



International Exporting Checklist for the United States Firms

The information contained herein is considered confidential and proprietary to Frost Brown Todd LLC. These materials have been prepared by Frost Brown Todd to provide information about the services we offer to our clients. Readers should not act or refrain from acting based upon this information without consulting an attorney. These materials are not legal advice and transmission or receipt of this information does not create an attorney-client relationship. Please do not distribute, duplicate or transmit without the expressed written consent of Frost Brown Todd.

International Exporting Checklist for United State Firms

I. INTRODUCTION

A. Exporting Generally:

- The decision to export is an exciting proposition for any business, large or small, and is a primary portal to increased sales in the ever-expanding global economy. The chief concerns of exporters are securing profitable markets, finding customers and getting paid. Primary legal issues are compliance with foreign legal and packaging requirements, U.S. export laws and foreign import laws, as well as proper documentation of sale and distribution agreements.
- Exporting has a number of advantages compared to setting up operations abroad. These include lower start-up costs, complete product control and the ability to test markets on a trial basis with minimal risk. There are disadvantages, such as limited access to customers, tariff barriers and inability to provide immediate delivery, customer service and spare parts.

B. How to Use this Checklist:

- The following checklist spots important issues that any firm with exporting plans should consider before exporting goods or services. It is not an exhaustive list of issues one will encounter, but can serve as a planning guide to avoid serious blunders.
- It is arranged in chronological order of what happens in exporting.

II. BUSINESS PLANNING AND PRELIMINARY DECISIONS

A. To Export or Not to Export:

- Is the product or service that the U.S. firm (the “Firm”) wants to export profitable and successful in its current domestic market?
- Are there still untapped domestic markets for the product or service?
- Is the product or service something that is of a cross-cultural nature and capable of producing good demand in a foreign market?
- Is the product or service suitable for sale in the foreign market, or must it be adapted, and if so, does adapting make good business sense?
- Has the Firm identified target markets and researched the potential for success there (i.e., information from trade associations, current clients and vendors, U.S. Commercial Service, foreign ministries of commerce), focused on these issues:
 - Size of population
 - Income distribution of the population
 - Estimated costs of establishing the market
 - Barriers to entry (i.e., competing products, regulatory hurdles, freight cost, tariffs, non-tariff barriers) for the product or service

- Strategies for dealing with barriers to entry
- Business plan (including projected market share, sales and profits) for the first five years after entry?

B. Medium of Exportation:

- Does the Firm have the capital resources to initiate direct exporting (i.e., marketing and fulfilling orders using its own personnel and assets)?
- Is the Firm short on capital resources and would it benefit more from indirect exporting (e.g., using U.S.-based intermediaries; hiring U.S. or foreign-based agents and brokers; utilizing Export Management Companies or Export Trading Companies)?
- Does the Firm have contacts in the target market or is the Firm dependent on third-party resources (e.g., U.S. Commercial Service, state development offices, foreign chambers of commerce, private groups) to make appropriate contacts?

C. Preparing the Product or Service for Export:

- How should the basic product or service be adapted for the foreign market?
- Will the marketing, labeling and packaging make a smooth transition from the U.S. market to a foreign market or will this need adaptation for the foreign market (i.e., changing a slogan in English that may translate into something offensive or ineffective in the language of the foreign country)?
- Will the warranty offered in the foreign market satisfy foreign laws?
- Does the Firm have adequate after-sale repair, spare parts and servicing?
- Are there marks or certifications required or desirable to distribute the product in the foreign market?
- Must warnings and training materials be different in the country of importation, and are language translations important beyond English?

D. Legal Issues:

- Is a U.S. export license required? Must U.S. export control approval be obtained?
- Do foreign country import laws require pre-approval (e.g., pharmaceuticals)?
- Will the export arrangements violate any U.S. or foreign anti-diversion, anti-boycott or competition laws?
- Will the export arrangements violate the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or the foreign country's anti-corruption laws?
- Are there any active trade embargoes, boycotts or sanctions with respect to the foreign country?
- Is the foreign country a member of any bilateral or multilateral treaties, of which the U.S. is also a member, that give favorable or unfavorable treatment to importing firms (i.e., North American Free Trade Agreement, Hague Conventions, World Trade Organization)?

- What are the effects, if any, of the United Nations Convention on the International Sale of Goods to the proposed exporting transactions? (This applies only to the cross-border sale of tangible goods, not services.) Should the firm opt out of the Convention's rules? If so, what law will apply to the export sale?
- Are there any special regulations or concerns associated with exporting services?
- Does the foreign country have a stable government, or is there a risk that committed exports would be disrupted by changed rules, a potential overthrow of the government or seizure by the government or other entities?
- If the sale will be to an affiliate of the U.S. exporter, has pricing been done to meet transfer pricing requirements, with documentation of the basis for pricing?
- Have risks been minimized by attention to product liability insurance, safety warnings, hazardous or toxic chemical ingredients, energy rating disclosures and other requirements that apply in the country of importation?

E. Intellectual Property Issues:

- Should the Firm file for copyright protection on its U.S.-copyrighted products?
- Should the Firm register its U.S.-protected trademarks in the foreign country, and if so, when (timing is critical)?
- Should the Firm register its U.S.-protected patents in the foreign country, and if so, when (timing is critical)?
- What, if anything, can the Firm do to protect its trade secrets that are not protected under formal laws in the U.S. or the foreign country?
- Is the foreign country a member of bilateral or multilateral treaties, of which the U.S. is also a member, aimed at protecting importing companies' intellectual property rights?
- Do treaties provide for expedited or abbreviated registration processes that the Firm can use (such as trademark registration in one country that automatically applies in all member countries, eliminating the need for multiple registrations)?

F. Economic Issues:

- Is the Firm committed and does it have the economic resources to finance the Firm's decision to go global until successful (early years may not be profitable)?
- Have the U.S. and the foreign country entered into a tax treaty and what are its effects on the proposed exporting transactions?
- Does the foreign country impose income taxes on the exporting companies?
- Does the foreign country impose a Value Added Tax and when does it apply?
- Should the Firm establish an IC-DISC or consider a holding structure to achieve maximum tax and treasury efficiency?
- What is the import tariff duty rate on the goods or services supplied by the Firm?

- Can the Firm take advantage of Free Trade Zones (i.e., free ports or other customs privileged facilities) or Bonded Warehouses?
- Does the foreign country have a stable currency and economy (at least no hyper-inflation)?
- If the country has non-convertible currency, will foreign exchange approval be readily obtained, with efficient banking channels in place?

III. EXPORTING MECHANICS

A. Pricing, Quotation and Export Finance Issues:

- Are quotations provided in an acceptable manner (i.e., by using a pro forma invoice)?
- Are the price quotations stated in a low-risk (or “hard”) currency to hedge against volatile currency fluctuations (US Dollar, UK pound, Euro)?
- Do price quotations conform to appropriate shipping and delivery terms using current INCOTERMS of ICC? Are these terms understood by all parties?
- Do price quotations take into account dispute resolution and choice of law and forum issues (a pro forma invoice and its subsequent acceptance by the buyer are viewed as forming an executed sales contract)?
- How will payment for the exported goods or services be made by the consuming parties?:
 - Payment in advance—ideal for the Firm but generally not acceptable to the foreign buyer
 - Credit extended by the Firm—if going this route, the Firm needs to practice prudent credit practices and should be conservative when granting credit to unfamiliar buyers (be diligent in obtaining credit information on the proposed buyer/debtor)
 - Loans through commercial banks or private funding agencies
 - Documentary Letters of Credit—this is common; if the Firm decides to use this method of payment, the Firm should establish a relationship with an experienced local confirming bank
- Have all channels for financing the transaction been explored (U.S. government entities, commercial banks, forfaiting companies, private funding companies)?

B. Delivering the Goods or Services:

- Are services and goods provided as promised and according to the quoted terms?
- Are the goods packaged and labeled specifically for international shipping?
- Has the Firm chosen the optimum shipping method for the goods?:
 - Land freight—relatively economical but very limited as to scope of geographic coverage (usually used in conjunction with air and ocean freight)
 - Air freight—expensive but very efficient and fast; involves less risk of loss, damage and theft to the items shipped (usually used for small shipments or when the goods are perishable, need to be at the destination fast, or are very valuable)

- Ocean freight—relatively economical; poses larger risk of loss, damage and theft to the items shipped (usually used when there is a large amount of goods to be shipped and delivery time is flexible)
 - Integrated carriers—more economical than traditional methods of using different air and land freight carriers; extremely efficient method of shipping because the carrier has its own land and air vehicles, thereby eliminating the need to coordinate between the different land and air carriers to ship the same set of products; some integrated carriers may help with clearing customs
 - Freight forwarders—a shipping “broker” of sorts that coordinates all shipping details and documentation for the exporting company; comparison shops for the most economical shipping alternative; handles the clearing of customs; possesses expertise and experience in international shipping (a veritable “one-stop-shopping” entity that may be a wise choice for smaller exporters that do not want to deal with international shipping issues on their own)
- Is the product delivered according to the agreed-to shipping terms, alleviating any questions as to risk of loss (i.e., FCA point of departure, CIF point of destination, other properly described definition from specific INCOTERMS edition), including the purchase of adequate insurance if obligated?
 - Was the shipment properly labeled and all necessary documents obtained to complete the transaction and satisfy payment contingencies (i.e., obtaining the Bill of Lading for a documentary Letter of Credit)?
 - Have all import tariffs of the foreign country been paid?
 - Was there adequate follow-up to ensure the transaction was completed as promised?

IV. RESOURCES

<p>U.S. Department of Commerce 14th St. & Constitution Ave., NW Washington, D.C. 20230 (202) 377-2000 www.commerce.gov</p>	<p>International Trade Administration (ITA) U.S. Department of Commerce Washington, D.C. 20230 (800) USA-TRADE www.ita.doc.gov</p>
<p>Bureau of Industry and Security (BIS) U.S. Department of Commerce 14th St. & Constitution Ave., NW Washington, D.C. 20230 (202) 482-0436 www.bis.doc.gov</p>	<p>Small Business Administration (SBA) 1441 L St., NW Washington, D.C. 20416 (800) 368-5855 www.sba.gov</p>
<p>Overseas Private Investment Corporation (OPIC) 1100 New York Ave., NW Washington, D.C. 20527 (202) 336-8400 www.opic.gov</p>	<p>Export-Import Bank of the United States (EXIMBANK) 811 Vermont Ave., NW Washington, D.C. 20571 (800) 565-3946 www.exim.gov</p>

<p>U.S. Department of Transportation- Maritime Administration 400 Seventh St., SW Washington, D.C. 20590 (800) 99-MARAD www.marad.dot.gov</p>	<p>Ohio Department of Development, International Trade Division PO Box 1001 Columbus, OH 43216 (800) 848-1300 www.development.ohio.gov/globalmarkets</p>
<p>U.S. Commercial Service Southern Ohio (513) 684-2944; fax (513) 684-3227 www.export.gov</p>	<p>The National Customs Brokers and Forwarders Association of America, Inc. 1200 18th Street, NW #901 Washington, D.C. 20036 (202) 466-0222 www.ncbfaa.org</p>
<p>World Trade Organization Centre William Rappard Rue de Lausanne 154, CH-1211 Geneva 21, Switzerland (41-22) 739 51 11 www.wto.org</p>	<p>International Chamber of Commerce 38 Cours Albert 1er 75008 Paris, France 33-1-49-53-28-28 www.iccwbo.org</p>
<p>Office of North American Free Trade Agreement and Inter-American Affairs U.S. Department of Commerce Washington, D.C. 20230 www.mac.doc.gov/nafta/nafta</p>	<p>Permanent Bureau of The Hague Conference on Private International Law Scheveningseweg 6 2517 KT The Hague The Netherlands www.hcch.net</p>
<p>Tennessee Department of Economic and Community Development 312 8th Ave. North Nashville, TN 37243-0405 (615) 741-1888 www.state.tn.us/ecd/bizdev_idg.htm</p>	<p>Kentucky Cabinet for Economic Development/International Trade Old Capitol Annex Bldg. 300 W. Broadway Frankfort, KY 40601 (502) 564-7140 www.thinkkentucky.com/kyedc/intltrade.asp</p>
<p>Indiana Economic Development Corporation One North Capitol, Suite 700 Indianapolis, IN 46204 (317) 232-8800 www.in.gov/iedc</p>	<p>West Virginia International Division Capitol Complex Building 6, Room 553 1900 Kanawha Blvd. E. Charleston, WV 25305-0311 (800) 982-3386 www.wvdo.org/international.index.html</p>

We are pleased to support the U.S. Commercial Service and all U.S. exporters.

Joseph J. Dehner
Frost Brown Todd LLC
Chairman, International Services Group
Member, Southern Ohio District Export Council
3300 Great American Tower
301 East Fourth Street
Cincinnati, OH 45202
Tel. (513) 651-6949
Fax (513) 651-6981
jdehner@fbtlaw.com
www.frostbrowntodd.com
www.fbtglobal.com