Trade offs: Understand legal basics of import, export

By MARIAN LADNER

Getting into importing and exporting can be a rewarding and lucrative business endeavor, but it is not without its legal pitfalls and problems. Understanding some of the basic issues can help prepare those interested for the difficulties they may face.

Classification of goods

First of all, the proper classification of goods is tremendously important to manufacturers and importers who want to avoid civil and criminal penalties. Proper classification of products is critical to running a successful (and legal) operation.

The Harmonized Tariff Schedule of the United States lists the tax rate for various goods that enter and leave the country, detailing which products are exempt from taxation and which require heavy duties.

The duty — or tax rate — of most imported products is established by the "essential character and use" provisions within the tariff schedule. If a product is not specifically listed or does not fall under a specific presidential ruling, as is often the case with cutting-edge technology, there may be conflict among manufacturers, importers and government experts regarding how much import taxes will be assigned.

Country of origin

Second, it is the responsibility of an importer or exporter to use "reasonable care" when declaring the correct country of origin for imported goods.

Customs officials are responsible for verifying the accuracy of these declarations, and periodic audits help to ensure a sound monitoring policy and to expose illegal trans-shipping or valuation schemes. Negligent or fraudulent country of origin information can lead directly to monetary penalties or criminal sanctions.

According to U.S. Customs and Border Protection, an article is considered a product of a country or instrumentality if is wholly the growth, product or manufacture of that country or if that country has transformed the product into an entirely new article of commerce with a new name, character or use.

Other country-of-origin requirements apply for textiles and goods composed of materials from more than one country.

Record keeping

It is a very bad idea to criminally transport goods in or out of the country. But negligence can be just as crippling to a business not intimately familiar with the rules, regulations, penalties and penalty process of shipping. This negligence can come from poor record keeping or unintentionally abusing preferential trade agreements.

To prevent such negligence, a company should always err on the side of caution and make sure to investigate every step of a supply chain to make sure all claims are just and above board.

Good record keeping is of paramount importance when it comes to dealing with the law. Record keeping hygiene can save a company vast amounts of trouble and money. It is important to keep things transparent and to make sure full access can be given in the event of a demand for disclosure of documents.

According to the law, any importer or exporter must make, keep and render for inspection any records, documents and electronic media pertaining to general business and any specific importations. These records must be kept for five years and, when requested, must be submitted within a reasonable timeframe, generally 30 days. In the event of a failure to comply, the penalties can be stringent.

Following the rules

To import commercially into the United States, a company must post a bond, which forms a three-way contract among customs, the importer and the surety. Penalties are taken against this import bond, in addition to those penalties assigned for misdeclaration.

Importers and exporters should give particular notice to the proper outbound classification associated with their products. Errors can lead to substantial penalties, both civil and criminal. Attention must also be paid to the end user, the end use and the destination of these items to ensure that they are not violating any of the export control laws of the United States.

Remember: The law follows the goods.

When exporting, an important consideration is that of "deemed exports." When a company is dealing with foreign nationals, it must be careful about exposing them to some kinds of U.S. technology.

If a company brings in foreign nationals to its facilities in the U.S. or even abroad and exposes them to U.S. technology that would have required an export license if exported to that foreign national's country, then the company has violated the law. A license is required prior to sharing such information or technology with that foreign national. Otherwise, a company could be in serious legal trouble.

Because the stakes are so high, it is wise to consult legal experts before making a permanent and costly mistake. The government has full-time experts working to get the most out of businesses. Businesses should have equally qualified experts working to negotiate acceptable agreements.

A company should run internal diagnostics regularly to make sure its policies are up-to-date and that it is not violating the law without knowing it. Keeping abreast of changes to customs law — and making the necessary adjustments to handbooks, procedures and internal employee education — serves as good preventative medicine.

While the legal complexities of international trade can be immense, the rewards can be well worth the struggle, and the potential snags should never dissuade a conscientious business from trying its hand at the trade offs of the importing and exporting game.

This column first appeared in the Houston Business Journal, a sister publication. **Marian Lader** *leads the international trade practice with Houston-based law firm Epstein Becker Green Wickliff & Hall P.C.*