



11 Commandments for Exporting

Many small package shippers are knowledgeable about domestic and international shipping, but some US companies have never ventured into the international export market. Since President Obama is setting goals to encourage exports, here are some things that a new exporter should be aware of.

Identify Which Jurisdiction You Fall Under

The United States government controls exports through the Department of Commerce, the Department of Defense, and the Department of the Treasury, Office of Foreign Asset Controls, just to name a few. Each of these agencies currently has export control rules and enforcement teams. (The Obama administration has proposed a sweeping change that would facilitate the creation of one-face-to-the-public agency and one set of rules. There are hopes of a new/simpler program in 2011.)

Talk to the Right Government Agency about Your Issues

The Bureau of Industry and Security (BIS) (www.bis.doc.gov) is usually the first point of contact unless your goods are identified on the US Munitions List (USML), considered weapons or used in weapons systems or satellite (space) programs. These rules apply to military surplus goods, too. These are handled by the Department of State (www.pmddtc.state.gov). The Office of Foreign Asset Controls (OFAC) deals with transactions that involve countries subject to US trade sanctions, such as Iran, Syria, Sudan, North Korea and Cuba. These rules generally prohibit you from exporting to these destinations without a license. These rulings also apply to situations where you know that the goods will be sold or reexported from an intermediate country to a sanctioned destination. When in doubt, ask which agency has jurisdiction. Mistakes can be very costly.

Another important agency to know about is the Bureau of Census, Foreign Trade Division. This group is responsible for collecting export information through the Automated Export System, previously captured on the Shipper's Export Declaration, and keeping track of trade statistics. To do this, there are very specific reporting requirements that exporters must follow. Exporters who don't report, report late or have errors in their information can be fined up to \$10,000 per transaction. You can find out more about these reporting requirements at www.census.gov/foreign-trade/regulations/index.html.

It is also a violation of US law to provide any party with information about or take any action in furtherance of a boycott of the country of Israel. These laws discourage and, in some circumstances, prohibit US companies from furthering or supporting the boycott of Israel sponsored by the Arab League and certain Moslem countries, including complying with certain requests for information designed to verify compliance with the boycott. Compliance with such requests may be prohibited by the Export Administration Regulations (EAR) and may be reportable. Significant penalties or loss of tax benefits may apply. To find out more about these rules, go to the Department of Commerce, Office of Antiboycott at www.bis.doc.gov/complianceand enforcement/antiboycottcompliance.htm.

Locate, Read and Apply the Rules that Apply to Your Case

Titles 32, 31, 27, 22 and 15 of the Code of Federal Regulations govern various aspects of international trade. Title 15 governs the largest number of exports handled by the US Commerce Department. These regulations are available online by going to www.access.gpo.gov/bis/ear/ear_data.html.

Understand the Rules that Apply

Some basic steps to go through when preparing to export:

- ▶ What is the export classification of the product per the Commerce Control List? http://edocket.access.gpo.gov/cfr_2009/janqtr/pdf/15cfr738.2.pdf
- ▶ What country is it going to? See the country chart: http://edocket.access.gpo.gov/cfr_2009/janqtr/pdf/15cfr738Supp1.pdf
- ▶ Are there any restrictions on the shipment, such as those based on classification, destination or end use defined by the country chart and the classification?
- ▶ Check the denied persons list, unverified users list and entities list for people you are not supposed to do business with: www.bis.doc.gov/complianceand enforcement/liststocheck.htm
- ▶ Do you need to file any export information with the Foreign Trade Division of the Bureau of Census or place an exemption statement on your export documents? www.census.gov/foreign-trade/aes/index.html

If still in doubt, ask for help. The SNAP-R process provided by the BIS is a way to submit the information you have for a ruling on the classification and controls applicable to your potential export order. The Regulations, Outreach and Education Branch, Foreign Trade Division (ROEB), Census Bureau at 1-800-549-0595, option 3, can also provide export assistance counseling and services as well.

Be Careful about Embargoed Countries

In today's world, exports to Iran, Syria, Sudan, North Korea and Cuba are embargoed for almost all products that are of US origin or have substantial US origin content, without license approval. The restrictions also apply to any US person, regardless of the origin of the product. This includes repairs and servicing products, as well.

Shipments related to nuclear development, military use and high technology are generally restricted from shipping to a number of countries designated by the country table available at: http://edocket.access.gpo.gov/cfr_2009/janqtr/pdf/15cfr738Supp1.pdf and www.access.gpo.gov/bis/ear/pdf/744.pdf

Use the Correct Harmonized Code

Exports must also be classified by harmonized number or "schedule B number" www.census.gov/foreign-trade/schedules/b/ for export reporting purposes. Any shipment valued over \$2,500 for any particular schedule B number or requiring an export license must be filed electronically via the Automated Exports System (AES).

Use the Right Price for Customs... There Are Rules

Now that you have covered all the export control issues, let's talk about foreign import requirements. All US exports should have an invoice identifying the item to be shipped and the value of the goods. All items have a value. If the items are being shipped free of charge, the cost to purchase the goods or manufacture the goods plus normal profit should be used. Otherwise, the sales price is normally acceptable.

Don't Violate Export Laws; It Can Be Expensive

Export violations can result in civil penalty of up to \$250,000 or twice the amount of the transaction, loss of export privileges, criminal penalties and jail time. Voluntary disclosures can mitigate penalty as much as 30% to 40%. In 2009, DHL was fined \$9 million for failure to maintain export records related to 98 shipments of used clothing to Iran, Syria and Sudan.

Export Reporting Errors: Just as Serious with Significant Consequences for Errors

Failure to file and late filings of AES can result in fines of \$1,000 per day per delinquency not to exceed \$10,000 per violation. For non-filing violations, i.e., incorrect/false information, civil

penalties can reach \$10,000 per violation. Criminal penalties equal \$10,000 per violation and/or five years in jail.

Communicate with Your Client or His Customs Clearance Agent before Shipping

Before shipping anything into another country, send a copy of your export invoice to your foreign customer or his customs clearance agent to ensure the item you are shipping is allowed to enter their country and to identify whether any unique documentation is required.

You Can Pay Me Now... or You Can Pay Me Later!

Many small package shipments move every day without people taking these steps. Often they move to their destination with no problems. But when they do have problems, they wish they had followed these steps at least once! ■

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