INTERNATIONAL COMMERCE

IMPORTING AND EXPORTING RESPONSIBILITIES IN A COMPLEX GLOBAL MARKETPLACE

According to the U.S. Bureau of Economic Analysis (December 2014), from 2000 to 2013 (the last full year for which statistics are available), exports have grown from $1,075,321 in seasonally adjusted millions of dollars to $1,592,784, while imports have grown from $1,447,837 to $2,756,586 in the same period. This snapshot demonstrates the increasing importance of international commerce to U.S. companies.

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everyone is responsible for compliance

As international business grows more important to U.S. companies, it's vital to recognize that import and export activities are heavily regulated by the U.S. government. Consequently, businesses must be aware of licensing, regulations and other requirements.

If you are conducting international business, if you are engaging in new types of transactions, if you are doing business with new entities or in new geographic regions, you may receive questions from government entities or your financial institution. Everyone involved — from your offshore manufacturer to your financial institution — is responsible for compliance and could face penalties or fines for noncompliance.

What government agencies regulate imports and exports?

Among the agencies that regulate imports and exports are the following: U.S. Customs and Border Protection (CBP), part of Homeland Security, is one agency that helps to regulate and enforce rules on imports into the United States. The Bureau of Industry and Security (BIS), part of the U.S. Department of Commerce, is responsible for export controls. The Office of Foreign Asset Controls (OFAC), part of the U.S. Treasury Department, administers and enforces economic trade sanctions based on U.S. foreign policy and national security goals. The enforcement of anti–money laundering laws is the responsibility of the Financial Crimes Enforcement Network (FINCEN), also part of the Treasury Department. Additionally, the Department of State is responsible for the enforcement of dual-use export regulations.

The U.S. government also relies on all parties involved in international trade, their trading partners and financial institutions to improve homeland and international security and guard against money laundering, terrorism and the proliferation of weapons of mass destruction, among other threats.

Please refer to the sidebar at left for more information.

What are the consequences of non-compliance?

All participants in the transaction, including but not limited to the exporter, the freight forwarder, the importer and the banks involved, have responsibility for compliance with U.S. government trade regulations. Requirements have become more demanding, and penalties have become more severe over the years. Failure to comply with any of the applicable requirements can have severe consequences, including loss of export rights, fines and penalties, and criminal prosecution.

Why should I have a written compliance program?

A written compliance program typically includes policy, procedures and protocols that your employees should follow to ensure compliance. Your compliance program should be based on your company's specific situation and should be capable of addressing future needs as well as your current requirements.

A written compliance program can help the company:

- Demonstrate senior management's commitment to complying with U.S. laws and regulations.

ADDITIONAL RESOURCES

This article covers only some of the issues faced by companies doing business internationally. Additional resources are available. A few are listed below.

Trade Basics
- http://www.cbp.gov/trade/basic-import-export
- http://export.gov/index.asp

Import and Export Licensing Requirements

U.S. Import Licensing Requirements
- https://help.cbp.gov/app/answers/detail/a_id/197/search/1

U.S. Export Licensing Requirements
- http://export.gov/exportbasics/eg_main_017474.asp

Import and Export Compliance

U.S. Import Regulations
- http://www.cbp.gov/trade/rulings/informed-compliance-publications

U.S. Export Regulations
- http://export.gov/regulation/index.asp

Office of Antiboycott Compliance
- http://www.bis.doc.gov/index.php/enforcement/oac

Establishing an Export Compliance Program
- http://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance

Consolidated Screening List
- http://export.gov/ecr/eg_main_023148.asp

Glossary of Trade Terminology
- http://export.gov/exportbasics/eg_main_017485.asp

Harmonized Tariff Schedule of the United States
- http://hts.usitc.gov/

U.S. Export Counselors
- *202-482-4811 (Washington, D.C.) or*
- *949-660-0144 (Calif.)*

Office of Foreign Assets Control
- http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx

1 *Report to the Congress:* **Sentencing Policy for Money Laundering Offenses, including Comments on Department of Justice Report** (as directed by section 2(b) of Public Law 104-38) United States Sentencing Commission, September 18, 1997.

2 Federalcriminallawyer.us, February 6, 2011.

> It is essential to ensure that your goods or merchandise are not sold on to a sanctioned entity or country or repurposed by a sanctioned party.

- Define who is responsible for compliance for each part of your import or export process as well as the underlying management structure.
- Enhance accountability.
- Provide safeguards and controls to ensure consistent processing and decision-making.
- Communicate "red flags" that require additional scrutiny of a transaction.
- Provide tools and training to ensure that employees are following compliance procedures.

You should consult your own legal and other professional advisers about how to establish a compliance policy and program that meet the needs of your company. More information can be obtained from the publication "Establishing an Export Compliance Program" at: *http://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance*

Why does the nature of my product matter?

Certain products are considered by the U.S. government to present greater risk of misuse than others. Known as "dual-use" items, these are defined as goods that have a commercial application and can also be used for military or terrorist purposes.

Due to the complexities of international commerce, the threat of dual-use items being put to wrongful use requires vigilance. If you aren't sure if your goods are dual-use, you can contact a U.S. export counselor: 202-482-4811 (Washington, D.C.) or 949-660-0144 (California). You may also want to consult your legal or other advisers.

Do I need an export, import or OFAC license?

The Department of Commerce may require you to obtain an export license based on what you are exporting, where it is going, who will use it and for what purpose. If any of these aspects of the transaction change, so may the licensing requirement.

Licensing requirements for exports are listed in the Department of Commerce's Commerce Control list: *http://export.gov/exportbasics/eg_main_017474.asp*

Importing of some items may also require licenses or permits from government agencies. For import requirements, please refer to the U.S. Customs and Border Protection: *https://help.cbp.gov/app/answers/detail/a_id/197/search/1*

Licensing may also be required under the Department of Treasury's OFAC regulations. These could be related to location of goods or services or the geographical location.

Why are you asking who my customers are and about the final destination of my goods?

One of the least understood aspects of exporting is the need to verify the final user and destination of your products. It is essential to ensure that your goods or merchandise are not sold on to a sanctioned entity or country or repurposed by a sanctioned party. Therefore, you need to know not only the country and the entity to which you sell, but also that entity's likely customers for your products.

The Departments of Commerce, State and the Treasury manage lists of prohibited entities, individuals and countries. Your company is responsible for knowing all parties to your transaction, such as shipping companies, freight forwarders, insurance brokers and end users, and whether they fall into this list.

These government lists of sanctioned countries and entities can change daily, so it is important to check them at each stage of your transaction — from beginning to end. To help comply with these requirements, you may wish to consult your legal advisers on terms to put into your sales agreement.

76% *of U.S. companies conduct business internationally*

58% *of those organizations have seen a dramatic increase in their international revenue over the past five years*

Note: Your financial institution may ask you questions about your customer, the end user, and the destination or other party related to the transaction in order to comply with these requirements. The combined screening list may be helpful. You can access it at: *http://export.gov/ecr/eg_main_023148.asp*

For information about economic sanctions, please refer to the OFAC website: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx*

> Companies and banks must be careful not to enter into transactions for which prohibited boycott language is used in the related documents.

Do I need to be concerned about boycott language?

The objectives of the antiboycott laws are to discourage participation in foreign boycotts that the United States does not sanction and to prevent U.S. firms from being used to implement foreign policies of other nations that run counter to U.S. policy. Therefore, companies and banks must be careful not to enter into transactions for which prohibited boycott language is used in the related documents. To better understand antiboycott requirements, please refer to the Office of Antiboycott Compliance: *http://www.bis.doc.gov/index.php/enforcement/oac*

For more information about doing business with PNC

If you have questions about your import/export business, contact your International Banking Officer.