

Import/Export Considerations

There certainly is a lot of interest today by entrepreneurs in establishing import and export companies and getting involved in international business. The international shipment of goods is highly organized and very efficient in getting the goods to and from most countries. After you organize your new company, set up a bank account and an accounting process, write a business plan and get your business licenses, here are some very important import and export issues you will have to fully and completely understand in order to be successful.

LETTERS OF CREDIT: Take a one to three day course in understanding Letters of Credit (LCs). LCs are a mainstay of paying for international sales of goods transactions. As a buyer — the applicant — you deposit funds and establish the LC with a bank. LCs are also called "Documentary Letters of Credit." An LC is issued by a bank. LCs are paid by the bank "at sight." All "at sight" means is that the bank looks over the documents produced by the seller — the beneficiary — of the LC, and required by the LC, and if those documents are in order, they pay the beneficiary the full value of the LC. Partial payments under an LC can be allowed. The LC will have a list of documents noted on its face that have to be produced by the beneficiary or his agent in order for the bank to cash the LC; hence the name "Documentary."

Some typical documents listed on the LC that must be produced in order for payment to be made to the beneficiary are as follows:

- Commercial Invoice (what goods are in the shipment)
- Bill of Lading (shipping documents, ocean, inland)
- Proof of Insurance (are the goods being shipped properly insured)
- Inspection Certificate (have the goods been properly inspected)
- Certificate of Origin (where did the goods originate — what country)

For a very basic understanding of LCs go to the following websites:

www.creditguru.com/guestarticleLC.htm and www.crfonline.org/orc/cro/cro-9-2.html.

Hong Kong and Shanghai Banking Corporation (HSBC) and Bank of America (B of A) often offer courses in understanding letters of credit. Call them to see if they offer a course near you or can refer you to a training course offered by someone else. Other private training companies offer these courses as well and you can find them by doing an internet search for "letters of credit training".

INCOTERMS: INCOTERMS are the terms commonly used and accepted world-wide by all countries for shipping goods from one location to another. There are thirteen INCOTERMS that you need to be completely familiar with. The thirteen INCOTERMS are as follows:

- EXW — Ex Works (at named place, e.g., mfg's warehouse)
- FCA — Free Carrier (to named place, e.g., to outside the port)
- FAS — Free Alongside Ship (to named port of export, next to ship)
- FOB — Free On Board (to named port of export, loaded on ship)
- CFR — Cost And Freight (to named port of import)

- CIF — Cost, Insurance, and Freight (to named port of import)
- CPT — Carriage Paid To (to named place of destination)
- CIP — Carriage and Insurance Paid To (to named place of destination)
- DAF — Delivered at Frontier (to named place)
- DES — Delivered Ex-Ship (to named port of import)
- DEQ — Delivered Ex-Quay (to named port of import)
Note: "Quay" is pronounced as "Key" and is the usual name for a portside location)
- DDU — Delivered Duty Unpaid (to named port of import or other location)
- DDP — Delivered Duty Paid (to named port of import or other location)

Common definitions of the thirteen INCOTERMS are maintained by the International Chamber of Commerce (ICC). You can get some more general information on the definition of these terms from the ICC website at www.iccwbo.org/incoterms/id3040/index.html

There are very significant differences in costs and risks associated with these INCOTERMS, so before you leap into the import/export business, make sure you completely understand INCOTERMS and the costs, obligations and responsibilities associated with each of them.

Example 1: You are a US company and buy a lot of goods from a supplier/manufacturer in China, EXW (Nanjing, Peoples Republic of China). Since the order is EXW (at named place), you, or your agent or representative, are responsible for picking up the goods at the suppliers/manufacturers named place of business in Nanjing, PRC. You are also responsible for shipping and insuring the goods from Nanjing by inland and ocean freight to wherever you want them to go to as a final destination in the US. In addition you would have to deal with all the customs and import considerations leaving PRC and entering the US.

Example 2: You are a US company and you buy a lot of goods from a supplier in China, CIF (Port of Import, New York, New York, USA). Since the order is CIF, you, or your agent or representative, are responsible for picking up the goods at the named Port of Import —New York, NY, USA. The supplier of the goods is responsible for and pays for the inland/ocean shipping and insuring of the goods from China to the Port of Import, US. You are responsible for any US customs duties or tariffs and for shipping the goods from the US Port of Import to their final destination in the US.

Example 3: You are a US manufacturer and sell a lot of your goods to a client located in Kabul, Afghanistan DDP (Client's warehouse, Um Quasir, border of Pakistan and Afghanistan). You are responsible for shipping your goods from the US to the border location noted. This would include all inland/ocean freight and insurance to Port of Import, Pakistan, customs clearance and duties at Port of Import, Pakistan, and all onward shipment from the Port of Import to the client's warehouse at the border city noted. Good luck!

In the definitions of the INCOTERMS maintained by the ICC, all the responsibilities of the buyer and the seller are clearly outlined in detail so both parties to the transaction know exactly what they are obligated to do and pay for. This is extremely important so there is no confusion over who is responsible for loading/unloading, insurance, customs duties and tariffs and any necessary onward shipment.

When you sell something to an overseas client, CFR and CIF are very often used and it's likely you will find many of your potential clients or suppliers will want to use these shipping terms. When you buy something from an overseas client, you should strongly consider using CFR or CIF as the shipping terms.

Letter of credit courses will very likely cover the proper use of INCOTERMS.

FREIGHT FORWARDERS: A freight forwarder is your shipping agent for international locations. He provides the necessary delivery services of your goods. He gets your goods out of the country from the port of export to the named port of import, and perhaps onward, and will be familiar with all the export documentation required. Freight forwarders can also provide for export packing, insurance and trucking, in addition to ocean and transshipment services.

A freight forwarder can also consolidate your shipment with other shipments going to the same or nearby international locations. For example: if your shipment only takes up half of a 20' or 40' container, the forwarder can consolidate your shipment with one or more other shipments to fill up the container. This will save you money.

Freight forwarders can arrange for your goods to be shipped by air, by rail, by ocean going vessel, and by truck. He can also review all shipping related documents to make sure they comply with letter of credit documentary requirements.

Freight forwarders can also make arrangements with overseas customs brokers to clear your goods through the port of import and onward if necessary.

IMPORTANT: Do not try to do freight forwarding yourself!

You can find freight forwarders near you at the National Customs Brokers and Forwarders Association of America's website: <http://www.ncbfaa.org/>

CUSTOMS BROKERS: A customs broker gets your goods through the customs department at the port of import or port of export. This is called "clearing". They are licensed specialists who are knowledgeable about all the rules and regulations regarding custom procedures, fees and tariffs in the particular country. There are more than 500 pages of customs and tariff regulations for goods being imported into the US. Customs brokers can also assist in the onward transport of goods to the final location.

Many times you will find that a freight forwarding company also has a customs broker department, so you can deal with one company for these two important specialty services.

IMPORTANT: Do not try to do customs clearing yourself!

You can find customs brokers near you at the National Customs Brokers and Forwarders Association of America's website: <http://www.ncbfaa.org/>

THE US FOREIGN CORRUPT PRACTICES ACT: If you are an American and do business in a foreign county (yes, this would include your exports to a foreign country and foreign client) you are

subject to the provisions of the US Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq. (FCPA).

The FCPA prohibits corrupt payments to foreign officials for the purposes of obtaining or keeping business. This is bribery. If convicted, criminal penalties can apply up to US\$2,000,000 and five years imprisonment. Civil penalties can also apply up to \$100,000.

Both the US Department of Justice and US Securities and Exchange Commission are responsible for enforcement aspects of the FCPA.

If you have a foreign agent or representative, and he bribes an official to obtain business for you, you can be penalized under the FCPA if it is determined this happened. Just because your agent or representative bribes a government official, doesn't mean you can avoid the provisions of the FCPA.

If you need to have an agent or representative in a foreign country, you must do a serious due diligence on that individual or firm; get some good written references and written background info on several individuals or firms. Select the best and most reputable, and then develop a written contract for their services that includes specific reference to the fact that, as your agent or representative, they agree to fully abide by all the provisions of the US FCPA. Keep all of the selection process information and a copy of the contract in a file for safekeeping. This same process would apply if you established a company in a foreign location or had a joint venture partner in a foreign location.

There is an exception in the FCPA for payments to foreign officials that the US Department of Justice deems: "facilitating payments". Some examples of facilitating payments are: obtaining permits, licenses, processing government papers like visas and work permits, police inspection, power and water supply, loading and unloading cargo. Don't assume. When in doubt contact the US Justice Department in Washington, DC and request a Foreign Practices Opinion Procedure to get an opinion of what specific type of payment constitutes a facilitating payment.

General guidance on the FCPA to exporters of US goods can also be provided by the US Department of Commerce in Washington, DC.

Familiarize yourself with the provisions of the US FCPA at the following US Department of Justice website: www.usdoj.gov/criminal/fraud/docs/dojdocb.html

Good luck with your new import/export business! All you need now are good, reliable foreign or US suppliers and buyers for your imports and/or exports.