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AN EXPORT STRATEGY

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The most common methods of exporting are indirect selling and direct selling. In indirect selling, an export intermediary such as an export management company (EMC) or an export trading company (ETC) normally assumes responsibility for finding overseas buyers, shipping products, and getting paid. In direct selling, the U.S. producer deals directly with a foreign buyer. The paramount consideration in determining whether to market indirectly or directly is the level of resources a company is willing to devote to its international marketing effort. Other factors to consider when deciding whether to market indirectly or directly include:

- The size of your firm;
- The nature of your products;
- Previous export experience and expertise;
- Business conditions in the selected overseas markets.

606.02 APPROCHES TO EXPORTING

The way your company chooses to export its products can have a significant effect on its export plan and specific marketing strategies. The basic distinction among approaches to exporting relates to the company's level of involvement in the export process. There are at least four approaches, which may be used alone or in combination:

Passively filling orders from domestic buyers who then export the product.

These sales are indistinguishable from other domestic sales as far as the original seller is concerned. Someone else has decided that the product in question meets foreign demand. That party takes all the risk and handles all of the exporting details, in some cases without even the awareness of the original seller. (Many companies take a stronger interest in exporting when they discover that their product is already being sold over-seas.)

Seeking out domestic buyers who represent foreign end users or customers.

Many U.S. and foreign corporations, general contractors, foreign trading companies, foreign government agencies, foreign distributors and retailers, and others in the United States purchase for export. These buyers are a large market for a wide variety of goods and services. In this case a company may know its product is being exported, but it is still the buyer who assumes the risk and handles the details of exporting.

Exporting indirectly through intermediaries.

With this approach, a company engages the services of an intermediary firm capable of finding foreign markets and buyers for its products. EMCs, ETCs, international trade consultants, and other intermediaries can give the exporter access to well-established expertise and trade contacts. Yet, the exporter can still retain considerable control over the process and can realize some of the other benefits of exporting, such as learning more about foreign competitors, new technologies, and other market opportunities.

Exporting directly.

This approach is the most ambitious and difficult, since the exporter personally handles every aspect of the exporting process from market research and planning to foreign distribution and collections. Consequently, a significant commitment of management time and attention is required to achieve good results. However, this approach may also be the best way to achieve maximum profits and long-term growth. With appropriate help and guidance from the Department of Commerce, state trade offices, freight forwarders, international banks, and other service groups, even small or medium-sized firms can export directly if they are able to commit enough staff time to the effort. For those who cannot make that commitment, the services of an EMC, ETC, trade consultant, or other qualified intermediary are indispensable Approaches 1 and 2 represent a substantial proportion of total U.S. sales, perhaps as much as 30 per-cent of U.S. exports. They do not, however, involve the firm in the export process. Consequently, this guide concentrates on approaches 3 and 4. (There is no single source or special channel for identifying domestic buyers for overseas markets. In general, they may be found through the same means that U.S. buyers are found, for example through trade shows, mailing lists, industry directories, and trade associations.)

If the nature of the company's goals and resources makes an indirect method of exporting the best choice, little further planning may be needed. In such a case, the main task is to find a suitable intermediary firm that can then handle most export details. Firms that are new to exporting or are unable to commit staff and funds to more complex export activities may find indirect methods of exporting more appropriate.

However, using an EMC or other intermediary does not exclude all possibility of direct exporting for your firm. For example, your company may try exporting directly to such "easy" nearby markets as Canada, Mexico, or the Bahamas while letting an EMC handle more ambitious sales to Egypt or Japan. You may also choose to gradually increase the level of direct exporting later, after experience has been gained and sales volume appears to justify added investment.

Consulting advisers before making these decisions can be helpful. Next we provide information on a variety of organizations that can provide this type of help - in many cases, at no cost.

606.03 DISTRIBUTION CONSIDERATIONS

- Which channels of distribution should the firm use to market its products abroad?
- Where should the firm produce its products and how should it distribute them in the foreign market?
- What types of representatives, brokers, wholesalers, dealers, distributors, or end-use customers, and so forth should the firm use?
- What are the characteristics and capabilities of the available intermediaries?
- Should the assistance of an EMC or ETC be obtained?

Indirect Exporting

The principal advantage of indirect marketing for a smaller U.S. company is that it provides a way to penetrate foreign markets without the complexities and risks of direct exporting. Several kinds of intermediary firms provide a range of export services. Each type of firm offers distinct advantages for your company.

Confirming Houses

Confirming houses or buying agents are finders for foreign firms that want to purchase U.S. products. They seek to obtain the desired items at the lowest possible price and are paid a commission by their foreign clients. In some cases, they may be foreign government agencies or quasi-governmental firms empowered to locate and purchase desired goods. An example is foreign government purchasing missions.

Export Management Companies

An EMC acts as the export department for one or several producers of goods or services. It solicits and transacts business in the names of the producers it represents or in its own name for a commission, salary, or retainer plus commission. Some EMCs provide immediate payment for the producer's products by either arranging financing or directly purchasing products for resale. Typically, only larger EMCs can afford to purchase or finance exports.

EMCs usually specialize either by product or by foreign market, or sometimes even both. Because of their specialization, the best EMCs know their products and the markets they serve very well and usually have well-established networks of foreign distributors already in place. This immediate access to foreign markets is one of the principal reasons for using an EMC, since establishing a productive relationship with a foreign representative may be a costly and lengthy process. One disadvantage of using an EMC is that a manufacturer may lose control over foreign sales. Most manufacturers are properly concerned that their product and company image be well maintained in foreign markets. An important way for a company to retain sufficient control in such an arrangement is to carefully select an EMC that can meet the company's needs and maintain close communication with it. For example, a company may ask for regular reports on efforts to market its products and may require approval of certain types of efforts, such as advertising programs or service arrangements. If a company wants to maintain

this type of relationship with an EMC, it should negotiate points of concern before entering an agreement, since not all EMCs are willing to comply with the company's concerns.

Export Trading Companies

An ETC facilitates the export of U.S. goods and services. Like an EMC, an ETC can either act as the export department for producers or take title to the product and export for its own account. Therefore, the terms ETC and EMC are often used interchangeably. A special kind of ETC is a group organized and operated by producers. These ETCs can be organized along multiple or single-industry lines and can also represent producers of competing products.

Export Trading Company Act of 1982 and The Office of Export Trading Company Affairs

The Export Trading Company Act of 1982 allows banks to make equity investments in commercial ventures that qualify as ETCs. In addition, the Export-Import Bank (Ex-Im Bank) of the United States is allowed to make working capital guarantees to U.S. exporters.

Through the Office of Export Trading Company Affairs (OETCA) within the International Trade Administration, the U.S. Department of Commerce promotes the formation and use of U.S. export intermediaries and issues export trade certificates of review providing limited immunity from U.S. antitrust laws. OETCA informs the business community of the benefits of export intermediaries through conferences, presentations before trade associations and civic organizations, and publications. The major publication on this subject is the *Export Trading Company Guidebook,* available for purchase through the U.S. Government Printing Office. OETCA provides counseling to businesses seeking to take advantage of the act.

OETCA also maintains the Contact Facilitation Service (CFS) database, a listing of U.S. producers of goods and services and of organizations that provide trade facilitation services. Under a public-private sector arrangement, the CFS database is published annually in a directory entitled The *Export Yellow Pages.* The directory provides users with the names and addresses of banks, EMCs, ETCs, freight forwarders, manufacturers, and service organizations and names the export products or export-related services that these firms supply. By obtaining CFS registration forms from Commerce EACs, firms can register in the database free of charge and be listed in subsequent editions of The *Export Yellow Pages.*

The certificate of review program provides ex-porters with an antitrust "insurance policy" intended to foster joint activities where economies of scale and risk diversification can be achieved. The act also amends the Sherman Antitrust Act and the Federal Trade Commission Act to clarify the jurisdictional reach of these statutes to export trade. Both acts now apply to export trade only if there is a

"direct substantial and reasonably foreseeable" effect on domestic or import commerce of the United States or the export commerce of a U.S. competitor. Certificates of review are issued by the Secretary of Commerce with the concurrence of the U.S. Department of Justice. Any U.S. corporation or partnership, any resident individual, or any state or local entity may apply for a certificate of review. A certificate can be issued to an applicant if it is determined that the proposed "export trade activities and methods of operation" will not result in a substantial lessening of domestic competition or restraint of trade within the United States. For the conduct covered by the certificate, its holder and any other individuals or firms named as members are given immunity from government suits under U.S. federal and state antitrust laws. In private party actions, liability is reduced from treble to single damages, greatly reducing the probability of nuisance suits. Moreover, in the event of private litigation involving conduct covered by the certificate of review, a prevailing certificate holder re-covers the costs of defending the suit, including reasonable attorney's fees.
If you are interested in additional information, contact the Office of Export Trading Company Affairs, U.S. Department of Commerce, International Trade Administration, Washington, DC 20230; telephone 202-482-5131.

606.04 AGENTS, MERCHANTS, OR RE-MARKETERS

Export agents, merchants, or re-marketers purchase products directly from the manufacturer, packing and marking the products according to their own specifications. They then sell these products overseas through their contacts in their own names and assume all risks for accounts.

In transactions with export agents, merchants, or re-marketers, a U.S. firm relinquishes control over the marketing and promotion of its product. This situation could have an adverse effect on future sales efforts abroad if the product is under priced or incorrectly positioned in the market, or if after-sales services are neglected. On the other hand, the effort required by the manufacturer to market the product overseas is very small and may lead to sales that otherwise would take a great deal of effort to obtain. Piggyback Marketing
Piggyback marketing is an arrangement in which one manufacturer or service firm distributes a second firm's product or service. The most common piggy-backing situation is when a U.S. company has a contract with an overseas buyer to provide a wide range of products or services.

Often, this first company does not produce all of the products it is under contract to provide, and it turns to other U.S. companies to provide the remaining products. The second U.S. company thus piggybacks its products to the international market, generally without incurring the marketing and distribution costs associated with exporting. Successful arrangements usually require that the product lines be complementary and appeal to the same customers.
Direct Exporting

The advantages of direct exporting for a U.S. company include more control over the export process, potentially higher profits, and a closer relationship to the overseas buyer and marketplace. However, these advantages do not come easily since the U.S. company needs to devote more time, personnel, and corporate resources than indirect exporting requires.

When a company chooses to export directly to foreign markets, it usually makes internal organizational changes to support more complex functions. A direct exporter normally selects the markets it wishes to penetrate, chooses the best channels of distribution for each market, and then makes specific foreign business connections in order to sell its product.

606.05 LOCATING FOREIGN REPRESENTATIVES AND BUYERS

A company that chooses to use foreign representatives may meet them during overseas business trips or at domestic or international trade shows. There are other effective methods that can be employed without leaving the United States. Ultimately, the exporter may need to travel abroad to identify, evaluate, and sign overseas representatives; how-ever, a company can save time by first conducting background research in the United States. The Commercial Service contact programs, banks and service organizations, and publications are available to help in this manner.

Contacting and Evaluating Foreign Representatives

Once your company has identified a number of potential representatives or distributors in the selected market, it should write and/or fax directly to each. Just as the U.S. firm is seeking information on the foreign representative, the representative is interested in corporate and product information on the U.S. firm. The prospective representative may want more information than the company normally provides to a casual buyer. Therefore, the firm should provide full information on its history, resources, personnel, product line, previous export activity, and all other pertinent matters. The firm may wish to include a photograph or two of plant facilities and products, and even product samples when practical. You may also want to consider inviting the foreign representative to visit its operations. Whenever the danger of piracy is significant, the exporter should guard against sending product samples that could be easily copied.

A U.S. firm should investigate potential representatives or distributors carefully before entering into an agreement. The U.S. firm also needs to know the following points about the representative or distributor's firm:

- Current status and history, including background on principal officers;
- Methods of introducing new products into the sales territory;
- Trade and bank references;
- Data on whether the U.S. firm's special requirements can be met; and
  A view of the in-country market potential for the U.S. firm's products.

This information is not only useful in gauging how much the representative knows about the exporter's industry, it is valuable market research in its own right.
A U.S. company may obtain much of this information from business associates who currently work with foreign representatives. However, U.S. exporters should not hesitate to ask potential representatives or distributors detailed and specific questions. Suppliers have the right to explore the qualifications of those who propose to represent them overseas. Well-qualified representatives will gladly answer questions that help distinguish them from less-qualified competitors. Your

company should also consider other private-sector sources for credit checks of potential business partners.

In addition, the company may wish to obtain at least two supporting business and credit reports to ensure that the distributor or representative is reputable. By using a second credit report from a different source, the U.S. firm may gain new or more complete information. Reports from a number of companies are available from commercial firms and from the Department of Commerce's International Company Profiles. Commercial firms and banks are also sources of credit information on overseas representatives. They can provide information directly or from their correspondent banks or branches overseas.

Directories of international companies may also provide credit information on foreign firms.

If the company has the necessary information, it may wish to contact a few of the foreign firm's existing U.S. clients to obtain an evaluation of the representative's character, reliability, efficiency, and past performance. To protect itself against possible conflicts of interest, it is also important for the firm to learn about other product lines that the foreign firm represents.

Once the company has pre-qualified some foreign representatives, it may wish to travel to the foreign country to observe the size, condition, and location of offices and warehouses. In addition, the company should meet the sales force and try to assess its strength in the marketplace. If traveling to each distributor or representative is difficult, the company may decide to meet each of them at or through worldwide trade shows.

606.06 NETOTIATING AN AGREEMENT WITH A REPRESENTATIVE

When the company has found a prospective representative that meets its requirements, the next step is to negotiate a foreign sales agreement. EACs can provide counseling to firms planning to negotiate foreign sales agreements with representatives and distributors. The International Chamber of Commerce also provides useful guidelines and can be reached at 212-206-1150.

Most representatives are interested in the company's pricing structure and profit potential. Representatives are also concerned with the terms of payment, product regulation, competitors and their market shares, the amount of support provided by the firm (sales aids, promotional material, advertising, etc.), training for sales and service staff, and the company's ability to deliver on schedule.

The agreement may contain provisions that the foreign representative:

- **Not** have business dealings with competing firms (because of anti-trust laws, this provision may cause problems in some European countries);

- **Not** reveal any confidential information in a way that would prove injurious, detrimental, or competitive to your firm;

- **Not** enter into agreements binding to the laws of your firm; and,

- **Refer** all inquiries received from outside the designated sales territory to meet the legal requirement of the country of your firm for action.

To ensure a conscientious sales effort from the foreign representative, the agreement should include a requirement that it apply the utmost skill and ability to the sale of the product for the compensation named in the contract. It may be appropriate to include performance requirements such as a minimum sales volume and an expected rate of increase.

In the drafting of the agreement, special attention must be paid to safeguarding the supplier's interests in cases where the representative proves less than satisfactory. It is vital to include an escape clause in the agreement, allowing the supplier to end the relationship safely and cleanly if the representative does not fulfill the firm's expectations. Some contracts specify that either party may terminate the agreement with written notice 30, 60, or 90 days in advance. The contract may also spell out exactly what constitutes just cause for ending the agreement (i.e., failure to meet specified performance levels). Other contracts specify a certain term for the agreement (usually one year), but arrange for automatic annual renewal unless either party gives written notice of its intention not to renew In all cases, escape clauses and other provisions to safeguard the supplier may be limited by the laws of the country in which the representative is located. For this reason, the supplier should learn as much as it can about the legal requirements of the representative's country and obtain qualified legal counsel in preparing the contract.

These are some of the legal questions to consider:

- How far in advance must the representative be notified of the supplier's intention to terminate the agreement? Three months satisfy the requirements of many countries, but a verifiable means of conveyance (i.e., registered mail) may be needed to establish when the notice was served.

- What is just cause for terminating a representative? Specifying causes for termination in the written contract usually strengthens the supplier's position.

- Which country's laws (or which international conventions) govern a contract dispute? Laws in the representative's country may forbid the representative from waiving its nation's legal jurisdiction.

- What compensation is due to the representative on dismissal? Depending on the length of the relationship, the added value of the market the representative created for the supplier, and whether termination is for just cause as defined by the foreign country, the supplier may be required to compensate the representative for losses.

- What must the representative give up if dismissed? The contract should specify the return of property such as: patents, trademarks, name registrations, and customer records.

- Should the representative be referred to as an agent? In some countries, the word agent implies power of attorney. The contract needs to specify if the representative is or is not a legal agent with power of attorney.

- In what language should the contract be drafted? In most cases, the contract should be in both English and the official language(s) of the foreign country.

The supplier should also be aware of laws that govern such contracts. For instance, the supplier should seek to avoid provisions that could be contrary to U.S. anti-trust laws. The Export Trading Company Act of 1982 provides a means to obtain anti-trust protection when two or more companies combine for exporting (see the section of OETCA, earlier in this chapter). In any case, the supplier should obtain legal advice when preparing and entering into any foreign agreement.

Foreign representatives often request exclusivity for marketing in a country or region. It is recommended that suppliers not grant exclusivity until the foreign representative has proven his or her capabilities or that it be granted for a limited, defined period of time, such as one year, with renewal possible. The territory covered by exclusivity may also need to be defined, though some countries' laws may prohibit that type of limitation.

The agreement with the foreign representative should define what laws apply to the agreement. Even if a supplier chooses a U.S. law or that of a third country, the laws of the representative's country may define which law applies.

Many suppliers define the U.N. Convention on Contracts for International Sale of Goods (CISG) as the source of resolution to contract disputes or defer to a ruling by the International Court of Arbitration of the International Chamber of Commerce.

606.05 ORGANIZING FOR EXPORTING

A company new to exporting generally treats its export sales no differently than its domestic sales, using existing personnel and organizational structures. As international sales and inquiries increase, the company may separate the management of its exports from that of its domestic sales.

The advantages of separating international from domestic business include the centralization of specialized skills needed to deal with international markets and the benefits of a focused marketing effort that is more likely to increase export sales. A possible disadvantage is that segmentation might be a less efficient use of corporate resources.

When a company separates international from domestic business, it may do so at different levels in the organization. For example, when a company first begins to export, it may create an export department with a full or part-time manager who reports to the head of domestic sales and marketing. At later stages, a company may choose to increase the autonomy of the export department to the point of creating an international division that reports directly to the president.

Larger companies at advanced stages of exporting may choose to retain the international division or to organize along product or geographic lines. A company with distinct product lines may create an inter-national department in each product division. A company with products that have common end users may organize geographically. For example, it may form a division for Europe and another for the Pacific Rim. A small company's initial needs may be satisfied by a single export manager who has responsibility for the full range of international activities. Regardless of how a company organizes its exporting efforts, the key is to facilitate the marketer's job. Good marketing skills can help the firm operate in an unfamiliar market. Experience has shown that a company's success in foreign markets depends less on the unique attributes of its products than on its marketing methods.

Distributors

The foreign distributor is a merchant who purchases goods from a U.S. exporter (often at a substantial discount) and resells it for a profit. The foreign distributor generally provides support and service for the product, thus relieving the U.S. company of these responsibilities. The distributor usually carries an inventory of products and a sufficient supply of spare parts and also maintains adequate facilities and personnel for normal servicing operations. Distributors typically handle a range of non-conflicting but complementary products. End users do not usually buy from a distributor; they buy from retailers or dealers.

The terms and length of association between the company and the foreign distributor are established by contract. Some companies prefer to begin with a relatively short trial period and then extend the contract if the relationship proves satisfactory to both parties.

Foreign Retailers

A company may also sell directly to foreign retailers, although in such transactions, products are generally limited to consumer lines. The growth of major retail chains in markets such as Canada and Japan has created new opportunities for this type of direct sale. This method relies mainly on traveling sales representatives who directly contact foreign retailers, although results might also be achieved by mailing catalogs, brochures, or other literature. The direct mail approach has the benefits of eliminating commissions, reducing traveling expenses, and reaching a broader audience. For optimal results, a firm that uses direct mail to reach foreign retailers should support it with other marketing activities.

American manufacturers with ties to major domestic retailers may also be able to use them to sell abroad. Many large American retailers maintain overseas buying offices and use these offices to sell abroad when practical.

Direct Sales to End Users

A U.S. business may sell its products or services directly to end users in foreign countries. These buyers can be foreign governments; institutions such as hospitals, banks, and schools; or businesses. Buyers can be identified at trade shows, through international publications, or through Commerce's Export Contact List Service. (Contact your local EAC for more details).

The U.S. company should be aware that if a product is sold in such a direct fashion, the company is responsible for shipping, payment collection, and product servicing unless other arrangements are made. Unless the cost of providing these services is built into the export price, a company could have a narrower profit than originally intended.

Please see '**Acknowledgements**' for sources of research