have?***



# **Contact Information**

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