

18<sup>th</sup> Annual New Mexico Data Users Conference, 2016  
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Introduction: *A Basic Guide to Exporting*

PREFACE: why is it important to know the regulations that you have to obey in conducting foreign trade? It's this simple: as a citizen of our nation you have no *right* to either export or import goods or services. The ability to export or import is a *privilege* granted by the federal government, and you must meet the provisions of the regulations that apply to the goods or services that you want to export or import or your goods and services could be blocked from export or import, your goods could be seized, and, worse-case scenario, you could serve prison time. For horror stories about people who simply went ahead and exported or imported without paying attention to appropriate regulations see this web address –

<http://bis.doc.gov/index.php/about-bis/newsroom/publications> and click *Don't let this happen to you!*

Here's a few excerpts from it:

**The Penalty:** In May 2015, Schlumberger Oilfield Holdings Ltd. entered a plea of guilty in U.S. District Court for the District of Columbia and agreed to pay over \$232.7 million, the largest criminal fine ever imposed for violations of sanctions programs administered under the International Emergency Economic Powers Act. Parent company Schlumberger Ltd. also agreed to the following additional terms during the three-year term of probation (1) maintaining its cessation of all operations in Iran and Sudan, (2) reporting on the parent company's compliance with sanctions regulations, (3) responding to requests to disclose information and materials related to the parent company's compliance with U.S. sanctions laws when requested by U.S. authorities, and (4) hiring an independent consultant to review the parent company's internal sanctions policies and procedures and the parent company's internal audits focused on sanctions compliance.

**The Penalty:** In May 2012, Ericsson entered into a settlement agreement with BIS in which it agreed to pay \$1,753,000 to settle 262 EAR violations. In addition, an independent third party will conduct an audit of all export transactions connected with Cuban customers undertaken by Ericsson de Panama, its ultimate parent company, or any of its ultimate parent company's other subsidiaries or affiliates.

**The Penalty:** On February 17, 2012, Jeng Shih was sentenced to 18 months in prison, two years of supervised release, a shared forfeiture with Sunrise Technologies of \$1.25 million, and a \$200 special assessment. Sunrise Technologies was sentenced to two years of corporate probation, the shared forfeiture, and a \$200 special assessment. On October 11, 2011, BIS issued Final Orders against Shih and Sunrise imposing a 10-year denial of export privileges (suspended) for their role in the illegal export of the computer equipment to Iran.

You have to take trade regulations seriously: know the regulations forwards and backward, and have everyone's work double-checked.

### **The 101's**

There are two sources to get to the basics of exporting that you need to know, both products of the U.S. International Trade Administration: *A Basic Guide to Exporting* and *Export Education*. NOTE: it's best to access these through Google Chrome because not all of their features open on other browsers.

### ***A Basic Guide to Exporting*** (2016 edition) –

<https://www.export.gov/article?id=Why-Companies-should-export>

(the online edition is always up to date; print versions may or may not be up to date)

This has long been the Bible for exporters (70 years and counting). This book should always be at your side, and you need to read and remember it. But it's important that you use only the most recent edition so you don't miss changes in foreign trade regulations; the most recent is always here online.

You can also buy a print copy of the 2016 edition for \$25 from the U.S. Government Publishing Office via this link: <https://bookstore.gpo.gov/products/sku/003-009-00741-1>

You can also get to *Basic Guide...* by clicking the first link in *Export Education* that we'll look at below after we finish the *Basic Guide*. NOTES: 1) in many of the following links we have to click twice on a chapter to get its information. Example: when you click "Technology licensing and joint ventures" and open it to "Technology licensing" you'll click "Technology licensing" and then see a new link with the same title of "Technology licensing" that you'll click to get its information; 2) Some website titles differ slightly from the full titles of documents and files on the website.

### **Export overview –**

*Why companies should export* – (quote): "Small and medium-sized companies in the United States are exporting more than ever before...Exporting can be one of the best ways to grow your business".

*Strategic reasons to export with* – (quote): "Export strategies" – "Grow your bottom line- companies that export are 17 percent more profitable than those that don't".

### **Export strategy**

*Do I need a license?* – 95% of exports don't need a license, but you don't want your exports to violate any of the "Export Administration Regulations" (EARs); and there are other regulations that you need to know about. There's a link here to the EARs.

*Determine a product's export potential* – Includes *Assessing your company's export potential* by examining your company's motivational and organizational factors, the product's selling points, and making minor product modifications to meet overseas market demands.

*Export plan development* – features 11 questions every export plan should answer; has sample plan.

### **Developing a market plan**

*Market research* has "Marketing Plans" with *Primary Research* (you get data directly from the foreign marketplace) and *Secondary Research* (you get data from primarily online sources)

*Methods of market research* features "A Step-by-Step Approach to Market Research" that has 8 steps that you need to take as you work with mainly or completely online market research

*Sources of market research* examines the sources of market intel that are available from these sources; all but this first source features website links: "General Information about exporting," "Statistical and Demographic information" "Export opportunities at development banks," "Industry information," "Regional and country information," and "Customized market research". All but this last choice can be done online and free. But "Customized market research" is conducted by marketing pros and may justify your expense.

**Export advice** – There are 21 links here to many more sources.

There is no New Mexico office for the U.S. Commercial Service Office, but you have one resource not easily found on this list: the New Mexico Economic Development Department's Office of International Trade at –

<https://gonm.biz/business-resource-center/edd-programs-for-business/international-trade/>

In a few minutes we'll hear a speaker from this office.

There is also no New Mexico "District Export Council". Such councils are made up of experienced local exporters who volunteer to be appointed to their position by the Secretary of Commerce. They advise and help their fellow state exporters and businesses new to exporting. New Mexico is represented by the Arizona District Export Council - <http://www.exportaz.org/about-us/>

There's a National District Export Council at <http://districtexportcouncil.org/>

### ***Methods and channels for exporting***

*Approaches to exporting* with "Distribution considerations," "Indirect exporting," "Direct exporting".  
*Choosing a foreign representative/distributor* – how to choose an effective foreign company.

***Finding qualified buyers*** – there are 7 programs here from federal agencies; there are also "Promotion in publications and other media" and "Strategies for keeping buyers". The article on "Promotion..." badly needs to be updated with online sources and advice.

***Tech licensing and joint ventures*** – technology licensing is international franchising. In joint ventures the challenge is to protect your intellectual property.

***Preparing your product for export*** – this is all about adopting your product for foreign markets to meet cultural and customer preferences and the small changes that you may need to make to be effective in those markets.

*Product adaptation*

*Engineering and redesign*

*Branding, labeling, and packaging*

*Installation*

*Warranties*

### ***Exporting services***

*Service exports with high growth potential* - (quote): "The United States is the world's premier producer and exporter of services...In the future, the service sector will loom even larger in the U.S. economy. Small and medium-sized entrepreneurial companies—those employing fewer than 500 employees—overwhelmingly lead this service-driven business expansion." This also includes why and how exporting services can be more difficult than exporting goods.

*Free Trade Agreements and service exports* – this lists the 20 nations that the U.S. has free trade agreements with along with a graph that's too small to easily read. There's also a link to *NAFTA*, which has served as a model for the FTAs that followed it, including the TPP.

*Aspects of service exports* – how service exports support goods exports.

*Marketing services abroad* – how service exports have followed goods exports to other countries.

*Obtaining government support for service exports*

### **International legal considerations**

*Export regulations* – you need to learn and know these as much as you need to learn and remember the exporting 101's. These are direct links to them:

<http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

Latest updates at: <https://www.govinfo.gov/> open "A to Z" to find "Federal Register" link.

*U.S. foreign trade zones* – These are domestic U.S. trade sites that are considered outside U.S. Customs territory and fees.

*Export processing zones* – to oversimplify it, these are free trade zones, special economic zones, bonded warehouses, free ports, and customs zones in other nations that make exporting easier for you.

*Custom bonded warehouses* – Regulated by U.S. Customs and Border Protection, a customs-bonded warehouse is a building or other secured area in which goods may be stored or manipulated, or may undergo manufacturing operations, without payment of duty.

*Intellectual property considerations* – on patents and trademarks here and in other nations; there's also information here about the role of intellectual property in exporting.

*International agreements* – about the types of laws protecting intellectual property in exporting, including NAFTA.

***E-exporting tools for small business*** – all about e-commerce and taking your company online for exporting.

*What is e-commerce?* (quote): "Global web use is booming, and millions of new buyers are logging on each year. Electronic commerce, especially business-to-consumer (B2C) e-commerce, reflects this growth."

*Use of e-commerce for international business and trade*

*Market development on the web* – has summary of the "CAN-SPAM Act" that governs e-commerce e-mail requirements. CROSSLINK to FTC's *CAN-SPAM ACT: A Compliance guide for business* –

<https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business>

*Assessing your company's readiness to go online*

*Steps to going online* – has 4 steps in "Are you ready to go online?"

*Executing orders and providing after-sales service* – Want to make repeat customers? Have good after-sales service.

### **Shipping your product**

*Freight forwarders* – Click on "Publications & Resources" and then "Useful Links" to get started.

CROSS LINK: <http://www.ncbfaa.org>

*Packing* – how-to guide.

*Labeling* – how-to guide.

*Documentation* – there are 20 types of documents here, explained with examples, of *Air Waybill*, *Bill of Lading*, *Certificate of Origin*, *NAFTA Certificate of Origin*, and *Insurance Certificate*; and examples of forms used by other nations such as *Certificate of Free Sale* And *Certificate of Conformity*. There are also links here for *Two kinds of insurance* (insurance against shipping damages, but also against nonpayment), *Export Credit Insurance*, and a beginning link to *Tariffs*.

### **Pricing, quotation, and terms**

*Pricing considerations* – Don't forget to include tariffs, customs fees, currency fluctuation, transaction costs and shipping, and value-added taxes.

*Quotations and pro-forma invoices* – what each should include, with examples.

*Terms of sale* – These are Incoterms, which are easy to find copies of online but the official text of them is available from <http://store.internationaltradebooks.org/> for sale in several versions (scroll to the bottom of the screen in the link above to find *Incoterms 2010* for \$60 which I recommend).

*Commonly used terms* – includes Incoterms, also available in the *Glossary of Trade Terms* below.

*Commonly used terms when chartering a vessel* – includes Incoterms, also available in the *Glossary of Trade Terms* below.

**Methods of payment** – why are these links so important? You want to get paid for your exports! These are the options that you have for working with different customers to whom you may extend different levels of trust and expect different levels of payment compliance (read: get paid).

*Prudent credit practices*

*Cash in advance*

*Letters of credit and documentary collections*

*Escrow*

*Open account*

*Consignment*

*Foreign exchange risk*

*Payment problems*

**Financing export transactions** – the decisions you make about small sales may not work well or safely for large sales.

*Factors to consider in making financing decisions* – about the need for financing to make the sale, length of time the transaction is being financed, the costs of different types of financing, and your risks (big risk = more difficult to finance with higher costs).

*Extending credit to foreign buyers* – you have to be careful in giving long periods of time to pay your bill, but you may have to extend your buyer's credit to make the sale at all.

*Working with commercial banks* – how to work with these banks.

*Using discounting and bankers acceptance* – judging the creditworthiness of foreign buyers.

*Using export intermediaries* - export intermediaries may or may not provide short-term financing.

*Using government assistance programs* – always consider their services.

*Obtaining funding from multilateral investment banks* – there are six of these to consider.

*Exploring state and local export finance programs* – what states offer vary widely.

### **Business travel abroad**

*Obtaining proper documentation* – about carnets (duty-free temporary admission of certain goods for the purposes of sales and displays, trade shows, etc.) for your goods, visas and passport, required vaccinations for some countries, foreign customs requirements.

*Obtaining assistance from U.S. embassies and consulates* – they want and wait for your business are true pros at assisting you.

CROSSLINK: <https://www.usembassy.gov/> click on the map.

*Business culture* – learn cultural competency. Here's a good article about it:

<http://www.albertaexportawards.com/the-value-of-cross-cultural-competence-for-your-next-export-market/>

### ***Selling overseas and aftersales service***

*Responding to inquiries* – how to write effective letters, faxes, and e-mails.

*Learning about potential clients* – contact the New Mexico Economic Development Department's Office of International Trade at –

<https://gonm.biz/business-resource-center/edd-programs-for-business/international-trade/>

*Conducting business internationally* – (quote): “The biggest complaint about U.S. suppliers by foreign buyers? ‘Failure to ship as promised.’ ”

*Building a working relationship* – how to make a customer a repeat customer.

*Providing after-sales service* – without good after-sales service your export effort can fail and a possible repeat customer will become a one-time customer with bad word-of-mouth talk about you

***Rules of origin for FTAs*** – if you can meet the requirements of Rule-of-origin (ROO) for Free Trade Agreements (FTAs) you will pay duty-free or reduced-duty export fees. The requirements for meeting ROOs differ between Free Trade Agreements, so don't assume that the calculation of an ROO for NAFTA meets the requirements of an ROO for the Singapore Free Trade Agreement or another FTA.

(quote): “One of the key ways to take advantage of the Free Trade Agreement (FTA) is to understand the Rules of Origin (ROOs). Put simply, to qualify for the reduced-duty benefit, the product exported must originate from an FTA party or must contain a specified percentage of U.S. inputs and components. Each FTA has its own Rules of Origin that describe how exported goods shipped to a country or a region may qualify for duty-free or reduced-duty benefits. Because the ROOs are FTA specific and product-specific, they need to be followed carefully.” All FTAs have “tariff shift” and/or Regional value content requirements that can differ. To understand tariff shift read this –

<http://www.shippingsolutions.com/how-the-tariff-shift-rule-works-in-a-free-trade-agreement-fta>

***Basic steps to qualify a product for duty free or reduced duty benefits***

*Percentage based rules* – about Rules-of-origin.

*Regional value content-based rule* – explains two ways of determining this: the “bulddown method” or the “buildup method”.

*Example rules of origin*

*Rules of origin - general categories* – about rules of origin in different U.S. free trade agreements.

*Rules of origin considerations* – about the “De minimis” rule (quote): “allows up to 10 percent (7 percent for NAFTA) of the selling price to be non-qualifying material even though the nonoriginating good may not meet the TS [tariff shift] test” and “accumulation” which concerns goods produced partly in one FTA partner nation and partly in another.

*Sector-specific considerations* – special rules of origin for 6 industry sectors.

*Certifying origin of product for FTA* – about documenting the origin of a good to meet specific free trade agreement rules.

*Generic certificates* – these are for goods that don't meet the requirements of a free trade agreement.

***Glossary of trade terms*** – 26 pages; also includes abbreviations.

## **Export Education** (this online tool is always up to date)

<https://www.export.gov/article?id=Export-Education>

The contents of *Basic Guide to Exporting* are all below in file format for those who prefer to work with information in this manner. Depending on what you're looking for it could be easier to get the information here than from *A Basic Guide to Exporting*; but the first link below is to *A Basic Guide to Exporting*.

### Guides to export – 3 guides

- A Basic guide to export
- Trade finance guide
- Preparing your business for global eCommerce

### Export education – 2 guides

- Why export
- Export planning

### Finding foreign buyers – 4 guides

- Finding buyers
- Sales channels
- Market research
- Free trade agreements

### Legal considerations – 3 guides

- Legal issues
- Regulations
- Intellectual property

### eCommerce – 1 guide: eCommerce

### Logistics – 4 guides

- Shipping
- Documentation
- Certificates of origin
- Trade problems

### Product preparation – 4 guides

- Product classification
- Rules of origin
- CE marking
- Foreign standards and certifications

### Financial considerations – 5 guides

- Export financing
- Incoterms
- Pricing
- Methods of payment
- Risk management